



8 U.S.C.A. § 1101



Effective: July 27, 2006

United States Code Annotated Currentness
Title 8. Aliens and Nationality (Refs & Annos)
 Chapter 12. Immigration and Nationality
 Subchapter I. General Provisions (Refs & Annos)

→§ 1101. Definitions

(a) As used in this chapter--

- (1) The term "administrator" means the official designated by the Secretary of State pursuant to section 1104(b) of this title.
- (2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.
- (3) The term "alien" means any person not a citizen or national of the United States.
- (4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.
- (5) The term "Attorney General" means the Attorney General of the United States.
- (6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.
- (7) The term "clerk of court" means a clerk of a naturalization court.
- (8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.
- (9) The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III of this chapter, for the purpose of adjudicating nationality.
- (10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien--

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens--

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

8 U.S.C.A. § 1101

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 1288(a) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam and solely in pursuit of his calling as a crewman and to depart from Guam with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title;

(F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184(l) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669)[22 U.S.C.A. 288 et seq.], accredited resident members of the staff of such representatives, [FN1] and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien (i) (a) [Repealed. Pub.L. 106-95, § 2(c), Nov. 12, 1999, 113 Stat. 1316] (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(n)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184(g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184(i)(3) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title, or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for the facility (as defined in section 1182(m)(6) of this title) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of Title 26, agriculture as defined in section 203(f) of Title 29, and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or

8 U.S.C.A. § 1101

following to join him;

(K) subject to subsections (d) and (p) of section 1184 of this title, an alien who--

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii)(I) of this title) who is the petitioner, is the beneficiary of a petition to accord a status under section 1151(b)(2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M) (i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who--

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting

8 U.S.C.A. § 1101

in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who--

(i) (a) is described in section 1184(c)(4)(A) of this title (relating to athletes), or (b) is described in section 1184(c)(4)(B) of this title (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q)(i) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers; or (ii)(I) an alien citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 24 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Secretary of Homeland Security under section 2(a) of the Irish Peace Process Cultural and

8 U.S.C.A. § 1101

Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who--

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 1184(k) of this title, an alien--

(i) who the Attorney General determines--

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine--

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 2708(a) of Title 22,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)(i) subject to section 1184(o) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security and the Attorney General jointly; [FN2] determines--

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of Title 22,

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,

8 U.S.C.A. § 1101

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; or

(bb) has not attained 18 years of age, and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal;

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) if the Secretary of Homeland Security, in his or her discretion and with the consultation of the Attorney General, determines that a trafficking victim, due to psychological or physical trauma, is unable to cooperate with a request for assistance described in clause (i)(III)(aa), the request is unreasonable.

(U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that--

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic

8 U.S.C.A. § 1101

violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 1184(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of a petition to accord a status under section 1153(a)(2)(A) of this title that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if--

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and--

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153(a)(2)(A) of this title; or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 1255 of this title, pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76)[50 App. U.S.C.A. 454(a)], or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

8 U.S.C.A. § 1101

(24) Repealed. Pub.L. 102-232, Title III, § 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term "special immigrant" means--

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who--

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of Title 26) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of Title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been

8 U.S.C.A. § 1101

honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who--

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant

8 U.S.C.A. § 1101

under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that--

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating--

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause--

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

8 U.S.C.A. § 1101

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998 [FN3]

(M) subject to the numerical limitations of section 1153(b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

8 U.S.C.A. § 1101

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means--

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

(E) an offense described in--

(i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) section 5861 of Title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for

8 U.S.C.A. § 1101

which the term of imprisonment at [FN4] least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at [FN4] least one year;

(H) an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);

(J) an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that--

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in--

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

(ii) section 421 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 421 of Title 50 (relating to protecting the identity of undercover agents);

(M) an offense that--

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

(ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter [FN5]

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to

8 U.S.C.A. § 1101

document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily--

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily--

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

8 U.S.C.A. § 1101

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of--

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term "intended spouse" means any alien who meets the criteria set forth in section 1154(a)(1)(A)(iii)(II)(aa)(BB), 1154(a)(1)(B)(ii)(II)(aa)(BB), or 1229b(b)(2)(A)(i)(III) of this title.

(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under--

(A) clause (iii), (iv), or (vii) of section 1154(a)(1)(A) of this title;

8 U.S.C.A. § 1101

(B) clause (ii) or (iii) of section 1154(a)(1)(B) of this title;

(C) section 1186a(c)(4)(C) of this title;

(D) the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208).

(b) As used in subchapters I and II of this chapter--

(1) The term "child" means an unmarried person under twenty-one years of age who is--

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age,

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

who have or has complied with the preadoption requirements, if any, of the child's proposed residence; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States; *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151(b) of this title.

(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in subchapter III of this chapter--

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1) of this section), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(d) Repealed. Pub.L. 100-525, § 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.

(e) For the purposes of this chapter--

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this chapter--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was--

(1) a habitual drunkard;

(2) Repealed. Pub.L. 97-116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section [FN6] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it; or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

8 U.S.C.A. § 1101

(g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 1182(a)(2)(E) of this title, the term "serious criminal offense" means--

(1) any felony;

(2) any crime of violence, as defined in section 16 of Title 18; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i) of this section--

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

CREDIT(S)

(June 27, 1952, c. 477, Title I, § 101, 66 Stat. 166; Sept. 11, 1957, Pub.L. 85-316, §§ 1, 2, 71 Stat. 639; July 7, 1958, Pub.L. 85-508, § 22, 72 Stat. 351; Mar. 18, 1959, Pub.L. 86-3, § 20(a), 73 Stat. 13; Sept. 21, 1961, Pub.L. 87-256, § 109(a), (b), 75 Stat. 534; Sept. 26, 1961, Pub.L. 87-301, §§ 1, 2, 7, 75 Stat. 650, 653; Oct. 3, 1965, Pub.L. 89-236, §§ 8, 24, 79 Stat. 916, 922; Nov. 2, 1966, Pub.L. 89-710, 80 Stat. 1104; Apr. 7, 1970, Pub.L. 91-225, § 1, 84 Stat. 116; Dec. 16, 1975, Pub.L. 94-155, 89 Stat. 824; Oct. 12, 1976, Pub.L. 94-484, Title VI, § 601(b), (e), 90 Stat. 2301, 2302; Oct. 20, 1976, Pub.L. 94-571, § 7(a), 90 Stat. 2706; Oct. 12, 1976, Pub.L. 94-484, Title VI, § 602(c), as added Aug. 1, 1977, Pub.L. 95-83, Title III, § 307(q)(3), 91 Stat. 395; Aug. 17, 1977, Pub.L. 95-105, Title I, § 109(b)(3), 91 Stat. 847; 1977 Reorg. Plan No. 2, § 7(a)(8), 42 F.R. 62461, 91 Stat. 1637; Sept. 27, 1979, Pub.L. 96-70, Title III, § 3201(a), 93 Stat. 496; Mar. 17, 1980, Pub.L. 96-212, Title II, § 201(a), 94 Stat. 102; Dec. 29, 1981, Pub.L. 97-116, §§ 2, 5(d)(1), 18(a), 95 Stat. 1611, 1614, 1619; Oct. 30, 1984, Pub.L. 98-47, § 3, 98 Stat. 3435; Oct. 21, 1986, Pub.L. 99-505, § 1, 100 Stat. 1806; Oct. 22, 1986, Pub.L. 99-514, § 2, 100 Stat. 2095; Nov. 6, 1986, Pub.L. 99-603, Title III, §§ 301(a), 312, 315(a), 100 Stat. 3411, 3434, 3439; Nov. 14, 1986, Pub.L. 99-653, §§ 2, 3, 100 Stat. 3655; Oct. 1, 1988, Pub.L. 100-459, Title II, § 210(a), 102 Stat. 2203; Oct. 24, 1988, Pub.L. 100-525, §§ 2(O)(1), 8(b), 9(a), 102 Stat. 2613, 2617, 2619; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7342, 102 Stat. 4469; Nov. 21, 1989, Pub.L. 101-162, Title VI, § 611(a), 103 Stat. 1038; Dec. 18, 1989, Pub.L. 101-238, § 3(a), 103 Stat. 2100; Feb. 16, 1990, Pub.L. 101-246, Title 1, § 131(b), 104 Stat. 31; Nov. 29, 1990, Pub.L. 101-649, Title I, §§ 123, 151(a), 153(a), 162(f)(2)(A), Title II, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209(a), Title IV, § 407(a)(2), Title V, §§ 501(a), 509(a), Title VI, § 603(a)(1), 104 Stat. 4995, 5004, 5005, 5012, 5018, 5019, 5020, 5022, 5023, 5024, 5026, 5027, 5040, 5048, 5051, 5082; Oct. 1, 1991, Pub.L. 102-110, § 2(a), 105 Stat. 555; Dec. 12, 1991, Pub.L. 102-232, Title II, §§ 203(a), 205(a) to (c), 206(b), (c)(1), (d), 207(b), Title III, §§ 302(e)(8)(A), 303(a)(5)(A), (7)(A), (14), 305(m)(1), 306(a)(1), 309(b)(1), (4), 105 Stat. 1737, 1740, 1741, 1746 to 1748, 1750, 1751, 1758; Apr. 30, 1994, Pub.L. 103-236, Title I, § 162(h)(1), 108 Stat. 407; Sept. 13, 1994, Pub.L. 103-322, Title XIII, § 130003(a), 108 Stat. 2024; Oct. 5, 1994, Pub.L. 103-337, Div. C, Title XXXVI, § 3605, 108 Stat. 3113; Oct. 25, 1994, Pub.L. 103-416, Title II, §§ 201, 202, 214, 219(a), 222(a), 108 Stat. 4310, 4311, 4314, 4316, 4320; Nov. 15, 1995,

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Pub.L. 104-51, § 1, 109 Stat. 467; Apr. 24, 1996, Pub.L. 104-132, Title IV, § 440(b), (e), 110 Stat. 1277; Sept. 30, 1996, Pub.L. 104-208, Div. C, Title I, § 104(a), Title III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a), (b), 322(a)(1), (2)(A), 361(a), 371(a), Title VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627, 3009-628, 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723; Oct. 6, 1997, Pub.L. 105-54, § 1(a), 111 Stat. 1175; Nov. 26, 1997, Pub.L. 105-119, Title I, § 113, 111 Stat. 2460; Oct. 21, 1998, Pub.L. 105-277, Div. C, Title IV, § 421, Div. G, Title XXII, § 2222(e), 112 Stat. 2681-657, 2681-819; Oct. 30, 1998, Pub.L. 105-319, § 2(b)(1), (e)(2), 112 Stat. 3014, 3015, and amended Nov. 12, 1999, Pub.L. 106-95, § 2(a), (c), 113 Stat. 1312; Dec. 7, 1999, Pub.L. 106-139, § (1)(a), (b)(1), 113 Stat. 1696; Oct. 28, 2000, Pub.L. 106-386, Div. A, § 107(e)(1), (4), Div. B, Title V, §§ 1503(a), 1513(b), 114 Stat. 1477, 1479, 1518, 1534; Oct. 30, 2000, Pub.L. 106-395, Title II, § 201(a)(1), 114 Stat. 1633; Nov. 1, 2000, Pub.L. 106-409, § 2(a), 114 Stat. 1787; Nov. 22, 2000, Pub.L. 106-536, § 1(a), 114 Stat. 2560; Dec. 21, 2000, Pub.L. 106-553, § 1(a)(2) [Title XI, § 1102(a), 1103(a)], 114 Stat. 2762, 2762A-142, 2762A-143; Jan. 16, 2002, Pub.L. 107-125, § 2(b), 115 Stat. 2403; Nov. 2, 2002, Pub.L. 107-274, § 2(a), (b), 116 Stat. 1923; Sept. 3, 2003, Pub.L. 108-77, Title IV, § 402(a)(1), 117 Stat. 939; Oct. 15, 2003, Pub.L. 108-99, § 1, 117 Stat. 1176; Dec. 19, 2003, Pub.L. 108-193, §§ 4(b)(1), (5), 8(a)(1), 117 Stat. 2878, 2879, 2886; Dec. 10, 2004, Pub.L. 108-449, § 1(b)(1), 118 Stat. 3470; Dec. 17, 2004, Pub.L. 108-458, Title V, § 5504, 118 Stat. 3741; May 11, 2005, Pub.L. 109-13, Div. B, Title V, § 501(a), 119 Stat. 321; Oct. 18, 2005, Pub.L. 109-90, § 536, 119 Stat. 2087; Jan. 5, 2006, Pub.L. 109-162, Title VIII, §§ 801, 805(d), 811, 822(c)(1), 119 Stat. 3053, 3056, 3057, 3063; July 27, 2006, Pub.L. 109-248, Title IV, § 402(b), 120 Stat. 623.)

[FN1] So in original. Probably should read "representative".

[FN2] So in original. The semicolon probably should not appear.

[FN3] So in original. Probably should be followed by "; or".

[FN4] So in original. Probably should be preceded by "is".

[FN5] So in original. Probably should be followed by a semicolon.

[FN6] So in original. The phrase "of such section" probably should not appear.

TERMINATION OF AMENDMENT

<Amendment to this section by Pub.L. 108-78, effective on the date the United States-Singapore Free Trade Agreement enters into force, to cease to be effective on the date on which the Agreement ceases to be in force, see Pub.L. 108-77, § 107(c), set out in the United States-Singapore Free Trade Agreement Act note under 19 U.S.C.A. § 3805.>

AMENDMENT OF SUBSECTION (A)(15)(Q)

<Pub.L. 105-319, 2(e)(2), Oct. 30, 1998, 112 Stat. 3015, as amended Pub.L. 107-234, § 1(4), Oct. 4, 2002, 116 Stat. 1481; Pub.L. 108-449, § (1)(a)(2)(B), Dec. 10, 2004, 118 Stat. 3469, provided that, effective October 1, 2008, subsection (a)(15)(Q) is amended-->

<(A) by striking "or" at the end of clause (i);>

<(B) by striking "(i)" after "(Q)"; and>

<(C) by striking clause (ii).>

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

AMENDMENT OF SUBSEC. (B)(1)

<Pub.L. 106-279, Title III, § 302(a), Title V, § 505(a)(2), (b), Oct. 6, 2000, 114 Stat. 838, 844, provided that, effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, subsection (b) is amended in paragraph (1) by striking out "or" at the end of subparagraph (E), by striking the period at the end of subparagraph (F) and inserting "; or", and by inserting a new subparagraph (G), as follows:>

<(G) a child, under the age of sixteen at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 1151(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States, by a United States citizen and spouse jointly, or by an unmarried United States citizen at least 25 years of age-->

<(i) if-->

<(I) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States;>

<(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;>

<(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;>

<(IV) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Attorney General may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and>

<(V) in the case of a child who has not been adopted-->

<(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and>

<(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and>

<(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.>

AMENDMENT OF SUBSEC. (B)(2)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

<Pub.L. 106-279, Title III, § 302(c), Title V, § 505(a)(2), (b), Oct. 6, 2000, 114 Stat. 839, 844, provided that, effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, subsection (b) is amended in paragraph (2) by inserting "and paragraph (1)(G)(i)" after "second proviso therein".>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1952 Acts. House Report No. 1365 and Conference Report No. 2096, see 1952 U.S. Code Cong. and Adm. News, p. 1653.

1957 Acts. House Report No. 1199, see 1957 U.S. Code Cong. and Adm. News, p. 2016.

1958 Acts. House Report No. 624, see 1958 U.S. Code Cong. and Adm. News, p. 2933.

1959 Acts. Senate Report No. 80, see 1959 U.S. Code Cong. and Adm. News, p. 1346.

1961 Acts. House Report No. 1094 and Conference Report No. 1197, see 1961 U.S. Code Cong. and Adm. News, p. 2759.

House Report No. 1086 and Conference Report No. 1172, see 1961 U.S. Code Cong. and Adm. News, p. 2950.

1965 Acts. Senate Report No. 748 and Conference Report No. 1101, see 1965 U.S. Code Cong. and Adm. News, p. 3328.

1966 Acts. Senate Report No. 1794, see 1966 U.S. Code Cong. and Adm. News, p. 3660.

1970 Acts. House Report No. 91-851, see 1970 U.S. Code Cong. and Adm. News, p. 2750.

1975 Acts. Senate Report No. 94-464, see 1975 U.S. Code Cong. and Adm. News, p. 1635.

1976 Acts. House Report No. 94-266 and House Conference Report No. 94- 1612, see 1976 U.S. Code Cong. and Adm. News, p. 4947.

House Report No. 94-1553, see 1976 U.S. Code Cong. and Adm. News, p. 6073.

1977 Acts. Senate Report No. 95-102 and House Conference Report No. 95- 500, see 1977 U.S. Code Cong. and Adm. News, p. 549.

Senate Report No. 95-194 and House Conference Report No. 95-537, see 1977 U.S. Code Cong. and Adm. News, p. 1625.

1979 Acts. House Report No. 96-98(Parts I and II) and House Conference Report No. 96-473, see 1979 U.S. Code Cong. and Adm. News, p. 1034.

1980 Acts. Senate Report No. 96-256 and House Conference Report No. 96- 781, see 1980 U.S. Code Cong. and Adm. News, p. 141.

1981 Acts. House Report No. 97-264, see 1981 U.S. Code Cong. and Adm. News, p. 2577.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

1986 Acts. House Report No. 99-592, see 1986 U.S. Code Cong. and Adm. News, p. 3464.

House Report No. 99-682(Parts I to V) and House Conference Report No. 99- 1000, see 1986 U.S. Code Cong. and Adm. News, p. 5649.

House Report No. 99-916, see 1986 U.S. Code Cong. and Adm. News, p. 6182.

1989 Acts. House Report No. 101-288, see 1989 U.S. Code Cong. and Adm. News, p. 1894.

1990 Acts. House Report No. 101-17, House Conference Report No. 101-343, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 3.

House Report No. 101-350, see 1990 U.S. Code Cong. and Adm. News, p. 95.

House Report No. 101-723(Parts I and II), House Conference Report No. 101-955, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 6710.

1991 Acts. House Report No. 102-195, see 1991 U.S. Code Cong. and Adm. News, p. 305.

House Report Nos. 102-287, 102-380, and 102-383, see 1991 U.S. Code Cong. and Adm. News, p. 1362.

1994 Acts. Senate Report No. 103-107 and House Conference Report No. 103- 482, see 1994 U.S. Code Cong. and Adm. News, p. 302.

House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

House Report No. 103-499 and House Conference Report No. 103-701, see 1994 U.S. Code Cong. and Adm. News, p. 2091.

House Report No. 103-387, see 1994 U.S. Code Cong. and Adm. News, p. 3516.

1996 Acts. Senate Report No. 104-179 and House Conference Report No. 104- 518, see 1996 U.S. Code Cong. and Adm. News, p. 924.

1997 Acts. House Conference Report No. 105-405, see 1997 U.S. Code Cong. and Adm. News, p. 2942.

1998 Acts. Statement by President, see 1998 U.S. Code Cong. and Adm. News, p. 582.

2000 Acts. House Report No. 106-691(Part I), see 2000 U.S. Code Cong. and Adm. News, p. 668.

House Report No. 106-852, see 2000 U.S. Code Cong. and Adm. News, p. 1499.

House Report No. 106-939, see 2000 U.S. Code Cong. and Adm. News, p. 1380.

House Conference Report No. 106-1005 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2345.

2002 Acts. House Report No. 107-188, see 2001 U.S. Code Cong. and Adm. News, p. 1789.

House Report No. 107-753, see 2002 U.S. Code Cong. and Adm. News, p. 1194.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

2003 Acts. House Report No. 108-224(Parts I and II), see 2003 U.S. Code Cong. and Adm. News, p. 1050.

House Report No. 108-271, see 2003 U.S. Code Cong. and Adm. News, p. 1258.

House Report No. 108-264(Parts I and II), see 2003 U.S. Code Cong. and Adm. News, p. 2408.

2004 Acts. House Report No. 108-260(Part I), see 2004 U.S. Code Cong. and Adm. News, p. 3100.

House Conference Report No. 108-796, see 2004 U.S. Code Cong. and Adm. News, p. 3178.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S51.

2005 Acts. House Conference Report No. 109-72, see 2005 U.S. Code Cong. and Adm. News, p. 240.

House Conference Report No. 109-241, see 2005 U.S. Code Cong. and Adm. News, p. 907.

2006 Acts. House Report No. 109-233, see 2005 U.S. Code Cong. and Adm. News, p. 1636.

Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S35.

References in Text

This chapter, referred to in text, was in the original, "this Act", meaning Act June 27, 1952, c. 477, 66 Stat. 163, as amended, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Tables.

The Headquarters Agreement with the United Nations (61 Stat. 758), referred to in subsec. (a)(15)(C), is set out as a note under 22 U.S.C.A. § 287.

The first section of Public Law 89-732, referred to in subsec. (a)(51)(D), is the first undesignated section in Pub.L. 89-732, Nov. 2, 1966, 80 Stat. 1161, as amended, which is set out in a note under 8 U.S.C.A. § 1255.

Section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998, referred to in subsec. (a)(51)(E), is Pub.L. 105-277, Div. A, § 101(h) [Title IX, § 902(d)(1)(B)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-538, as amended, which is set out as a note under 8 U.S.C.A. § 1255.

Section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act, referred to in subsec. (a)(51)(F), is Pub.L. 105-100, Title II, § 202(d)(1), Nov. 19, 1997, 111 Stat. 2195, which is set out in a note under 8 U.S.C.A. § 1255.

Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (a)(51)(G), is Pub.L. 104-208, Div. C, Title III, § 309, Sept. 30, 1996, 110 Stat. 3009-625, as amended, which is set out as an Effective and Applicability Provisions note under this section.

Section 1184(l) of this title, referred to in subsec. (a)(15)(F)(i), probably means the subsec. (l) of section 1184 which relates to nonimmigrant elementary and secondary school students and was added by Pub.L. 104-208, Div. C, Title VI, § 625(a)(1), Sept. 30, 1996, 110 Stat. 3009-699, and redesignated subsec. (m) of section 1184 by Pub.L. 106-386, Div. A, § 107(e)(2)(A), Oct. 28, 2000, 114 Stat. 1478.

The International Organization Immunity Act (59 Stat. 669), referred to in subsec. (a)(15)(G)(i), is classified principally to §§ 288 to 288f of Title 22.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Subsection (p) of section 1184 of this title, referred to in subsec. (a)(15)(K), was redesignated 8 U.S.C.A. § 1184(r) by Pub.L. 108-193, § 8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

Section 3(a) of the Selective Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), referred to in subsec. (a)(19), was formerly classified to § 303 of Appendix to Title 50, War and National Defense and has been omitted as obsolete.

Section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998, referred to in subsec. (a)(15)(Q)(ii)(I), is section 2(a) of Pub.L. 105-319, Oct. 30, 1998, 112 Stat. 3013, which is classified as a note under this section.

The Immigration Technical Corrections Act of 1988, referred to in subsec. (a)(27)(L)(iii), is Pub.L. 100-525, Oct. 24, 1988, 102 Stat. 2609, for classification of which, see Tables.

The Immigration and Nationality Technical Corrections Act of 1994, referred to in subsec. (a)(27)(L)(iii), is Pub.L. 103-416, Oct. 25, 1994, 108 Stat. 4305, for classification of which, see Tables.

The American Competitiveness and Workforce Improvement Act of 1998, referred to in subsec. (a)(27)(L)(iii), is Pub.L. 105-277, Div. C, Title IV, Oct. 21, 1998, 112 Stat. 2681-641, for classification of which, see Tables.

Section 1432 of this title, referred to in subsec. (c)(1), was repealed by Pub.L. 106-395, Title I, § 103(a), Oct. 30, 2000, 114 Stat. 1632.

Codifications

Pub.L. 109-248, Title IV, § 402(b), July 27, 2006, 120 Stat. 623, which directed the amendment of "Section 101(a)(15)(K) (8 U.S.C. § 1101(a)(15)(K))", was executed to section 101 of the Immigration and Nationality Act, as the probable intent of Congress, since section 101 of the Immigration and Nationality Act is classified to 8 U.S.C.A. § 1101.

Amendment by Pub.L. 104-208, Div. C, § 321(a) directed that amendments be made to subsec. (a)(43) of this section "as amended by section 441(e) of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132)". Section 441 of Pub.L. 104-132 contained no subsec. (e) and did not amend this section; however, section 440 of Pub.L. 104-132 contained a subsec. (e) which did amend subsec. (a)(43) of this section. The amendments by Pub.L. 104-208, Div. C, § 321(a) have been applied to subsec. (a)(43) of this section as amended by section 440(e) of Pub.L. 104-132, as the probable intent of Congress.

September 30, 1996, referred to in the concluding provisions of subsec. (a)(43), originally read "the date of enactment of this paragraph", which was translated as meaning the date of enactment of section 321(b) of Pub.L. 104-208, which inserted that language, to reflect the probable intent of Congress.

Amendment by Pub.L. 104-208, Div. C, § 322(a)(2)(A), could not be executed because it directed the striking out of language already struck out by Pub.L. 104-208, § 321(a)(8).

Amendment by Pub.L. 104-208, Div. C, § 322(a)(2)(A), which directed that "imposed (regardless of any suspension of imprisonment)" be struck out of subsec. (a)(43)(G) and (P), was executed by striking out "imposed (regardless of any suspension of such imprisonment)", as the probable intent of Congress.

Amendment by Pub.L. 104-208, Div. C, § 671(b)(5), which directed that the comma be struck out following "1588" in subsec. (a)(43)(K)(ii), was executed by striking out the comma following "1588" in subsec. (a)(43)(K)(iii), as the probable intent of Congress.

8 U.S.C.A. § 1101

Amendment by Pub.L. 104-208, Div. C, § 321(a)(3), which directed the substitution of "at least one year" for "is at least 5 years" in subsec. (a)(43)(P), could not be executed to text because "is at least 5 years" does not appear in subpar. (P).

Amendment by Pub.L. 99-653, § 3, as originally enacted, struck out par. (1) of subsec. (c), which defined "child" as unmarried person under age twenty one, including a child legitimated under law of child's or father's residence or domicile, in United States or elsewhere, and, except as otherwise provided in sections 1431 to 1434 of this title, a child adopted in United States before age sixteen while in legal custody of legitimating or adopting parents. Subsequent amendment by Pub.L. 100-525, § 8(b), repealed section 3 of Pub.L. 99-653 and directed restoration of language deleted thereby, thus restoring subsec. (c)(1), effective Nov. 14, 1986, the date of enactment of Pub.L. 99-653. Accordingly, such amendment by Pub.L. 99-653 has been treated as never having been enacted.

Amendments

2006 Amendments. Subsec. (a)(15)(K). Pub.L. 109-248, § 402(b), inserted "(other than a citizen described in section 204(a)(1)(A)(viii)(I))" after "citizen of the United States" each place that phrase appeared.

Subsec. (a)(15)(T)(i). Pub.L. 109-162, § 801(a)(1)(A), in the matter preceding subcl. (I), struck out "Attorney General" and inserted "Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security and the Attorney General jointly;".

Subsec. (a)(15)(T)(i)(III)(aa). Pub.L. 109-162, § 801(a)(1)(B), inserted "Federal, State, or local" before "investigation", struck out ", or" following "trafficking", and inserted "or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; or".

Subsec. (a)(15)(T)(i)(IV). Pub.L. 109-162, § 801(a)(1)(C), struck out "and" at the end.

Subsec. (a)(15)(T)(ii). Pub.L. 109-162, § 801(a)(2), rewrote cl. (ii), which formerly read:

"**(ii)** if the Attorney General considers it necessary to avoid extreme hardship--

"**(I)** in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; and

"**(II)** in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien,

if accompanying, or following to join, the alien described in clause (i);".

Subsec. (a)(15)(T)(iii). Pub.L. 109-162, § 801(a)(3), added cl. (iii).

Subsec. (a)(15)(U)(i). Pub.L. 109-162, § 801(b)(1), struck out "Attorney General" and inserted "Secretary of Homeland Security".

Subsec. (a)(15)(U)(ii). Pub.L. 109-162, § 801(b)(2), rewrote cl. (ii), which formerly read: "if the Attorney General considers it necessary to avoid extreme hardship to the spouse, the child, or, in the case of an alien child, the parent of the alien described in clause (i), the Attorney General may also grant status under this paragraph based upon certification of a government official listed in clause (i)(III) that an investigation or prosecution would be harmed without the assistance of the spouse, the child, or, in the case of an alien child, the parent of the alien; and".

8 U.S.C.A. § 1101

Subsec. (a)(51). Pub.L. 109-162, § 811, added par. (51).

Subsec. (b)(1)(E)(i). Pub.L. 109-162, § 805(d), inserted "or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household" following "at least two years".

Subsec. (f)(3). Pub.L. 109-162, § 822(c)(1), struck out "(9)(A)" and inserted "(10)(A)" before "of section 1182(a) of this title".

Subsec. (i)(1). Pub.L. 109-162, § 801(c)(1), struck out "Attorney General" and inserted "Secretary of Homeland Security, the Attorney General,".

Subsec. (i)(2). Pub.L. 109-162, § 801(c)(2), struck out "Attorney General" and inserted "Secretary of Homeland Security".

2005 Amendments. Subsec. (a)(15)(E). Pub.L. 109-13, § 501(a), inserted "or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title;" after "or of an enterprise in which he is actively in the process of investing, a substantial amount of capital;"; and in cl. (1) struck out "or" after "national;".

Subsec. (a)(15)(H)(ii)(a). Pub.L. 109-90, § 536, struck out "Title 26 and agriculture as defined in section 203(f) of Title 29," and inserted "Title 26, agriculture as defined in section 203(f) of Title 29, and the pressing of apples for cider on a farm,".

2004 Amendments. Subsec. (a)(15)(Q). Pub.L. 108-449, § 1(b)(1)(A), struck "Attorney General" each place such term appeared and inserted "Secretary of Homeland Security".

Subsec. (a)(15)(Q)(i). Pub.L. 108-449, § 1(a)(2)(B), struck "or" at the end of cl. (i) and struck "(i)" after "(Q)".

Subsec. (a)(15)(Q)(ii)(I). Pub.L. 108-449, § 1(b)(1)(B), struck "35 years of age or younger having a residence" and inserted "citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months", and struck "36 months)" and inserted "24 months)".

Subsec. (a)(15)(Q)(ii). Pub.L. 108-449, § 1(a)(2)(B), struck out clause (ii), which read "(I) an alien 35 years of age or younger having a residence in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 36 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Attorney General under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;".

Subsec. (f)(8). Pub.L. 108-458, § 5504(1), struck out the period at the end of par. (8) and inserted "; or".

Subsec. (f)(9). Pub.L. 108-458, § 5504(2), added par. (9).

2003 Amendments. Subsec. (a)(15)(H)(i)(b). Pub.L. 108-77, § 402(a)(1), struck out "1182(n)(1) of this title, or (c)" and inserted "1182(n)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance

8 U.S.C.A. § 1101

of the provisions of an agreement listed in section 1184(g)(8)(A) of this title, who is engaged in a specialty occupation described in section 1184(i)(3) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title, or (c)".

Subsec. (a)(15)(T). Pub.L. 108-193, § 8(a)(1)(A), (B), made technical corrections, requiring no change in text, and struck out "1184(n)," and inserted "1184(o),".

Subsec. (a)(15)(T)(i)(III)(bb). Pub.L. 108-193, § 4(b)(1)(A), struck out "15 years of age," and inserted "18 years of age,".

Subsec. (a)(15)(T)(ii)(I). Pub.L. 108-193, § 4(b)(1)(B), before "and parents", inserted "unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause,".

Subsec. (a)(15)(U). Pub.L. 108-193, § 8(a)(1)(A), (C), made technical corrections, requiring no change in text, and struck out "1184(o)," and inserted "1184(p),".

Subsec. (a)(15)(V). Pub.L. 108-193, § 8(a)(1)(D), struck out "1184(o)," and inserted "1184(q),".

Subsec. (a)(27)(C)(ii). Pub.L. 108-99, § 1, struck out "2003," and inserted "2008," in subclauses (II) and (III).

Subsec. (a)(43)(K)(iii). Pub.L. 108-193, § 4(b)(5), rewrote clause (iii), which formerly read:

"(iii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of Title 18 (relating to peonage, slavery, and involuntary servitude);".

2002 Amendments. Subsec. (a)(15)(F). Pub.L. 107-274, § 2(a), struck out "(ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;" and inserted "(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;".

Subsec. (a)(15)(L). Pub.L. 107-125, § 2(b), struck "an alien who," and inserted "subject to section 1184(c)(2) of this title, an alien who,".

Subsec. (a)(15)(M). Pub.L. 107-274, § 2(a), struck out "(ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;" and inserted "(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;".

Subsec. (a)(15)(Q)(ii). Pub.L. 107-234, § 1(4), struck out clause (ii), which read "(I) an alien 35 years of age or younger having a residence in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 36 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Attorney General under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;".

8 U.S.C.A. § 1101

2000 Amendments. Subsec. (a)(15)(K). Pub.L. 106-553, § 1(a)(2) [Title XI, § 1103(a)], rewrote subpar. (K), which formerly read: "**(K)** an alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancée or fiancé accompanying him or following to join him;".

Subsec. (a)(15)(R). Pub.L. 106-386, § 107(e)(1)(A), struck out "or" at the end of subpar. (R).

Subsec. (a)(15)(S). Pub.L. 106-386, § 107(e)(1)(B), struck out the period at the end and inserted "; or".

Pub.L. 106-386, § 1513(b)(1), struck out the "or" at the end.

Subsec. (a)(15)(T). Pub.L. 106-386, § 107(e)(1)(C), added subpar. (T).

Pub.L. 106-386, § 1513(b)(2), struck out the period at the end and inserted "; or".

Subsec. (a)(15)(U). Pub.L. 106-386, § 1513(b)(3), added subpar. (U).

Subsec. (a)(15)(V). Pub.L. 106-553, § 1(a)(2) [Title XI, § 1102(a)], added subpar. (V).

Subsec. (a)(27)(C)(ii)(I), (II). Pub.L. 106-409, § 2(a), substituted "2003" for "2000" wherever appearing.

Subsec. (a)(27)(M). Pub.L. 106-536, § 1(a), added subpar. (M).

Subsec. (a)(50). Pub.L. 106-386, § 1503(a), added par. (50).

Subsec. (b)(1)(E) to (G). Pub.L. 106-279, § 302(a), made conforming changes in subpars. (E) and (F), and added subpar. (G).

Subsec. (b)(2). Pub.L. 106-279, § 302(c), inserted "and paragraph (1)(G)(i)" after "second proviso therein".

Subsec. (f). Pub.L. 106-395, § 201(a), added "In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it."

Subsec. (i). Pub.L. 106-386, § 107(e)(4), added subsec. (i).

1999 Amendments. Subsec. (a)(15)(H)(i). Pub.L. 106-95, § 2(c), repealed subcl. (a) which read: "who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or".

Pub.L. 106-95, § 2(a) inserted subcl. (c).

Subsec. (b)(1)(E). Pub.L. 106-139, § 1(a)(1), added "(i)" after "(E)" and added clause (ii).

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Subsec. (b)(1)(F). Pub.L. 106-139, § 1(a)(2), added "(i)" after "(F)", struck out the period at the end and inserted "; or", and added clause (ii).

Subsec. (c)(1). Pub.L. 106-139, § 1(b)(1), struck out "sixteen years," and inserted "16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)),".

1998 Amendments. Subsec. (a)(9). Pub.L. 105-277, § 2222(e), inserted "or employee" after "officer" the second place "officer" appeared, and inserted before the period at the end of the sentence "or, when used in subchapter III of this chapter, for the purpose of adjudicating nationality".

Subsec. (a)(15)(N). Pub.L. 105-277, § 421(b), inserted "(or under analogous authority under paragraph (27)(L))" after "(27)(I)(i)" and inserted "(or under analogous authority under paragraph (27)(L))" after "(27)(I)".

Subsec. (a)(15)(Q)(i). Pub.L. 105-319, § 2(b)(1)(A), inserted "(i)" after "(Q)" and "or" at the end of the clause.

Subsec. (a)(15)(Q)(ii). Pub.L. 105-319, § 2(b)(1)(B), inserted clause (ii).

Subsec. (a)(15)(Q)(i). Pub.L. 105-319, § 2(d)(2)(A), (B), struck out "(i)" after "(Q)" and "or" at the end of the clause.

Subsec. (a)(15)(Q)(ii). Pub.L. 105-319, § 2(d)(2)(C), struck out clause (ii), which read "(I) an alien 35 years of age or younger having a residence in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 36 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Attorney General under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;".

Subsec. (a)(27)(L). Pub.L. 105-277, § 421(a), added new subparagraph "(L)".

1997 Amendments. Subsec. (a)(27)(C)(ii)(II), (III). Pub.L. 105-54, § 1(a), substituted "2000" for "1997" in subcls. (II) and (III).

Subsec. (a)(27)(J). Pub.L. 105-119, § 113, revised subpar. (J), which formerly read: "an immigrant (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or".

1996 Amendments. Subsec. (a)(6). Pub.L. 104-208, § 104(a), added provisions relating to biometric identifiers.

Subsec. (a)(13). Pub.L. 104-208, § 301(a), added par. (13). Former par. (13) relating to definitions of "admission" and "admitted" was struck out.

Subsec. (a)(15)(F)(i). Pub.L. 104-208, § 625(a)(2), inserted "consistent with section 1184(l) of this title" following "such a course of study".

8 U.S.C.A. § 1101

Subsec. (a)(15)(K). Pub.L. 104-208, § 308(f)(1)(A), substituted "admission" for "entry".

Subsec. (a)(15)(S). Pub.L. 104-208, § 671(a)(3)(B), substituted reference to section 1184(k) for reference to section 1184(j).

Subsec. (a)(17). Pub.L. 104-208, § 308(d)(4)(A), inserted reference to removal.

Subsec. (a)(30). Pub.L. 104-208, § 308(f)(1)(B), substituted "admission" for "entry".

Subsec. (a)(42). Pub.L. 104-208, § 601(a), added provisions relating to persecution by coercive population control measures such as abortion and sterilization.

Subsec. (a)(43). Pub.L. 104-208, § 321(b), added provision relating to application of term regardless of date of entry of conviction.

Subsec. (a)(43)(A). Pub.L. 104-208, § 321(a)(1), added provisions relating to rape and sexual abuse of a minor.

Subsec. (a)(43)(D). Pub.L. 104-208, § 321(a)(2), substituted "\$10,000" for "\$100,000".

Subsec. (a)(43)(F). Pub.L. 104-208, §§ 321(a)(3), 322(a)(2)(A), substituted "at least one year" for "imposed (regardless of any suspension of imprisonment) is at least 5 years".

Subsec. (a)(43)(G). Pub.L. 104-208, §§ 321(a)(3), 322(a)(2)(A), substituted "at least one year" for "imposed (regardless of any suspension of such imprisonment) is at least 5 years". See Codification note set out under this section.

Subsec. (a)(43)(J). Pub.L. 104-208, § 321(a)(4), substituted "one year imprisonment" for "5 years' imprisonment".

Pub.L. 104-132, § 440(e)(1), inserted ", or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses)," following "corrupt organizations".

Subsec. (a)(43)(K)(ii). Pub.L. 104-208, § 321(a)(5), inserted "if committed" preceding "for commercial advantage".

Subsec. (a)(43)(K)(ii), (iii). Pub.L. 104-132, § 440(e)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(43)(L)(iii). Pub.L. 104-208, § 321(a)(6), added cl. (iii).

Subsec. (a)(43)(M). Pub.L. 104-208, § 321(a)(7), substituted "\$10,000" for "\$200,000" wherever appearing.

Subsec. (a)(43)(N). Pub.L. 104-208, § 321(a)(3), substituted "at least one year" for "is at least 5 years".

Pub.L. 104-208, § 321(a)(8), substituted provision relating to exception in case of first offense committed on behalf of specified relatives for provision relating to prison term, regardless of any suspension, of at least one year.

Pub.L. 104-208, § 322(a)(2)(A), purported to strike out "imposed (regardless of any suspension of imprisonment)", following "term of imprisonment". See Codifications note set out under this section.

Pub.L. 104-132, § 440(e)(3), amended subpar. (N) generally. Prior to amendment subpar. (N) read as follows: "an offense described in section 1324(a)(1) of this title (relating to alien smuggling) for the purpose of commercial advantage;"

8 U.S.C.A. § 1101

Subsec. (a)(43)(O). Pub.L. 104-132, § 440(e)(4), (6), (7), added subpar. (O). Former subpar. (O) was amended generally and redesignated as subpar. (P). Prior to such amendment and redesignation, former subpar. (O) read as follows: "an offense described in section 1546(a) of Title 18 (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspicion of such imprisonment) is at least 5 years;".

Subsec. (a)(43)(P). Pub.L. 104-208, § 321(a)(3), purported to substitute "at least one year" for "is at least 5 years". See Codifications note set out under this section.

Pub.L. 104-132, § 440(e)(5), (6), redesignated former subpar. (O) as (P). Former subpar. (P) was amended by substituting "5 years" for "15 years" and striking out "and" following "more;", and, as so amended, redesignated as subpar. (Q).

Subsec. (a)(43)(P)(ii). Pub.L. 104-208, § 321(a)(9), substituted provision relating to 12-month term except when first offense committed on behalf of specified relatives for provision relating to 18-month term, and struck out "imposed (regardless of any suspension of such imprisonment)" following "term of imprisonment".

Subsec. (a)(43)(Q). Pub.L. 104-132, § 440(e)(6), redesignated former subpars. (P) and (Q) as (Q) and (U), respectively.

Subsec. (a)(43)(R). Pub.L. 104-208, § 321(a)(10), substituted "the term of imprisonment is at least one year" for "a sentence of 5 years' imprisonment or more may be imposed".

Subsec. (a)(43)(R) to (T). Pub.L. 104-132, § 440(e)(8), added subpars. (R) to (T).

Subsec. (a)(43)(S). Pub.L. 104-208, § 321(a)(11), substituted "the term of imprisonment is at least one year" for "a sentence of 5 years' imprisonment or more may be imposed".

Subsec. (a)(43)(U). Pub.L. 104-132, § 440(e)(6), redesignated former subpar. (Q) as (U).

Subsec. (a)(47). Pub.L. 104-132, § 440(b), added par. (47).

Subsec. (a)(48). Pub.L. 104-208, § 322(a)(1), added par. (48).

Subsec. (a)(49). Pub.L. 104-208, § 361(a), added par. (49).

Subsec. (b)(4). Pub.L. 104-208, § 371(a), substituted provisions defining "immigration judge" for provisions defining "special inquiry officer".

Subsec. (c)(1). Pub.L. 104-208, § 671(e)(2), substituted "and 1432" for "to 1433".

Subsec. (f)(3). Pub.L. 104-208, § 308(d)(3)(A), substituted "inadmissible" for "excludable".

Subsec. (g). Pub.L. 104-208, § 308(e)(3), inserted "or removed" following "deported" wherever appearing.

1995 Amendments. Subsec. (b)(1)(A). Pub.L. 104-51, § 1(1)(A), substituted "child born in wedlock" for "legitimate child".

Subsec. (b)(1)(D). Pub.L. 104-51, § 1(1)(B), substituted "a child born out of wedlock" for "an illegitimate child".

Subsec. (b)(2). Pub.L. 104-51, § 1(2), substituted "a child born out of wedlock" for "an illegitimate child".

8 U.S.C.A. § 1101

1994 Amendments. Subsec. (a)(1). Pub.L. 103-236, § 162(h)(1), substituted "official designated by the Secretary of State pursuant to section 1104(b) of this title" for "Assistant Secretary of State for Consular Affairs".

Subsec. (a)(27)(C)(ii)(II), (III). Pub.L. 103-416, § 214, substituted "1997" for "1994", wherever appearing.

Subsec. (a)(27)(D). Pub.L. 103-416, § 201, inserted references to American Institute of Taiwan and the Director thereof.

Subsec. (a)(27)(F). Pub.L. 103-337, § 3605, in cl. (ii) inserted "or continues to be employed by the United States Government in an area of the former Canal Zone" after "employment".

Subsec. (a)(27)(I)(iii). Pub.L. 103-416, § 202, substituted provisions relating to an immigrant who is a retired officer of an international organization who files a petition for status under this subpar. no later than 6 months after date of retirement or 6 months after Oct. 25, 1994, whichever is later, rather than before Jan. 1, 1993 and no later than 6 months after date of retirement or 6 months after Oct. 25, 1988, whichever is later.

Subsec. (a)(27)(J)(i). Pub.L. 103-416, § 219(a), substituted "or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has" for "and has".

Subsec. (a)(43). Pub.L. 103-416, § 222(a), expanded definition and cite list of actions which, for the purposes of this chapter, constitute an "aggravated felony".

1991 Amendments. Subsec. (a)(15)(D)(i). Pub.L. 102-232, § 309(b)(1), inserted a comma after "States)".

Subsec. (a)(15)(H)(i)(b). Pub.L. 102-232, § 207(b), inserted "or as a fashion model" after "section 1184(i)(1) of this title" and "or, in the case of a fashion model, is of distinguished merit and ability" after "section 1184(i)(2) of this title".

Pub.L. 102-232, § 303(a)(5)(A), inserted "subject to section 1182(j)(2) of this title" following "or (b)".

Pub.L. 102-232, § 303(a)(7)(A), struck out ", and had approved by," following "has filed with".

Subsec. (a)(15)(O)(i). Pub.L. 102-232, § 205(b), struck out ", but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States" after "extraordinary ability".

Subsec. (a)(15)(O)(ii)(III)(b). Pub.L. 102-232, § 205(c), substituted "significant production (including pre- and post-production work)" for "significant principal photography".

Subsec. (a)(15)(P)(i). Pub.L. 102-232, § 203(a), substituted reference to section 1184(c)(4)(A) and (B) of this title for provision which described a qualified athlete or member of an entertainment group, who are now described in section 1184(c)(4)(A) and (B) of this title.

Subsec. (a)(15)(P)(ii)(II). Pub.L. 102-232, § 206(b), (c)(1), inserted "or organizations" after "and an organization" and struck out ", between the United States and foreign states involved" after "groups of artists and entertainers".

Subsec. (a)(15)(P)(iii)(II). Pub.L. 102-232, § 206(d), inserted "commercial or noncommercial" preceding "program" and substituted "to perform, teach, or coach" for "for the purpose of performing".

Subsec. (a)(15)(Q). Pub.L. 102-232, § 303(a)(14), substituted "approved by the Attorney General" for "designated by the Attorney General".

8 U.S.C.A. § 1101

Subsec. (a)(24). Pub.L. 102-232, § 305(m)(1), struck out par. (24), which defined "naturalization court".

Subsec. (a)(27)(I)(ii)(II), (iii)(II). Pub.L. 102-232, § 302(e)(8)(A), substituted "files a petition for status" for "applies for a visa or adjustment of status".

Subsec. (a)(27)(K). Pub.L. 102-110 added subpar. (K).

Subsec. (a)(43). Pub.L. 102-232, § 306(a)(1), substituted a period for "," after "commit any such act", thereby correcting a technical error resulting from the literal execution of directory language in Pub.L. 101-649.

Subsec. (a)(46). Pub.L. 102-232, § 205(a), added par. (46).

Subsec. (c)(1). Pub.L. 102-232, § 309(b)(4), substituted "and 1433" for "1433, and 1434".

1990 Amendments. Subsec. (a)(15)(D)(i). Pub.L. 101-649, § 203(c), inserted ", as defined in section 1288(a) of this title" following "on board a vessel" and substituted "a capacity" for "any capacity".

Subsec. (a)(15)(E)(i). Pub.L. 101-649, § 204(a), added reference to trade in services or technology.

Subsec. (a)(15)(H). Pub.L. 101-649, § 205(e)(1), in opening cl. struck out "having a residence in a foreign country which he has no intention of abandoning" following "an alien".

Subsec. (a)(15)(H)(i)(a). Pub.L. 101-649, § 162(f)(2)(A), added parenthetical provision directing that facility include petitioner and worksite if worksite is not alien's employer or controlled by employer.

Subsec. (a)(15)(H)(i)(b). Pub.L. 101-649, § 205(c)(1), substituted provisions excepting aliens, coming temporarily to perform services in a speciality occupation with respect to whom intending employer has filed an application, from definition, for provisions excepting aliens of distinguished merit and ability coming temporarily to perform services of an exceptional nature, including certain medical graduates, from definition.

Subsec. (a)(15)(H)(ii). Pub.L. 101-649, § 205(e)(2), (3), added provisions in subcls. (a) and (b) specifying that alien have a residence in a foreign country which he has no intention of abandoning.

Subsec. (a)(15)(H)(iii). Pub.L. 101-649, § 205(d), added provision specifying that training program not be designed primarily to provide employment.

Pub.L. 101-649, § 205(e)(4), added provision specifying that alien have a residence in a foreign country which he has no intention of abandoning.

Subsec. (a)(15)(L). Pub.L. 101-649, § 206(c), substituted "within 3 years preceding the time of his application" for "immediately preceding the time of his application".

Subsec. (a)(15)(O), (P). Pub.L. 101-649, § 207(a), added subpars. (O) and (P).

Subsec. (a)(15)(Q). Pub.L. 101-649, § 208, added subpar. (Q).

Subsec. (a)(15)(R). Pub.L. 101-649, § 209(a), added subpar. (R).

Subsec. (a)(27)(C). Pub.L. 101-649, § 151(a), rewrote subparagraph (C) which formerly read: "(i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation

8 U.S.C.A. § 1101

of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him; or".

Subsec. (a)(27)(J). Pub.L. 101-649, § 153(a), added subpar. (J).

Subsec. (a)(37). Pub.L. 101-649, § 407(a)(2), struck out "(except as used in section 1421(a) of this title)" following "term 'State' includes".

Subsec. (a)(43). Pub.L. 101-649, § 501(a), expanded definition to include illicit trafficking in controlled substances, offenses described in section 1956 of Title 18 and certain offenses defined in section 16 of Title 18, and directed that term applies to offenses whether in violation of State, Federal, or foreign law in certain circumstances.

Subsec. (a)(44). Pub.L. 101-649, § 123, added par. (44).

Subsec. (a)(45). Pub.L. 101-649, § 204(c), added par. (45).

Subsec. (f)(3). Pub.L. 101-649, § 603(a)(1)(A), (B), substituted "subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof" for "paragraphs (9) and (10) of section 1182(a) of this title and paragraph (23)" and "paragraphs (2)(D), (6)(E), and (9)(A)" for "paragraphs (11), (12), and (31)".

Subsec. (f)(8). Pub.L. 101-649, § 509(a), substituted "an aggravated felony (as defined in subsection (a)(43) of this section)" for "the crime of murder".

Subsec. (h). Pub.L. 101-649, § 603(a)(1)(C), substituted "1182(a)(2)(E) of this title" for "1182(a)(34) of this title".

Pub.L. 101-246 added subsec. (h).

1989 Amendments. Subsec. (a)(15)(H)(i). Pub.L. 101-238, § 3(a), added subcl. (a), relating to the establishment of a new nonimmigrant classification for nonimmigrant nurses, designated existing provisions in part as subcl. (b), and in subcl. (b) of cl. (i), as so designated, inserted "(other than services as a registered nurse)" after "to perform services".

Subsec. (b)(2). Pub.L. 101-162, § 611(a), added provision similar to that enacted by Pub.L. 100-459, § 210(a), effective immediately upon expiration of amendment by said section 210(a) of Pub.L. 100-459. See 1988 Amendments note and Effective Date of 1989 Amendments note set out under this section.

1988 Amendments. Subsec. (a)(15)(J). Pub.L. 100-525, § 9(a)(1), substituted "Director of the United States Information Agency" for "Secretary of State".

Subsec. (a)(27)(I)(i)(II), (ii)(II), (iii)(II). Pub.L. 100-525, § 2(o)(1), substituted "October 24, 1988" for "November 6, 1986" and "applies for a visa or adjustment of status" for "applies for admission", respectively, wherever appearing.

Subsec. (a)(38). Pub.L. 100-525, § 9(a)(2), struck out provision that for the purpose of issuing certificates of citizenship to persons who are citizens of the United States, the term "United States" as used in section 1452 of this title included the Canal Zone.

Subsec. (a)(43). Pub.L. 100-690 added par. (43).

8 U.S.C.A. § 1101

Subsec. (b)(2). Pub.L. 100-459, § 210(a), added provision that, for purposes of paragraph (1)(F) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

Subsec. (c)(1). Pub.L. 100-525, § 8(b), struck out section 3 of Pub.L. 99-653, thereby deleting amendment made by such section. See Codification note set out above.

Subsec. (d). Pub.L. 100-525, § 9(a)(3), struck out former subsec. (d), relating to definition of the terms "veteran", "Spanish-American War", "World War I", "World War II", and "Korean hostilities" as those terms were used in part III of subchapter III of this chapter.

1986 Amendments. Subsec. (a)(15)(D)(i). Pub.L. 99-505, § 1, designated existing provisions as cl. (i).

Subsec. (a)(15)(D)(ii). Pub.L. 99-505, § 1, added cl. (ii).

Subsec. (a)(15)(H)(ii). Pub.L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(15)(H). Pub.L. 99-603, § 301(a), designated existing provisions of cl. (ii) as subcl. (b) thereof and added subcl. (a) relating to persons performing agricultural labor or services as defined by the Secretary of Labor in regulations and including agricultural labor as defined in section 3121(g) of Title 26 and agriculture as defined in section 203(f) of Title 29 of a temporary or seasonal nature.

Subsec. (a)(15)(N). Pub.L. 99-603, § 312(b), added subpar. (N).

Subsec. (a)(27)(I). Pub.L. 99-603, § 312(a), added subpar. (I).

Subsec. (b)(1)(D). Pub.L. 99-603, § 315(a), inserted "or to its natural father if the father has or had a bona fide parent-child relationship with the person".

Subsec. (b)(1)(E). Pub.L. 99-653, § 2, struck out "thereafter" following "the child has".

Subsec. (c)(1). Pub.L. 99-653, § 3, struck out par. (1), which defined "child" as unmarried person under age twenty one, including a child legitimated under law of child's or father's residence or domicile, in United States or elsewhere, and, except as otherwise provided in sections 1431 to 1434 of this title, a child adopted in United States before age sixteen while in legal custody of legitimating or adopting parents.

1984 Amendments. Subsec. (a)(9). Private Law 98-47 struck out provisions which had directed that in the Canal Zone and the outlying possessions of the United States the term "consular officer" meant an officer designated by the Governor of the Canal Zone, or the governors of the outlying possessions for purposes of issuing immigrant or nonimmigrant visas under this chapter.

1981 Amendments. Subsec. (a)(15)(F). Pub.L. 97-116, §§ 2(a)(1), 18(a)(1), substituted in cl. (i) "college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program" for "institution of learning or other recognized place of study" and "Secretary of Education" for "Office of Education of the United States".

Subsec. (a)(15)(H), (J), (K), (L). Pub.L. 97-116, § 18(a)(2), substituted a semicolon for a period at the end of subpars. (H), (J), (K), and (L) and inserted "or" at the end of subpar. (L).

8 U.S.C.A. § 1101

Subsec. (a)(15)(M). Pub.L. 97-116, § 2(a)(2), added subpar. (M).

Subsec. (a)(27)(H). Pub.L. 97-116, § 5(d)(1), added subpar. (H).

Subsec. (a)(33). Pub.L. 97-116, § 18(a)(3), struck out provision that residence be considered continuous for the purposes of sections 1482 and 1484 of this title where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

Subsec. (b)(1)(A). Pub.L. 97-116, § 18(a)(5)(A), substituted "child;" for "child; or".

Subsec. (b)(1)(B). Pub.L. 97-116, § 18(a)(5)(A), substituted "occurred;" for "occurred; or".

Subsec. (b)(1)(C). Pub.L. 97-116, § 18(a)(5)(B), substituted "legitimation;" for "legitimation."

Subsec. (b)(1)(E). Pub.L. 97-116, §§ 2(b), 18(a)(5)(C), substituted "sixteen" for "fourteen" and "this chapter; or" for "this chapter."

Subsec. (b)(1)(F). Pub.L. 97-116, § 2(b), substituted "sixteen" for "fourteen".

Subsec. (f). Pub.L. 97-116, § 2(c), struck out par. (2), which provided that a person not be considered a person of good moral character if within the period for which good moral character is required to be established the person commit adultery, and substituted in par. (3) "paragraphs (9) and (10) of section 1182(a) of this title and paragraph (23) of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana)" for "paragraphs (9), (10), and (23) of section 1182(a) of this title".

1980 Amendments. Subsec. (a)(42). Pub.L. 96-212 added subsec. (a)(42).

1979 Amendments. Subsec. (a)(27). Pub.L. 96-70 added subpars. (E) to (G).

1977 Amendments. Subsec. (a)(1). Pub.L. 95-108 substituted "Assistant Secretary of State for Consular Affairs" for "administrator of the Bureau of Security and Consular Affairs of the Department of State".

Subsec. (a)(41). Pub.L. 95-83 inserted "a" after "graduates of" and ", other than such aliens who are of national or international renown in the field of medicine" after "in a foreign state".

1976 Amendments. Subsec. (a)(15)(H)(i). Pub.L. 94-484, § 601(b)(1), added ", and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency".

Subsec. (a)(15)(H)(ii). Pub.L. 94-484, § 601(b)(2), added ", but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession".

Subsec. (a)(15)(H)(iii). Pub.L. 94-484, § 601(b)(3), added ", other than to receive graduate medical education or training".

Subsec. (a)(15)(J). Pub.L. 94-484, § 601(b)(4), added "and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title".

Subsec. (a)(27). Pub.L. 94-571 struck out subpar. (A) provision defining the term "special immigrant" to include

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

an immigrant born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him and restricting issuance of an immigrant visa until consular officer was in receipt of a determination made by the Secretary of Labor pursuant to former provisions of section 1182(a)(14) of this title; and redesignated as subpars. (A) to (D) former subpars. (B) to (E).

Subsec. (a)(41). Pub.L. 94-484, § 601(e), added subsec. (a)(41).

1975 Amendments. Subsec. (b)(1)(F). Pub.L. 94-155 provided for adoption of alien children under the age of fourteen by unmarried United States citizens who are at least twenty-five years of age and added requirement that before adoption the Attorney General be satisfied that proper care will be provided the child after admission.

1970 Amendments. Subsec. (a)(15)(H). Pub.L. 91-225, § 1(a), provided for non-immigrant alien status for alien spouse and minor children of any alien specified in par. (H) if accompanying him or following to join him and deleted "temporary", "other", and "industrial" preceding "services", "temporary services", and "trainee" in cls. (i) to (iii), respectively.

Subsec. (a)(15)(K), (L). Pub.L. 91-225, § 1(b), added subpars. (K) and (L).

1966 Amendments. Subsec. (a)(38). Pub.L. 89-710 inserted sentence providing that the term "United States" as used in § 1452 of this title, for the purpose of issuing certificates of citizenship to persons who are citizens of the United States, shall include the Canal Zone.

1965 Amendments. Subsec. (a)(27). Pub.L. 89-236, § 8(a), substituted "special immigrant" for "nonquota immigrant" as the term being defined.

Subsec. (a)(32). Pub.L. 89-236, § 8(b), substituted the term "profession" and its definition for the term "quota immigrant" and its definition.

Subsec. (b)(1)(F). Pub.L. 89-236, § 8(c), expanded the definition to include a child, under the age of 14 at the time a petition is filed in his behalf to accord a classification as an immediate relative or who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption, made minor amendments in the existing definition.

Subsec. (b)(6). Pub.L. 89-236, § 24, repealed subsec. (b)(6) which defined the term "eligible orphan".

1961 Amendments. Subsec. (a)(15). Pub.L. 87-256 included the alien spouse and minor children of any such alien if accompanying him or following to join him in subpar. (F), and added subpar. (J).

Subsec. (b)(1). Pub.L. 87-301, § 2, added subpar. (F).

Subsec. (b)(6). Pub.L. 87-301, § 1, added subsec. (b)(6).

Subsec. (d)(1). Pub.L. 87-301, § 7(a), inserted "or from June 25, 1950, to July 1, 1955."

Subsec. (d)(2). Pub.L. 87-301, § 7(b), added the definition of Korean hostilities.

1959 Amendments. Subsec. (a)(36). Pub.L. 86-3 struck out "Hawaii".

8 U.S.C.A. § 1101

1958 Amendments. Subsec. (a)(36). Pub.L. 85-508, struck out "Alaska".

1957 Amendments. Subsec. (b)(1). Pub.L. 85-316 inserted "whether or not born out of wedlock" in subpar. (B), and added subpars. (D) and (E).

Effective and Applicability Provisions

2006 Acts. Pub.L. 109-162, Title VIII, § 822(c)(2), Jan. 5, 2006, 119 Stat. 3063, provided that: "The amendment made by paragraph (1) [amending subsec. (f)(3) of this section] shall be effective as if included in section 603(a)(1) of the Immigration Act of 1990 (Public Law 101-649; 104 Stat. 5082) [Pub.L. 101-649, Title VI, § 603(a)(1), Nov. 29, 1990, 104 Stat. 5082, which amended this section]."

2003 Acts. Amendment to this section by Pub.L. 108-78, effective on the date the United States-Singapore Free Trade Agreement enters into force, and to cease to be effective on the date on which the Agreement ceases to be in force, see Pub.L. 108-77, § 107, set out in the United States-Singapore Free Trade Agreement note under 19 U.S.C.A. § 3805.

2003 Acts. Pub.L. 108-99, § 2, Oct. 15, 2003, 117 Stat. 1176, provided that: "The amendment made by section 1 [amending this section] shall take effect on October 1, 2003."

2000 Acts. Pub.L. 106-553, § 1(a)(2) [Title XI, § 1102(e)], Dec. 21, 2000, 114 Stat. 2762, 2762A-144, provided that: "The amendments made by this section [amending this section and sections 1184 and 1255 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000] and shall apply to an alien who is the beneficiary of a classification petition filed under section 204 of the Immigration and Nationality Act [8 U.S.C.A. § 1184] on or before the date of the enactment of this Act [Dec. 21, 2000]."

Pub.L. 106-553, § 1(a)(2) [Title XI, § 1103(d)], Dec. 21, 2000, 114 Stat. 2762, 2762A-146, provided that: "The amendments made by this section [amending this section and sections 1184, 1186a and 1255 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000] and shall apply to an alien who is the beneficiary of a classification petition filed under section 204 of the Immigration and Nationality Act [8 U.S.C.A. § 1184] before, on, or after the date of the enactment of this Act [Dec. 21, 2000]."

Pub.L. 106-409, § 2(b), Nov. 1, 2000, 114 Stat. 1787, provided that: "The amendment made by subsection (a) [amending subsec. (a)(27)(C)(ii)] shall take effect on October 1, 2000."

Pub.L. 106-395, Title II, § 201(a)(2), Oct. 30, 2000, 114 Stat. 1633, provided that: "The amendment made by paragraph (1) [amending subsec. (f) of this section] shall be effective as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104- 208; 110 Stat. 3009-546) [Pub.L. 104-208, Div.C, Sept. 30, 1996, 110 Stat. 3009-546; see Short Title note under this section and Tables for complete classification] and shall apply to individuals having an application for a benefit under the Immigration and Nationality Act pending on or after September 30, 1996."

Pub.L. 106-386, Div. B, Title V, § 1506(b)(4), Oct. 28, 2000, 114 Stat. 1528, provided that: "The amendments made by paragraph (3) [amending a note provision set out under this section] shall take effect as if included in the enactment of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub.L. 104-208, Div. C, Title III, § 309, Sept. 30, 1996, 110 Stat. 3009-587], which is set out as a note under this section (8 U.S.C. 1101 note)."

Pub.L. 106-386, Div. B, Title V, § 1510(c), Oct. 28, 2000, 114 Stat. 1532, provided that: "The amendments made by subsections (a) and (b) [amending a note provision set out under this section and provisions set out as a note under section 1255 of this title] shall be effective as if included in the Nicaraguan Adjustment and Central

8 U.S.C.A. § 1101

American Relief Act [Pub.L. 105-100, Title II, Nov. 19, 1997, 111 Stat. 2193] (8 U.S.C. 1255 note; Public Law 105-100, as amended)."

Amendment by Pub.L. 106-279 to take effect upon the entry into force for the United States of the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, subject to certain transition rules, see section 505(a)(2), (b) of Pub.L. 106-279, set out as a note under section 14901 of Title 42.

1999 Acts. Amendment by section 2 of Pub.L. 106-95 applicable to classification petitions filed for nonimmigrant status only during the 4-year period beginning on the date that interim or final regulations are first promulgated, see section 2(e) of Pub.L. 106-95, set out as a note under section 1182 of this title.

1998 Acts. The amendments to subsec. (a)(15)(Q) by section 2(d)(2) of Pub.L. 105-319, as amended by section 1(4) of Pub.L. 107-234, effective Oct. 1, 2006.

1997 Acts. Pub.L. 105-139, § 1(f), Dec. 2, 1997, 111 Stat. 2644, provided that: "The amendments made by this section [amending provisions set out as notes under this section and sections 1151, 1153, and 1255 of this title]--

"(1) shall take effect upon the enactment of the Nicaraguan Adjustment and Central American Relief Act [Pub.L. 105-100, Title II, Nov. 19, 1997, 111 Stat. 2193] (as contained in the District of Columbia Appropriations Act, 1998) [Pub.L. 105-100, Nov. 19, 1997, 111 Stat. 2160]; and

"(2) shall be effective as if included in the enactment of such Act."

Section 203(f) of Pub.L. 105-100 provided that: "The amendments made by this section to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub.L. 104-208, Div. C, Sept. 30, 1996, 110 Stat. 3009-546, as amended] [amending provisions set out as a note under this section] shall take effect as if included in the enactment of such Act."

Section 1(b) of Pub.L. 105-54 provided that: "The amendment made by subsection (a) [amending subsec. (a)(27)(C)(ii) of this section] shall take effect on the date of the enactment of this Act [Oct. 6, 1997]."

1996 Acts. Section 104(b) of Div. C of Pub.L. 104-208, as amended Pub.L. 105-277, Div. A, § 101(b) [Title IV, § 410(c)], Oct. 21, 1998, 112 Stat. 2681-104; Pub.L. 107-173, Title VI, § 601, May 14, 2002, 116 Stat. 564, provided that:

"(1) **Clause A.**--Clause (A) of the sentence added by the amendment made by subsection (a) [subsec. (a)(6)(A) of this section] shall apply to documents issued on or after 18 months after the date of the enactment of this Act [Sept. 30, 1996].

"(2) **Clause B.**--Clause (B) of such sentence [subsec. (a)(6)(B) of this section] shall apply to cards presented on or after 6 years after the date of the enactment of this Act [Sept. 30, 1996]."

Section 309 of Div. C of Pub.L. 104-208, as amended Pub.L. 104-302, § 2(2), (3), Oct. 11, 1996, 110 Stat. 3657; Pub. L. 105-100, Title II, §§ 203(a) to (c), 204(d), Nov. 19, 1997, 111 Stat. 2196, 2201; Pub.L. 105-139, § 1(c), Dec. 2, 1997, 111 Stat. 2644; Pub.L. 106-386, Div. B, Title V, §§ 1506(b)(3), 1510(b), Oct. 28, 2000, 114 Stat. 1527, 1531; Pub. L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1505(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-327, provided that:

"(a) **In general.**--Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division [enacting provisions set out as a note under section 1226 of this title, enacting provisions set out as a note under section 1252 of this title, amending section 1251(a) of this title prior to redesignation thereof as 1227(a)

8 U.S.C.A. § 1101

of this title and enacting provisions set out as a note under redesignated 1227 of this title, and amending sections 1225 and former section 1227 of this title and enacting and repealing provisions set as notes under those sections], this subtitle and the amendments made by this subtitle [subtitle A of Title III [sections 301 to 309] of Div. C of Pub.L. 104-208, see Tables for classification] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Sept. 30, 1996] (in this title referred to as the 'title III-A effective date').

"(b) Promulgation of regulations.--The Attorney General shall first promulgate regulations to carry out this subtitle by not later than 30 days before the title III-A effective date.

"(c) Transition for certain aliens.--

"(1) General rule that new rules do not apply.--Subject to the succeeding provisions of this subsection, in the case of an alien who is in exclusion or deportation proceedings before the title III-A effective date--

"(A) the amendments made by this subtitle shall not apply, and

"(B) the proceedings (including judicial review thereof) shall continue to be conducted without regard to such amendments.

"(2) Attorney General option to elect to apply new procedures.--In a case described in paragraph (1) in which an evidentiary hearing under section 236 or 242 and 242B [1226 or 1252 and 1252b of this title] of the Immigration and Nationality Act has not commenced as of the title III-A effective date, the Attorney General may elect to proceed under chapter 4 of title II of such Act (as amended by this subtitle) [part IV of subchapter II of this chapter]. The Attorney General shall provide notice of such election to the alien involved not later than 30 days before the date any evidentiary hearing is commenced. If the Attorney General makes such election, the notice of hearing provided to the alien under section 235 or 242(a) of such Act [sections 1225 or 1252(a) of this title] shall be valid as if provided under section 239 of such Act (as amended by this subtitle) [former section 1229 of this title, now section 1224 of this title; there is also a new section 1229 of this title] to confer jurisdiction on the immigration judge.

"(3) Attorney General option to terminate and reinstate proceedings.--In the case described in paragraph (1), the Attorney General may elect to terminate proceedings in which there has not been a final administrative decision and to reinstate proceedings under chapter 4 of title II the Immigration and Nationality Act (as amended by this subtitle) [part IV of subchapter II of this chapter]. Any determination in the terminated proceeding shall not be binding in the reinstated proceeding.

"(4) Transitional changes in judicial review.--In the case in which a final order of exclusion or deportation is entered more than 30 days after the date of the enactment of this Act [Sept. 30, 1996], notwithstanding any provision of section 106 of the Immigration and Nationality Act [section 1105a of this title] (as in effect as of the date of the enactment of this Act [Sept. 30, 1996]) to the contrary--

"(A) in the case of judicial review of a final order of exclusion, subsection (b) of such section shall not apply and the action for judicial review shall be governed by the provisions of subsections (a) and (c) of such in the same manner as they apply to judicial review of orders of deportation;

"(B) a court may not order the taking of additional evidence under section 2347(c) of title 28, United States Code [section 2347(c) of Title 28, Judiciary and Judicial Procedure];

"(C) the petition for judicial review must be filed not later than 30 days after the date of the final order of exclusion or deportation;

8 U.S.C.A. § 1101

"(D) the petition for review shall be filed with the court of appeals for the judicial circuit in which the administrative proceedings before the special inquiry officer or immigration judge were completed;

"(E) there shall be no appeal of any discretionary decision under section 212(c), 212(h), 212(i), 244, or 245 of the Immigration and Nationality Act [sections 1182(c), 1182(h), 1182(i), 1254, or 1255 of this title] (as in effect as of the date of the enactment of this Act [Sept. 30, 1996]);

"(F) service of the petition for review shall not stay the deportation of an alien pending the court's decision on the petition, unless the court orders otherwise; and

"(G) there shall be no appeal permitted in the case of an alien who is inadmissible or deportable by reason of having committed a criminal offense covered in section 212(a)(2) or section 241(a)(2)(A)(iii), (B), (C), or (D) of the Immigration and Nationality Act [sections 1182(a)(2) or 1251(a)(2)(A)(iii), (B), (C), or (D) of this title] (as in effect as of the date of the enactment of this Act) [Sept. 30, 1996], or any offense covered by section 241(a)(2)(A)(ii) of such Act [section 1251(a)(2)(A)(ii) of this title] (as in effect on such date) for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 241(a)(2)(A)(i) of such Act [section 1251(a)(2)(A)(i) of this title] (as so in effect).

"(5) Transitional rules with regard to suspension of deportation.--

"(A) In general.--Subject to subparagraphs (B) and (C), paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act [section 1229b(d) of this title] (relating to continuous residence or physical presence) shall apply to orders to show cause (including those referred to in section 242B(a)(1) of the Immigration and Nationality Act [section 1252b(a)(1) of this title], as in effect before the title III-A effective date), issued before, on, or after the date of the enactment of this Act [Nov. 19, 1997].

"(B) Exception for certain orders.--In any case in which the Attorney General elects to terminate and reinstate proceedings in accordance with paragraph (3) of this subsection, paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act [section 1229b(d) of this title] shall not apply to an order to show cause issued before April 1, 1997.

"(C) Special rule for certain aliens granted temporary protection from deportation and for battered spouses and children.--

"(i) In general.--For purposes of calculating the period of continuous physical presence under section 244(a) of the Immigration and Nationality Act [section 1254(a) of this title] (as in effect before the title III-A effective date) or section 240A of such Act [section 1229b of this title] (as in effect after the title III-A effective date), subparagraph (A) of this paragraph and paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act [section 1229b(d) of this title] shall not apply in the case of an alien, regardless of whether the alien is in exclusion or deportation proceedings before the title III-A effective date, who has not been convicted at any time of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act [section 1101(a) of this title]) and--

"(I) was not apprehended after December 19, 1990, at the time of entry, and is--

"(aa) a Salvadoran national who first entered the United States on or before September 19, 1990, and who registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al. v. Thornburgh* (ABC), 760 F.Supp. 796 (N.D.Cal.1991) on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991; or

8 U.S.C.A. § 1101

"(bb) a Guatemalan national who first entered the United States on or before October 1, 1990, and who registered for benefits pursuant to such settlement agreement on or before December 31, 1991;

"(II) is a Guatemalan or Salvadoran national who filed an application for asylum with the Immigration and Naturalization Service on or before April 1, 1990;

"(III) is the spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act [section 1101(b)(1) of this title]) of an individual, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such individual, if the individual has been determined to be described in this clause (excluding this subclause and subclause (IV));

"(IV) is the unmarried son or daughter of an alien parent, at the time a decision is rendered to suspend the deportation, or cancel the removal, of such alien parent, if--

"(aa) the alien parent has been determined to be described in this clause (excluding this subclause and subclause (III)); and

"(bb) in the case of a son or daughter who is 21 years of age or older at the time such decision is rendered, the son or daughter entered the United States on or before October 1, 1990;

"(V) is an alien who entered the United States on or before December 31, 1990, who filed an application for asylum on or before December 31, 1991, and who, at the time of filing such application, was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia; or

"(VI) is an alien who was issued an order to show cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [section 1254(a)(3) of this title] (as in effect before the date of the enactment of this Act [Oct. 28, 2000]); or

"(VII)(aa) was the spouse or child of an alien described in subclause (I), (II), or (V)--

"(AA) at the time at which a decision is rendered to suspend the deportation or cancel the removal of the alien;

"(BB) at the time at which the alien filed an application for suspension of deportation or cancellation of removal; or

"(CC) at the time at which the alien registered for benefits under the settlement agreement in *American Baptist Churches, et. al. v. Thornburgh (ABC)*, applied for temporary protected status, or applied for asylum; and

"(bb) the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien described in subclause (I), (II), or (V).

"(ii) **Limitation on judicial review.**--A determination by the Attorney General as to whether an alien satisfies the requirements of clause (i) is final and shall not be subject to review by any court. Nothing in the preceding sentence shall be construed as limiting the application of section 242(a)(2)(B) of the Immigration and Nationality Act [section 1252(a)(2)(B) of this title] (as in effect after the title III-A effective date) to other eligibility determinations pertaining to discretionary relief under this Act [see section 1(a) of Div. C of Pub.L.

8 U.S.C.A. § 1101

104-208, set out as a Short Title of 1996 Amendments note under this section].

"(iii) Consideration of petitions.--In acting on a petition filed under subclause (VII) of clause (i) the provisions set forth in section 204(a)(1)(H) [section 1154(a)(1)(H) of this title] shall apply.

"(iv) Residence with spouse or parent not required.--For purposes of the application of clause (i)(VII), a spouse or child shall not be required to demonstrate that he or she is residing with the spouse or parent in the United States.

"(6) Transition for certain family unity aliens.--The Attorney General may waive the application of section 212(a)(9) of the Immigration and Nationality Act, as inserted by section 301(b)(1) of this division [section 1182(a)(9) of this title], in the case of an alien who is provided benefits under the provisions of section 301 of the Immigration Act of 1990 (relating to family unity) [section 301 of Pub.L. 101-649, set out as a note under section 1255a of this title].

"(7) Limitation on suspension of deportation.--After April 1, 1997, the Attorney General may not suspend the deportation and adjust the status under section 244 of the Immigration and Nationality Act [section 1254 of this title] (as in effect before the title III-A effective date) of any alien in any fiscal year, except in accordance with section 240A(e) of such Act [section 1229b of this title]. The previous sentence shall apply regardless of when an alien applied for such suspension and adjustment.

"(d) Transitional references.--For purposes of carrying out the Immigration and Nationality Act [this chapter], as amended by this subtitle--

"(1) any reference in section 212(a)(1)(A) of such Act [section 1182(a)(1)(A) of this title] to the term 'inadmissible' is deemed to include a reference to the term 'excludable', and

"(2) any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation.

"(e) Transition.--No period of time before the date of the enactment of this Act [Sept. 30, 1996] shall be included in the period of 1 year described in section 212(a)(6)(B)(i) of the Immigration and Nationality Act (as amended by section 301(c) of this division) [section 1182(a)(6)(B)(i) of this title].

"(f) Special rule for cancellation of removal.--

"(1) In general.--Subject to the provisions of the Immigration and Nationality Act [June 27, 1952, c. 477, 66 Stat. 163 (this chapter); see Tables for classification to the Code] (as in effect after the title III-A effective date), other than subsections (b)(1), (d)(1), and (e) of section 240A of such Act [section 1229b of this title] (but including section 242(a)(2)(B) of such Act [section 1252(a)(2)(B) of this title]), the Attorney General may, under section 240A of such Act [section 1229b of this title], cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States, if the alien applies for such relief, the alien is described in subsection (c)(5)(C)(i) of this section, and--

"(A) the alien--

"(i) is not inadmissible or deportable under paragraph (2) or (3) of section 212(a) [section 1182(a) of this title] or paragraph (2), (3), or (4) of section 237(a) of the Immigration and Nationality Act [section 1227(a) of this title] and is not an alien described in section 241(b)(3)(B)(i) of such Act [section 1231(b)(3)(B)(i) of this title];

8 U.S.C.A. § 1101

"(ii) has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date of such application;

"(iii) has been a person of good moral character during such period; and

"(iv) establishes that removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

"(B) the alien--

"(i) is inadmissible or deportable under section 212(a)(2), 237(a)(2) (other than 237(a)(2)(A)(iii)), or 237(a)(3) of the Immigration and Nationality Act [section 1182(a)(2), 1227(a)(2) (other than 1227(a)(2)(A)(iii)), or 1227(a)(3) of this title];

"(ii) is not an alien described in section 241(b)(3)(B)(i) or 101(a)(43) of such Act [section 1231(b)(3)(B)(i) or section 1101(a)(43) of this title];

"(iii) has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for removal;

"(iv) has been a person of good moral character during such period; and

"(v) establishes that removal would result in exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

"(2) **Treatment of certain breaks in presence.**--Section 240A(d)(2) [section 1229b(d)(2) of this title] shall apply for purposes of calculating any period of continuous physical presence under this subsection, except that the reference to subsection (b)(1) in such section shall be considered to be a reference to paragraph (1) of this section.

"(g) **Motions to reopen deportation or removal proceedings.**--Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act [section 1101(a) of this title])), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act [section 203 of Pub.L. 105-100, Title II, Nov. 19, 1997, 111 Stat. 2196, enacting and amending provisions set out as notes under this section, and enacting provisions set out as notes under sections 1151 and 1153 of this title] may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of the Nicaraguan Adjustment and Central American Relief Act [Pub.L. 105-100, Title II, Nov. 19, 1997, 111 Stat. 2193, which was approved Nov. 19, 1997] and shall extend for a period not to exceed 240 days.

"(h) **Relief and motions to reopen.**--

"(1) **Relief.**--An alien described in subsection (c)(5)(C)(i) who is otherwise eligible for--

"(A) suspension of deportation pursuant to section 244(a) of the Immigration and Nationality Act [8 U.S.C.A. § 1254a(a)], as in effect before the title III-A effective date; or

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

"(B) cancellation of removal, pursuant to section 240A(b) of the Immigration and Nationality Act [8 U.S.C.A. § 1229b(b)] and subsection (f) of this section;

shall not be barred from applying for such relief by operation of section 241(a)(5) of the Immigration and Nationality Act [8 U.S.C.A. § 1231(a)(5)], as in effect after the title III-A effective date.

"(2) Additional motion to reopen permitted.--Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(a)])), any alien who is described in subsection (c)(5)(C)(i) and who has become eligible for cancellation of removal or suspension of deportation as a result of the enactment of paragraph (1) may file one motion to reopen removal or deportation proceedings in order to apply for cancellation of removal or suspension of deportation. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of this subsection [Dec. 21, 2000] and shall extend for a period not to exceed 240 days.

"(3) Construction.--Nothing in this subsection shall preclude an alien from filing a motion to reopen pursuant to section 240(b)(5)(C)(ii) of the Immigration and Nationality Act [8 U.S.C.A. § 1229a(b)(5)(c)(ii)], or section 242B(c)(3)(B) of such Act [8 U.S.C.A. § 1252B(c)(3)(B)] (as in effect before the title III-A effective date)."

[Amendment by Pub.L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1505(c)] effective as if included in the enactment of the Legal Immigration Family Equity Act, see Pub.L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1506], set out as a note under section 1255 of this title].

[For effective date of amendment to section 309 of Div. C of Pub.L. 104- 208 by Pub.L. 105-139, see section 1(f) of Pub.L. 105-139, set out as an Effective Date of 1997 Amendments note under this section].

[Amendments to this note by sections 203 and 204 of Pub.L. 105-100 effective as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208, Div. C, Sept. 30, 1996, 110 Stat. 3009-546, which was enacted Sept. 30, 1996, see sections 203(f) and 204(e) of Pub.L. 105-100, set out as notes under this section and section 1229b of this title, respectively.]

[Section 2 of Pub.L. 104-302 provided in part that amendment by section 2(2) and (3) of Pub.L. 104-302 to section 309 of Div. C of Pub.L. 104- 208, set out as a note above, is effective on Sept. 30, 1996.]

Section 321(c) of Div. C of Pub.L. 104-208 provided that: "The amendments made by this section [amending this section] shall apply to actions taken on or after the date of the enactment of this Act [Sept. 30, 1996], regardless of when the conviction occurred, and shall apply under section 276(b) of the Immigration and Nationality Act [8 U.S.C.A. § 276(b)] only to violations of section 276(a) of such Act [8 U.S.C.A. § 276(a)] occurring on or after such date."

Section 322(c) of Div. C of Pub.L. 104-208 provided that: "The amendments made by subsection (a) [amending this section and section 1182 of this title] shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act [Sept. 30, 1996]. Subparagraphs (B) and (C) of section 240(c)(3) of the Immigration and Nationality Act [8 U.S.C.A. § 1230(c)(3)], as inserted by section 304(a)(3) of this division, shall apply to proving such convictions."

Section 361(b) of Div. C of Pub.L. 104-208 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 30, 1996]."

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Section 371(d)(1) of Div. C of Pub.L. 104-208 provided that: "Subsections (a) [amending this section] and (b) [amending sections 1105a, 1159, 1222, 1225, 1226, 1252, 1252b, 1323, and 1362 of this title] shall take effect on the date of the enactment of this Act [Sept. 30, 1996]."

Section 591 of Title V of Div. C of Pub.L. 104-208 provided that: "Except as provided in this title, this title and the amendments made by this title [enacting sections 1369, 1370, 1371, 1623, and 1624 of this title, amending sections 1182, 1183, 1183a, 1631, 1632, 1641, and 1642 of this title, section 506 of Title 18, Crimes and Criminal Procedure, section 1091 of Title 20, Education, and sections 402, 1320b-7, and 1436a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1182, 1183am 1611, 1612, and 1621 of this title and sections 402 and 1436a of Title 42, and repealing a provision set out as a note under section 1183a of this title] shall take effect on the date of enactment of this Act [Sept. 30, 1996]."

Section 625(c) of Div. C of Pub.L. 104-208 provided that: "The amendments made by subsection (a) [amending this section and section 1184 of this title] shall apply to individuals who obtain the status of a nonimmigrant under section 101(a)(15)(F) of the Immigration and Nationality Act [subsec. (a)(15)(F) of this section] after the end of the 60-day period beginning on the date of the enactment of this Act [Sept. 30, 1996], including aliens whose status as such a nonimmigrant is extended after the end of such period."

Section 671(a)(7) of Div. C of Pub.L. 104-208 provided that: "The amendments made by this subsection [amending this section, sections 1184, 1251, 1255, 1258, and 1324 of this title, and provisions set out as note under section 1252 of this title] shall be effective as if included in the enactment of the VCCLEA [Pub.L. 103-322, 108 Stat. 1796, which was approved Sept. 13, 1994]."

Section 671(b)(14) of Div. C of Pub.L. 104-208 provided that: "Except as otherwise provided in this subsection, the amendments made by this subsection [amending this section, sections 1252a, 1255b, 1323, 1356, and 1483 of this title, enacting provisions set out as a note under section 1161 of this title, and amending provisions set out as notes under sections 1101, 1255a, 1323, 1401, and 1433 of this title] shall take effect as if included in the enactment of INTCA [Pub.L. 103-416, 108 Stat. 4305, which was approved Oct. 25, 1994]."

Section 440(f) of Pub.L. 104-132 provided that: "The amendments made by subsection (e) [amending this section] shall apply to convictions entered on or after the date of the enactment of this Act [Apr. 24, 1996], except that the amendment made by subsection (e)(3) [amending this section] shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994 [Pub.L. 103-416, Title II, § 222, Oct. 25, 1994, 108 Stat. 4320, subsec. (a) of which amended subsec. (a)(43) of this section and subsec. (b) of which provided that such amendment was applicable to convictions entered on or after Oct. 25, 1994, see 1994 Amendments and Effective Date of 1994 Amendments notes, set out under this section]."

1994 Acts. Section 219(dd) of Pub.L. 103-416 provided that: "Except as otherwise specifically provided in this section, the amendments made by this section [amending sections 1101, 1151, 1153, 1154, 1160, 1182, 1251, 1252, 1252b, 1254a, 1255, 1255a, 1288, 1302, 1322, 1323, 1324, 1324b, 1324c, 1330, 1421, 1444, 1449, and 1522 of this title, repealing section 1161 of this title, enacting provisions set out as notes under this section and section 1449 of this title, and amending provisions set out as notes under sections 1101, 1182, 1254a, and 1255 of this title, and repealing provisions set out as a note under section 1288 of this title] shall be effective as if included in the enactment of the Immigration Act of 1990 [Pub.L. 101-649, 104 Stat. 4978, which was approved Nov. 29, 1990]."

Section 222(b) of Pub.L. 103-416 provided that: "The amendments made by this section [amending this section] shall apply to convictions entered on or after the date of enactment of this Act [Oct. 25, 1994]."

1991 Acts. Section 208 of Pub.L. 102-232 provided that: "The provisions of, and amendments made by, this title [amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title] shall take effect on April 1, 1992."

8 U.S.C.A. § 1101

Section 302(e)(8) of Pub.L. 102-232, provided in part that the amendments made by subpars. (A), (B), and (C) of such section [amending this section and sections 1186a and 1201 of this title, respectively] are effective as if included in section 162(e) of the Immigration Act of 1990 [section 162(e) of Pub.L. 101-649 which took effect on Oct. 1, 1991 and applies beginning with fiscal year 1992, see section 161(a) of Pub.L. 101-649, set out as a note under this section].

Section 305(m) of Pub.L. 102-232 provided in part that the amendments made by such section [amending this section and sections 1423, 1433, 1441, 1443, 1445, and 1452 of this title] are effective as if included in section 407(d) of Pub.L. 101-649, which was approved on Nov. 29, 1990.

Section 310 of Pub.L. 102-232, as amended Pub.L. 103-416, Title II, § 219(z)(9), Oct. 25, 1994, 108 Stat. 4318, provided that: "Except as otherwise specifically provided, the amendments made by (and provisions of)--

"(1) sections 302 through 308 [amending this section and sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1324c, 1325, 1357, 1421, 1423, 1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of this title and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1160, 1182, 1251, 1252, 1254a, and 1255 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title] shall take effect as if included in the enactment of the Immigration Act of 1990 [Pub.L. 101-649 which was approved Nov. 29, 1990], and

"(2) section 309(b) [amending this section and sections 1154, 1160, 1182, 1188, 1252, 1252a, 1324a, 1356, 1424, and 1455 of this title and enacting provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Dec. 12, 1991]."

[Section 219(z) of Pub.L. 103-416 provided in part that amendment of this note by section 219(z)(9) of Pub.L. 103-416 is effective as if included in Pub.L. 102-232, Dec. 12, 1991, 105 Stat. 1733.]

Section 2(d) of Pub.L. 102-110 provided that: "This section [amending this section and sections 1153 and 1255 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 1, 1991]."

1990 Acts. Enactment of subsec. (a)(27)(J) by section 153(a) of Pub.L. 101- 649 effective Nov. 29, 1990, and applicable to fiscal year 1991, see section 161(b) of Pub.L. 101-649, set out as a note under this section.

Section 161 of Pub.L. 101-649, as amended Pub.L. 102-110, § 4, Oct. 1, 1991, 105 Stat. 557; Pub.L. 102-232, Title III, § 302(e)(1), (2), Dec. 12, 1991, 105 Stat. 1745; Pub.L. 103-416, Title II, §§ 218, 219(aa), Oct. 25, 1994, 108 Stat. 4316, 4319; Pub.L. 104-208, Div. C, Title VI, § 671(f), Sept. 30, 1996, 110 Stat. 3009-724, provided that:

"(a) **In general.**--Except as otherwise provided in this title, this title and the amendments made by this title [enacting section 1186b of this title, amending this section, sections 1103, 1151, 1152, 1153, 1182, 1254, 1255, and 1325 of this title, section 3304 of Title 26, Internal Revenue Code, and section 1382c of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1153 and 1182 of this title, and amending a provision set out as a note under section 1255 of this title] shall take effect on October 1, 1991, and apply beginning with fiscal year 1992.

"(b) **Provisions taking effect upon enactment.**--The following sections (and amendments made by such sections) shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and (unless otherwise provided) apply to fiscal year 1991:

8 U.S.C.A. § 1101

"(1) Section 103 (relating to per country limitation for Hong Kong) [set out as a note under section 1152 of this title].

"(2) Section 104 (relating to asylee adjustments) [amending sections 1157 and 1159 of this title and enacting provisions set out as notes under section 1159 of this title].

"(3) Section 124 (relating to transition for employees of certain U.S. businesses in Hong Kong) [set out as a note under section 1153 of this title].

"(4) Section 133 (relating to one-year diversity transition for aliens who have been notified of availability of NP-5 visas) [set out as a note under section 1153 of this title].

"(5) Section 134 (relating to transition for displaced Tibetans) [set out as a note under section 1153 of this title].

"(6) Section 153 (relating to special immigrants who are dependent on a juvenile court) [amending this section].

"(7) Section 154 (permitting extension of validity of visas for certain residents of Hong Kong) [set out as a note under section 1201 of this title].

"(8) Section 155 (relating to expedited issuance of Lebanese second and fifth preference visas) [set out as a note under section 1153 of this title].

"(9) Section 162(b) [amending section 1154 of this title] (relating to immigrant visa petitioning process), but only insofar as such section relates to visas for fiscal years beginning with fiscal year 1992.

"(c) General transitions.--

"(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act [section 1154(a) of this title] before October 1, 1991, for preference status under section 203(a)(3) or section 203(a)(6) of such Act [section 1153(a)(3) or section 1153(a)(6) of this title] (as in effect before such date)--

"(A) in order to maintain the priority date with respect to such a petition, the petitioner must file (by not later than October 1, 1993) a new petition for classification of the employment under paragraph (1), (2), or (3) of section 203(b) of such Act [section 1153(b)(1), (2), or (3) of this title] (as amended by this title), and

"(B) any labor certification under section 212(a)(5)(A) of such Act [section 1182(a)(5)(A) of this title] required with respect to the new petition shall be deemed approved if the labor certification with respect to the previous petition was previously approved under section 212(a)(14) of such Act [section 1182(a)(14) of this title].

In the case of a petition filed under section 204(a) of such Act [section 1154(a) of this title] before October 1, 1991, but which is not described in paragraph (4), and for which a filing fee was paid, any additional filing fee shall not exceed one-half of the fee for the filing of the new petition referred to in subparagraph (A).

"(2) Any petition filed under section 204(a) of the Immigration and Nationality Act [section 1154(a) of this title] before October 1, 1991, for preference status under section 203(a)(4) or section 203(a)(5) of such Act [section 1153(a)(4) or section 1153(a)(5) of this title] (as in effect before such date) shall be deemed, as of such date, to be a petition filed under such section for preference status under section 203(a)(3) or section 203(a)(4), respectively, of such Act [section 1153(a)(3) or section 1153(a)(4) of this title] (as amended by this title).

"(3) In the case of an alien who is described in section 203(a)(8) of the Immigration and Nationality Act [section

8 U.S.C.A. § 1101

1153(a)(8) of this title] (as in effect before October 1, 1991) as the spouse or child of an alien admitted for permanent residence as a preference immigrant under section 203(a)(3) or 203(a)(6) of such Act [section 1153(a)(3) or (6) of this title] (as in effect before such date) and who would be entitled to enter the United States under such section 203(a)(8) [section 1153(a)(8) of this title] but for the amendments made by this title [Title I of Pub.L. 101-649, Nov. 29, 1990, 104 Stat. 4980, for classifications to which see Tables], such an alien shall be deemed to be described in section 203(d) of such act [section 1153(d) of this title] as the spouse or child of an alien described in section 203(b)(2) or 203(b)(3)(A)(i), respectively, of such Act [section 1153(b)(2) or (b)(3)(A)(i) of this title] with the same priority date as that of the principal alien.

"(4)(A) Subject to subparagraph (B), any petition filed before October 1, 1991, and approved on any date, to accord status under section 203(a)(3) or 203(a)(6) of the Immigration and Nationality Act [section 1153(a)(3) or (6) of this title] (as in effect before such date) shall be deemed, on and after October 1, 1991 (or, if later, the date of such approval), to be a petition approved to accord status under section 203(b)(2) or under the appropriate classification under section 203(b)(3), respectively, of such Act [section 1153(b)(2) or (3) of this title] (as in effect on and after such date). Nothing in this subparagraph shall be construed as exempting the beneficiaries of such petitions from the numerical limitations under section 203(b)(2) or 203(b)(3) of such Act [section 1153(b)(2) or (3) of this title].

"(B) Subparagraph (A) shall not apply more than two years after the date the priority date for issuance of a visa on the basis of such a petition has been reached.

"(d) **Admissibility standards.**--When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1991, makes application for admission, the immigrant's admissibility under paragraph (7)(A) of section 212(a) of the Immigration and Nationality Act [section 1182(a)(7)(A) of this title] shall be determined under the provisions of law in effect on the date of the issuance of such visa.

"(e) **Construction.**--Nothing in this title shall be construed as affecting the provisions of section 19 of Public Law 97-116 [set out as a note under section 1151 of this title], section 2(c)(1) of Public Law 97-271 [set out as a note under section 1255 of this title], or section 202(e) of Public Law 99-603 [set out as a note under section 1255a of this title]."

[Section 219(aa) of Pub.L. 103-416 provided in part that amendment by such section is effective as if included in section 4 of Pub.L. 102-110, which amended this note.]

[Amendment by section 4 of Pub.L. 102-110 effective as if included in Pub.L. 101-169.]

[Amendment by section 302(e)(1), (2) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, which was approved Nov. 29, 1990, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Section 162(f)(3) of Pub.L. 101-649 provided that: "The amendments made by this subsection [amending this section and section 1182 of this title] shall apply as though included in the enactment of the Immigration Nursing Relief Act of 1989 [Pub.L. 101-238, approved Dec. 18, 1989]."

Section 203(d) of Pub.L. 101-649 provided that: "The amendments made by this section [amending this section and section 1281 of this title and enacting section 1288 of this title] shall apply to services performed on or after 180 days after the date of the enactment of this Act [Nov. 29, 1990]."

Section 231 of Pub.L. 101-649 provided that: "Except as otherwise provided in this title, this title, and the amendments made by this title [amending this section and sections 1182 and 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title], shall take effect on October 1, 1991,

8 U.S.C.A. § 1101

except that sections 222 and 223 [set out as notes under this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990]."

Section 501(b) of Pub.L. 101-649 provided that: "The amendments made by subsection (a) [amending this section] shall apply to offenses committed on or after the date of the enactment of this Act [Nov. 29, 1990], except that the amendments made by paragraphs (2) [inserting reference to section 802 of Title 21] and (5) [providing that such term applies to offenses whether in violation of Federal or State law] of subsection (a) shall be effective as if included in the enactment of section 7342 of the Anti-Drug Abuse Act of 1988 [section 7342 of Pub.L. 100-690, approved Nov. 18, 1988]."

Section 509(b) of Pub.L. 101-649, as amended Pub.L. 102-232, Title III, § 306(a)(7), Dec. 12, 1991, 105 Stat. 1751, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990] and shall apply to convictions occurring on or after such date, except with respect to conviction for murder which shall be considered a bar to good moral character regardless of the date of the conviction."

[Amendment by section 306(a)(7) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Section 601(e) of Pub.L. 101-649 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] and by section 603(a) of this Act [amending this section and sections 1102, 1153, 1157, 1159, 1161, 1181, 1182, 1183, 1201, 1224, 1225, 1226, 1254a, 1259, 1322, and 1327 of this title, repealing section 2691 of Title 22, Foreign Relations and Intercourse, amending provisions set out as notes under this section and sections 1254 and 1255 of this title, and repealing provisions set out as notes under this section] shall apply to individuals entering the United States on or after June 1, 1991.

"(2) The amendments made by paragraphs (5) [amending section 1160 of this title] and (13) [amending section 1255a of this title] of section 603(a) shall apply to applications for adjustment of status made on or after June 1, 1991."

1989 Acts. Amendment by section 3(a)(1) of Pub.L. 101-238 shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after Dec. 18, 1989, see section 3(d) of Pub.L. 101-238, set out as a note under section 1182 of this title.

Section 611(b) of Pub.L. 101-162 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1989, upon the expiration of the similar amendment made by section 210(a) of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100-459, 102 Stat. 2203) [which amended this section]."

1988 Acts. Section 309(b)(15) of Pub.L. 102-232 provided that: "The amendments made by section 8 of the Immigration Technical Corrections Act of 1988 [section 8 of Pub.L. 100-525, amending this section, sections 1152, 1182, 1201 to 1202, 1301, 1302, 1304, 1356, 1409, 1431 to 1433, 1452, 1481, and 1483 of this title, and section 4195 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, sections 1153, 1201, 1401, 1409, 1451, and 1481 of this title, and section 4195 of Title 22, and amending provisions set out as notes under this section and section 1153 of this title] shall be effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986 (Public Law 99-653) [which was approved Nov. 14, 1986]."

[Section 309(b)(15) of Pub.L. 102-232 to take effect on the date of the enactment of Pub.L. 102-232, which was

8 U.S.C.A. § 1101

approved Dec. 12, 1991, see section 310 of Pub.L. 102-232, as amended, set out as an Effective Date of 1991 Amendments note under this section.]

Section 2(s) of Pub.L. 100-525 provided that: "The amendments made by this section [amending this section and sections 1160, 1161, 1184, 1186-1188, 1251, 1254, 1255, 1255a, 1259, 1324, 1324a, 1324b, 1357 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, section 1091 of Title 20, Education, enacting provisions set out as a note under this section, amending provisions set out as a note under this section and sections 1254, 1255, 1255a of this title, section 1802 of Title 29, Labor and repealing provisions set out as a note under 1255a of this title] shall be effective as if they were included in the enactment of the Immigration Reform and Control Act of 1986 [Nov. 6, 1986, Pub.L. 99-603, § 1 et seq., 100 Stat. 3359. For classification of this Act to the Code, see Tables]."

Section 210(b) of Pub.L. 100-459 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 315 of the Immigration Reform and Control Act of 1986 [amending this section and section 1254 of this title and enacting provisions set out as notes under this section and section 1253 of this title] and shall expire on October 1, 1989."

1986 Acts. Section 23(a) of Pub.L. 99-653, as added Pub.L. 100-525, § 8(r), Oct. 24, 1988, 102 Stat. 2618, provided that: "The amendments made by sections 2, 4, and 7 [amending this section and sections 1152, 1182, 1228, 1251, and 1356 of this title] apply to visas issued, and admissions occurring, on or after November 14, 1986."

[Amendment by section 8(r) of Pub.L. 100-525 effective as if included in the enactment of Pub.L. 99-653, see section 309(b)(15) of Pub.L. 102-232, set out as a note under this section.]

Amendment by section 301(a) of Pub.L. 99-603 applicable to petitions and applications filed under sections 1184(c) and 1186 of this title on or after the first day of the seventh month beginning after Nov. 6, 1986, see section 301(d) of Pub.L. 99-603, set out as a note under section 1186 of this title.

1981 Acts. Section 21 of Pub.L. 97-116 provided that:

"(a) Except as provided in subsection (b) and in section 5(c) [set out as a note under section 1182 of this title] the amendments made by this Act [amending this section and note set out under this section, sections 1105a, 1151, 1152, 1154, 1182, 1201, 1203, 1221, 1227, 1251, 1252, 1253, 1254, 1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1431, 1432, 1433, 1439, 1440, 1445, 1446, 1447, 1448, 1452, 1455, 1481, and 1483 of this title, and section 1429 of Title 18, Crimes and Criminal Procedure, repealing section 1182 note, and enacting provisions set out as notes under this section and sections 1151 and 1182 of this title] shall take effect on the date of the enactment of this Act [Dec. 29, 1981].

"(b)(1) The amendments made by section 2(a) [amending this section] shall apply on and after the first day of the sixth month beginning after the date of the enactment of this Act [Dec. 29, 1981].

"(2) The amendment made by section 16 [amending section 1455(c) of this title] shall apply to fiscal years beginning on or after October 1, 1981."

1980 Acts. Section 204(a) to (c) of Pub.L. 96-212 provided that:

"(a) Except as provided in subsections (b) and (c), this title and the amendments made by this title [enacting sections 1157(a), (b), (d), and (e), 1158, and 1159 of this title, amending this section and sections 1151, 1181 and 1253 of this title, enacting provisions set out as notes under sections 1153, 1157, 1158, and 1521 of this title, and amending provisions set out as a note under section 1182 of this title] shall take effect on the date of the enactment of this Act [Mar. 17, 1980], and shall apply to fiscal years beginning with the fiscal year beginning October 1,

8 U.S.C.A. § 1101

1979.

"(b)(1)(A) Section 207(c) of the Immigration and Nationality Act (as added by section 201(b) of this Act) [section 1157(c) of this title] and the amendments made by subsections (b), (c), and (d) of section 203 of this Act [amending sections 1152, 1153, 1182, and 1254 of this title] shall take effect on April 1, 1980.

"(B) The amendments made by section 203(f) [amending section 1182(d) of this title] shall apply to aliens paroled into the United States on or after the sixtieth day after the date of the enactment of this Act.

"(C) The amendments made by section 203(i) [amending section 1153(g) of this title and provisions set out as notes under section 1255 of this title] shall take effect immediately before April 1, 1980.

"(2) Notwithstanding sections 207(a) and 209(b) of the Immigration and Nationality Act (as added by section 201(b) of this Act) [sections 1157(a) and 1159(b) of this title], the fifty thousand and five thousand numerical limitations specified in such respective sections shall, for fiscal year 1980, be equal to 25,000 and 2,500, respectively.

"(3) Notwithstanding any other provision of law, for fiscal year 1980--

"(A) the fiscal year numerical limitation specified in section 201(a) of the Immigration and Nationality Act [section 1151(a) of this title] shall be equal to 280,000, and

"(B) for the purpose of determining the number of immigrant visas and adjustments of status which may be made available under sections 203(a)(2) and 202(e)(2) of such Act [sections 1153(a)(2) and 1152(e)(2) of this title, respectively], the granting of a conditional entry or adjustment of status under section 203(a)(7) or 202(e)(7) of such Act [section 1153(a)(7) or 1152(e)(7) of this title, respectively] after September 30, 1979, and before April 1, 1980, shall be considered to be the granting of an immigrant visa under section 203(a)(2) or 202(e)(2), respectively, of such Act during such period.

"(c)(1) The repeal of subsections (g) and (h) of section 203 of the Immigration and Nationality Act, made by section 203(c)(8) of this title [section 1153(g) and (h) of this title, respectively], shall not apply with respect to any individual who before April 1, 1980, was granted a conditional entry under section 203(a)(7) of the Immigration and Nationality Act [section 1153(a)(7) of this title] (and under section 202(e)(7) of such Act [section 1152(e)(7) of this title], if applicable), as in effect immediately before such date, and it shall not apply to any alien paroled into the United States before April 1, 1980, who is eligible for the benefits of section 5 of Public Law 95-412 [set out as a note under section 1182 of this title].

"(2) An alien who, before April 1, 1980, established a date of registration at an immigration office in a foreign country on the basis of entitlement to a conditional entrant status under section 203(a)(7) of the Immigration and Nationality Act [section 1153(a)(7) of this title] (as in effect before such date), shall be deemed to be entitled to refugee status under section 207 of such Act (as added by section 201(b) of this title) [section 1157 of this title] and shall be accorded the date of registration previously established by that alien. Nothing in this paragraph shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of such Act [section 1153(a) of this title].

"(3) The provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act [section 1182(a)(14), (15), (20), (21), (25), and (32) of this title] shall not be applicable to any alien who has entered the United States before April 1, 1980, pursuant to section 203(a)(7) of such Act [section 1153(a)(7) of this title] or who has been paroled as a refugee into the United States under section 212(d)(5) of such Act [section 1182(d)(5) of this title], and who is seeking adjustment of status, and the Attorney General may waive any other provision of section 212(a) of such Act [section 1182(a) of this title] (other than paragraph (27), (29), or

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

(33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."

1979 Acts. Section 3201(d)(1) of Pub.L. 96-70 provided that: "The amendments made by this section [amending this section and section 1182 of this title] shall take effect on the date of the enactment of this Act [September 27, 1979]."

1977 Acts. Section 602(d) of Pub.L. 94-484, as added Pub.L. 95-83, Title III, § 307(q)(3), Aug. 1, 1977, 91 Stat. 395, provided that: "This section [amending this section and enacting provisions set out as a note under section 1182 of this title] and the amendment made by subsection (c) [amending this section] are effective January 10, 1977, and the amendments made by subsections (b)(4) and (d) of section 601 [amending subsec. (a)(15)(J) of this section and enacting subsec. (j) of section 1182 of this title] shall apply only on and after January 10, 1978, notwithstanding subsection (f) of such section [set out in the Effective Date of 1976 Amendments note under section 1182 of this title]."

1976 Acts. Amendment by section 601(b)(4) of Pub.L. 94-484 to be applicable only on and after Jan. 10, 1978, notwithstanding section 601(f) of Pub.L. 94-484, see section 602(d) of Pub.L. 94-484, as added by section 307(q)(3) of Pub.L. 95-83, set out as a note under this section.

Amendment by Pub.L. 94-484 effective 90 days after Oct. 12, 1976, see section 601(f) of Pub.L. 94-484, set out as a note under section 1182 of this title.

Section 10 of Pub.L. 94-571 provided that: "The foregoing provisions of this Act [amending this section and sections 1151, 1152, 1153, 1154, 1181, 1182, 1251, 1254, and 1255 of this title and enacting provisions set out as notes under this section and sections 1153 and 1255 of this title], including the amendments made by such provisions, shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of this Act [Oct. 20, 1976]."

1965 Acts. Amendment of section by Pub.L. 89-236 effective, except as otherwise provided, on the first day of the first month after the expiration of thirty days following the date of enactment of Pub.L. 89-236, which was approved on Oct. 3, 1965, see section 20 of Pub.L. 89-236, set out as a note under section 1151 of this title.

1952 Acts. Section 407 of Act June 27, 1952, provided that: "Except as provided in subsection (k) of section 401 [section 1106(k) of this title], this Act [this chapter] shall take effect at 12:01 antemeridian United States Eastern Standard Time on the one hundred eightieth day immediately following the date of its enactment [June 27, 1952]."

Transfer of Functions

"Director of the United States Information Agency" was substituted for "Director of the International Communication Agency" in subsec. (a)(15)(J), pursuant to section 303(a) of Pub.L. 97-241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse.

Previously, "Director of the International Communication Agency" was substituted for "Secretary of State" in subsec. (a)(15)(J) pursuant to Reorg. Plan No. 2 of 1977, § 7(a)(8), 42 F.R. 62461, 91 Stat. 1637, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before July 1, 1978, at such time as specified by the President, which transferred all functions vested in the Secretary of State in subsec. (a)(15)(J) of this section to the Director of the International Communication Agency.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references,

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

see note set out under 8 U.S.C.A. § 1551.

Repeals

Section 8(b) of Pub.L. 100-525 provided that: "Section 3 of INAA [Immigration and Nationality Act Amendments of 1986, Pub.L. 99-653, § 3, Nov. 14, 1986, 100 Stat. 3655] is repealed and the language stricken by such section is revived as of November 14, 1986." Section 3 of Pub.L. 99-653 had repealed par. (1) of subsec. (c) of this section relating to a definition of the term "child" and the repeal of that section 3 and the revival of the stricken language served to re-insert the definition into text.

[Repeal by section 8(b) of Pub.L. 100-525 effective as if included in the enactment of Pub.L. 99-653, see section 309(b)(15) of Pub.L. 102-232, set out as a note under this section.]

Section 403(b) of Act June 27, 1952 provided that: "Except as otherwise provided in section 405 [set out as a note under this section], all other laws, or parts of laws, in conflict or inconsistent with this Act [this chapter] are, to the extent of such conflict or inconsistency, repealed."

Savings Provisions

Amendment by Title IV of Pub.L. 101-649 effective Nov. 29, 1990, with general savings provisions, see section 408(a)(3) and (d) of Pub.L. 101-649, set out as a note under section 1421 of this title.

Section 405 of Act June 27, 1952, provided in part that:

"(a) Nothing contained in this Act [this chapter], unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act [this chapter] shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act [this chapter] shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes [so in original; probably should read "statutes"] conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act [this chapter] are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act [this chapter], makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under § 19 of the Immigration Act of 1917, as amended [former § 155 of this title], or for adjustment of status under § 4 of the Displaced Persons Act of 1948, as amended [former § 1953 of Appendix to Title 50], which is pending on the date of enactment of this Act [June 27, 1952], shall be regarded as a proceeding within the meaning of this subsection.

"(b) Except as otherwise specifically provided in title III [subchapter III of this chapter], any petition for naturalization heretofore filed which may be pending at the time this Act [this chapter] shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

"(c) Except as otherwise specifically provided in this Act [this chapter], the repeal of any statute by this Act shall not terminate nationality heretofore lawfully acquired nor restore nationality heretofore lost under any law of the United States or any treaty to which the United States may have been a party.

"(d) Except as otherwise specifically provided in this Act [this chapter], or any amendment thereto, fees, charges and prices for purposes specified in title V of the Independent Offices Appropriation Act, 1952 (Public Law 137, Eighty-second Congress, approved August 31, 1951), may be fixed and established in the manner and by the head

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

of any Federal Agency as specified in that Act.

"(e) This Act [this chapter] shall not be construed to repeal, alter, or amend section 231(a) of the Act of April 30, 1946 (60 Stat. 148; 22 U.S.C. 1281(a) [section 1281(a) of Title 22], the Act of June 20, 1949 (Public Law 110, section 8, Eighty-first Congress, first session; 63 Stat. 208 [section 403h of Title 50]), the Act of June 5, 1950 (Public Law 535, Eighty-first Congress, second session [former section 1501 et seq. of Title 22]), nor Title V of the Agricultural Act of 1949, as amended (Public Law 78, Eighty-second Congress, first session [sections 1461 to 1468 of Title 7])."

Separability Provisions

Pub.L. 106-313, Title I, § 116, Oct. 17, 2000, 114 Stat. 1262, provided that: "If any provision of this title (or any amendment made by this title) [amending sections 1152, 1154, 1182, 1184, and 1356 of this title, section 2916a of Title 29 and section 1869c of Title 42, enacting provisions set out as notes under sections 1101, 1153, 1184, and 1356, of this title, section 2701 of Title 29, and sections 1862 and 13751 of Title 42, and amending provisions set out as notes under section 1182 of this title and provisions formerly set out as a note under section 2916 of Title 29 and transferred to the text of section 2916a of Title 29] or the application thereof to any person or circumstance is held invalid, the remainder of the title (and the amendments made by this title) and the application of such provision to any other person or circumstance shall not be affected thereby. This section be enacted [sic] 2 days after effective date [probably means Oct. 17, 2000, the date of enactment of Pub.L. 106-313]."

Section 1(e) of Div. (C) of Pub.L. 104-208 provided that: "If any provision of this division [see Short Title of 1996 Amendments note set out under this section] or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this division and the application of the provisions of this division to any person or circumstance shall not be affected thereby."

Section 406 of Act June 27, 1952 provided that: "If any particular provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of the Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby."

Short Title

2006 Amendments. Pub.L. 109-367, § 1, Oct. 26, 2006, 120 Stat. 2638, provided that: "This Act [enacting provisions set out as a note under 8 U.S.C.A. § 1701 and amending provisions set out as a note under 8 U.S.C.A. § 1103] may be cited as the 'Secure Fence Act of 2006'."

Pub.L. 109-162, Title VIII, § 831, Jan. 5, 2006, 119 Stat. 3066, provided that: "This subtitle [enacting 8 U.S.C.A. § 1375a, amending 8 U.S.C.A. § 1184, repealing 8 U.S.C.A. § 1375, and enacting provisions set out as notes under 8 U.S.C.A. §§ 1184 and 1202] may be cited as the 'International Marriage Broker Regulation Act of 2005'."

2005 Amendments. Pub.L. 109-13, Div. B, § 1, May 11, 2005, 119 Stat. 302, provided that: "This division [enacting 8 U.S.C.A. § 1778, amending this section, 8 U.S.C.A. §§ 1157, 1158, 1159, 1182, 1184, 1227, 1229a, 1231, 1252, 1356, and 18 U.S.C.A. § 1028, enacting provisions set out as notes under this section, 8 U.S.C.A. §§ 1157, 1158, 1182, 1184, 1227, 1252, 1712, 1721, and 49 U.S.C.A. § 30301, amending provisions set out as notes under 8 U.S.C.A. §§ 1103, 1153, and 1184, and repealing provisions set out as a note under 49 U.S.C.A. § 30301] may be cited as the 'REAL ID Act of 2005'."

Pub.L. 109-13, Div. B, Title IV, § 401, May 11, 2005, 119 Stat. 318, provided that: "This title [amending 8 U.S.C.A. §§ 1184, 1356, enacting provisions set out as notes under 8 U.S.C.A. § 1184, and amending provisions set out as a note under 8 U.S.C.A. § 1184] may be cited as the 'Save Our Small and Seasonal Businesses Act of 2005'."

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

2004 Amendments. Pub.L. 108-447, Div. J, Title IV, § 401, Dec. 8, 2004, 118 Stat. 3351, provided that: "This title [enacting 8 U.S.C.A. §§ 1380 and 1381, amending 8 U.S.C.A. §§ 1182, 1184, 1356, 29 U.S.C.A. § 2916a, and 42 U.S.C.A. § 1869c, and enacting provisions set out as notes under 8 U.S.C.A. §§ 1182 and 1184] may be cited as the 'L-1 Visa and H-1B Visa Reform Act'."

Pub.L. 108-447, Div. J, Title IV, § 411, Dec. 8, 2004, 118 Stat. 3351, provided that: "This subtitle [Pub.L. 108-447, Div. J, Title IV, §§ 411 to 417, Dec. 8, 2004, 118 Stat. 3351, enacting 8 U.S.C.A. § 1380, amending 8 U.S.C.A. § 1184, and enacting provisions set out as notes under 8 U.S.C.A. § 1184] may be cited as the 'L-1 Visa (Intracompany Transferee) Reform Act of 2004'."

Pub.L. 108-447, Div. J, Title IV, § 421, Dec. 8, 2004, 118 Stat. 3353, provided that: "This subtitle [Pub.L. 108-447, Div. J, Title IV, §§ 421 to 430, Dec. 8, 2004, 118 Stat. 3353, enacting 8 U.S.C.A. § 1381, amending 8 U.S.C.A. §§ 1182, 1184, 1356, 29 U.S.C.A. § 2916a, and 42 U.S.C.A. § 1869c, and enacting provisions set out as notes under 8 U.S.C.A. §§ 1182 and 1184] may be cited as the 'H-1B Visa Reform Act of 2004'."

2003 Amendments. Pub.L. 108-156, § 1, Dec. 3, 2003, 117 Stat. 1944, provided that: "This Act [enacting a provision set out as note under 8 § 1153 and amending provisions set out as notes under 8 U.S.C.A. §§ 1153, 1324a, 1360,] may be cited as the 'Basic Pilot Program Extension and Expansion Act of 2003'."

2002 Amendments. Pub.L. 107-274, § 1, Nov. 2, 2002, 116 Stat. 1923, provided that: "This Act [amending this section and 8 U.S.C.A. § 1184] may be cited as the 'Border Commuter Student Act of 2002'."

Pub.L. 107-273, Div. C, Title I, § 11030(a), Nov. 2, 2002, 116 Stat. 1836, provided that: "This section [amending 8 U.S.C.A. § 1440-1] may be cited as the 'Posthumous Citizenship Restoration Act of 2002'."

Pub.L. 107-258, § 1, Oct. 29, 2002, 116 Stat. 1738, provided that: "This Act [amending provisions set out as a note under 8 U.S.C.A. § 1157] may be cited as the 'Persian Gulf War POW/MIA Accountability Act of 2002'."

Pub.L. 107-208, § 1, Aug. 6, 2002, 116 Stat. 927, provided that: "This Act [amending 8 U.S.C.A. §§ 1151, 1153, 1154, 1157, and 1158 and enacting provisions set out as notes under 8 U.S.C.A. § 1151] may be cited as the 'Child Status Protection Act'."

Pub.L. 107-150, § 1, Mar. 13, 2002, 116 Stat. 74, provided that: "This Act [amending sections 1182 and 1183a of this title and enacting provisions set out as a note under section 1182 of this title] may be cited as the 'Family Sponsor Immigration Act of 2002'."

Pub.L. 107-128, § 1, Jan. 16, 2002, 115 Stat. 2407, provided that: "This Act [enacting and amending provisions set out as notes under section 1324a of this title] may be cited as the 'Basic Pilot Extension Act of 2001'."

2000 Amendments. Pub.L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1501], Dec. 21, 2000, 114 Stat. 2763, 2763A-324, provided that: "This title [amending section 1255 of this title and enacting provisions set out as notes under this section and section 1255 of this title] may be cited as the 'LIFE Act Amendments of 2000'."

[Amendment by Pub.L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1501] effective as if included in the enactment of the Legal Immigration Family Equity Act, see Pub.L. 106-554, § 1(a)(4) [Div. B, Title XV, § 1506], set out as a note under section 1255 of this title].

Pub.L. 106-553, § 1(a)(2) [Title XI, § 1101], Dec. 21, 2000, 114 Stat. 2762, 2762A-142, provided that:

"This title [amending this section and sections 1184, 1186a, and 1255 of this title and enacting provisions set out as notes under this section] may be cited as--

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

"(1) the 'Legal Immigration Family Equity Act'; or

"(2) the 'LIFE Act'."

Pub.L.106-409, § 1, Nov. 1, 2000, 114 Stat. 1787, provided that: "This Act [amending subsec. (a)(27)(C)(ii) of this section and enacting a provision set out as a note under this section] may be cited as the 'Religious Workers Act of 2000'".

Pub.L. 106-406, § 1, Nov. 1, 2000, 114 Stat. 1755, provided that: "This Act [amending section 1229c of this title] may be cited as the 'International Patient Act of 2000'."

Pub.L. 106-396, § 1, Oct. 30, 2000, 114 Stat. 1637, provided that: "This Act [amending sections 1184, 1187, and 1372 of this title, enacting provisions set out as notes under section 1187 of this title and section 763 of Title 47, and amending provisions set out as a note under section 1153 of this title] may be cited as the 'Visa Waiver Permanent Program Act'."

Pub.L. 106-395, § 1, Oct. 30, 2000, 114 Stat. 1631, provided that: "This Act [amending sections 1101, 1182, 1227, 1431, and 1433 of this title and sections 611 and 1015 of Title 18, repealing section 1432 of this title, and enacting provisions set out as notes under sections 1431, 1182, and 1227 of this title and section 611 of title 18] may be cited as the 'Child Citizenship Act of 2000'."

Pub.L. 106-386, Div. B, Title V, § 1501, Oct. 28, 2000, 114 Stat. 1518, provided that: "This title [enacting provisions set out as notes under this section and sections 1229a, 1229b, and 1255 of this title, and amending this section and sections 1151, 1154, 1182, 1184, 1227, 1229a, 1229b, 1255, 1367, 1430, and 1641 of this title, section 1152 of Title 20, sections 3796gg, 3796hh, and 13971 of Title 42, and provisions set out as notes under this section and section 1255 of this title] may be cited as the 'Battered Immigrant Women Protection Act of 2000'."

Pub.L. 106-313, Title I, § 101, Oct. 17, 2000, 114 Stat. 125, provided that: "This title [amending sections 1152, 1154, 1182, 1184, and 1356 of this title, section 2916a of Title 29 and section 1869c of Title 42, enacting provisions set out as notes under sections 1101, 1153, 1184, and 1356 of this title, section 2701 of Title 29, and sections 1862 and 13751 of Title 42, and amending provisions set out as notes under section 1182 of this title and provisions formerly set out as a note under section 2916 of Title 29 and transferred to the text of section 2916a of Title 29] may be cited as the 'American Competitiveness in the Twenty-first Century Act of 2000'."

Pub.L. 106-215, § 1, June 15, 2000, 114 Stat. 337, provided that: "This Act [enacting provisions set out as a note under section 1365a of this title and amending provisions set out as a note under section 1221 of this title and subsequently transferred to section 1365a of this title] may be cited as the 'Immigration and Naturalization Service Data Management Improvement Act of 2000'."

1999 Amendments. Pub. L. 106-95, § 1, Nov. 12, 1999, 113 Stat. 1312, provided that: "This Act [amending this section and sections 1153 and 1182 of this title, enacting provisions set out as a note under section 1182 of this title, and amending provisions set out as a note under section 1101 of this title] may be cited as the 'Nursing Relief for Disadvantaged Areas Act of 1999'."

1998 Amendments. Pub.L. 105-277, Div. A, § 101(h) [Title IX, § 901], Oct. 21, 1998, 112 Stat. 2681-538, provided that: "This title [enacting sections 1377 and 1378 of this title and enacting provisions set out as a note under section 1255 of this title] may be cited as the 'Haitian Refugee Immigration Fairness Act of 1998'."

Pub.L. 105-277, Div. C, Title IV, § 401(a), Oct. 21, 1998, 112 Stat. 2681- 641 provided that "This title [Pub.L. 105-277, Div. C, Title IV, Oct.21, 1998, 112 Stat. 2681-641, which enacted section 1869c of Title 42, amended sections 1101, 1182, 1184, and 1356 of this title, and enacted provisions set out as notes under sections 1182 and

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

1184 of this title and sections 2701 and 2916 of Title 29] may be cited as the 'American Competitiveness and Workforce Improvement Act of 1998'."

1997 Amendments. Pub.L. 105-100, Title II, § 201, Nov. 19, 1997, 111 Stat. 2193, provided that: "This title [Title II of Pub.L. 105-100, Nov. 19, 1997, 111 Stat. 2193, amending section 1229b of this title, and enacting provisions set out as notes under this section and sections 1151, 1153, 1229b and 1255 of this title, and amending provisions set out as notes under this section] may be cited as the 'Nicaraguan Adjustment and Central American Relief Act'."

Pub.L. 105-119, Title I, § 112(a), Nov. 26, 1997, 111 Stat. 2459, provided that: "This section [amending provisions set out as a note under section 1440 of this title] may be cited as the 'Philippine Army, Scouts, and Guerilla Veterans of World War II Naturalization Act of 1997'."

1996 Amendments. Section 1(a) of Div. C of Pub.L. 104-208 provided that: "This division [enacting sections 1225a, 1229, 1229a, 1229b, 1229c, 1231, 1324d, 1363a, 1363b, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1623, and 1624 of this title and sections 116, 611, and 758 of Title 18, Crimes and Criminal Procedure, amending sections 1101, 1102, 1103, 1105a, 1151, 1152, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1182, 1183, 1183a, 1184, 1186a, 1186b, 1187, 1189, 1201, 1202, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1288, 1303, 1304, 1306, 1321, 1322, 1323, 1324, 1324a, 1324b, 1324c, 1325, 1326, 1327, 1329, 1330, 1356, 1357, 1360, 1361, 1362, 1364, 1367, 1368, 1427, 1429, 1483, 1503, 1522, 1531, 1532, 1534, 1535, 1537, 1612, 1631, 1632, 1641, and 1642 of this title, section 2015 of Title 7, Agriculture, sections 506, 982, 1015, 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1546, 1581, 1583, 1584, 1588, 1961, 2424, 2516, 3563, and 4113 of Title 18, section 1091 of Title 20, Education, sections 618 and 2508 of Title 22, Foreign Relations and Intercourse, section 1821 of Title 28, Judiciary and Judicial Procedure, section 112 of Title 32, National Guard, sections 402, 1320b-7, and 1436a of Title 42, The Public Health and Welfare, and sections 47c, 191, 403h, and 855 of Title 50, War and National Defense, repealing sections 1105a, 1227, and 1252b of this title, enacting provisions set out as notes under sections 1101, 1103, 1153, 1158, 1159, 1160, 1161, 1182, 1183a, 1187, 1189, 1202, 1221, 1225, 1226, 1227, 1228, 1231, 1252, 1252a, 1255, 1255a, 1256, 1324, 1324a, 1324b, 1324c, 1324d, 1325, 1326, 1329, 1330, 1356, 1360, 1448, 1534, 1611, 1612, and 1621 of this title, section 301 of Title 5, Government Organization and Employees, sections 116, 758, 1058, 1581 and 4100 of Title 18, section 994 of Title 28, and sections 402, 405, and 1436a of Title 42, amending provisions set out as notes under sections 1101, 1158, 1159, 1182, 1201, 1224, 1252, 1252b, 1253, 1254a, 1255a, 1323, 1401, 1430, 1433, and 1522 of this title, and repealing provisions set out as notes under sections 1183a, 1225, and 1356 of this title] may be cited as the 'Illegal Immigration Reform and Immigrant Responsibility Act of 1996'."

1994 Amendments. Pub.L. 103-416, § 1, Oct. 25, 1994, 108 Stat. 4305, provided that: "This Act [enacting section 1504 of this title, amending this section and sections 1105a, 1151, 1153, 1154, 1160, 1182, 1184, 1185, 1187, 1188, 1202, 1251, 1252, 1252a, 1252b, 1254a, 1255, 1255a, 1255b, 1256, 1288, 1302, 1322, 1323, 1324a, 1324b, 1324c, 1330, 1356, 1401, 1421, 1423, 1424, 1433, 1435, 1444, 1449, 1451, 1452, 1483, 1501, 1522, and 1524 of this title, repealing section 1161 of this title, enacting provisions set out as notes under this section and sections 1153, 1182, 1185, 1202, 1255a, 1323, 1356, 1401, 1423, 1424, 1433, 1435, and 1449 of this title, amending provisions set out as notes under this section and sections 1153, 1184, 1254, 1255, 1255a, 1356, and 1440 of this title, and repealing provisions set out as notes under this section and section 1288 of this title] may be cited as the 'Immigration and Nationality Technical Corrections Act of 1994'."

1991 Amendments. Section 1(a) of Pub.L. 102-232 provided that: "This Act [amending this section and sections 1102, 1105a, 1151, 1152, 1153, 1154, 1157, 1159, 1160, 1161, 1182, 1184, 1186a, 1186b, 1187, 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1252, 1252a, 1252b, 1254, 1254a, 1255, 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a, 1324b, 1324c, 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439, 1440, 1441, 1443, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, and 1455 of this title and section 3753 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1182, 1184, 1251, 1252, 1254a,

8 U.S.C.A. § 1101

1255, 1356, and 1421 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title] may be cited as the 'Miscellaneous and Technical Immigration and Naturalization Amendments of 1991'."

Section 101 of Pub.L. 102-232 provided that: "This title [amending sections 1421, 1450, 1448, and 1455 of this title and enacting provisions set out as a note under section 1421 of this title] may be cited as the 'Judicial Naturalization Ceremonies Amendments of 1991'."

Section 201 of Pub.L. 102-232 provided that: "This title [amending this section and section 1184 of this title and enacting provisions set out as notes under this section and section 1184 of this title] may be cited as the 'O and P Nonimmigrant Amendments of 1991'."

Section 301(a) of Pub.L. 102-232 provided that: "This title [amending this section and sections 1102, 1105a, 1151 to 1154, 1157, 1159 to 1161, 1182, 1184, 1186a to 1187, 1188, 1201, 1221, 1226, 1227, 1229, 1251 to 1252b, 1254 to 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a to 1325, 1356, 1357, 1421, 1423, 1424, 1433, 1439 to 1441, 1443, 1445 to 1449, 1451, 1452, and 1455 of this title and section 3753 of Title 42, Public Health and Welfare, enacting provisions set out as notes under this section and sections 1151, 1157, 1182, 1251, 1252, 1254a, 1255, and 1356 of this title, and amending provisions set out as notes under this section and sections 1105a, 1153, 1158, 1160, 1184, 1201, 1251, 1254a, 1255, and 1421 of this title] may be cited as the 'Immigration Technical Corrections Act of 1991'."

Section 1 of Pub.L. 102-110 provided that: "This Act [amending this section and sections 1153, 1255 and 1524 of this title, enacting provisions set out as notes under this section and amending provisions set out as a note under this section] may be cited the 'Armed Forces Immigration Adjustment Act of 1991'."

1990 Amendments. Section 1(a) of Pub.L. 101-649 provided that: "This Act [enacting sections 1186b, 1252b, 1254a, 1288, and 1324c of this title, amending sections 1101, 1102, 1103, 1105a, 1151, 1152, 1153, 1154, 1157, 1158, 1159, 1160, 1161, 1181, 1182, 1183, 1184, 1186a, 1187, 1201, 1221, 1224, 1225, 1226, 1227, 1229, 1251, 1252, 1252a, 1253, 1254, 1254a, 1255, 1255a, 1259, 1281, 1282, 1284, 1285, 1286, 1287, 1304, 1321, 1322, 1323, 1324a, 1324b, 1325, 1326, 1327, 1328, 1330, 1357, 1421, 1423, 1424, 1426, 1427, 1428, 1429, 1430, 1433, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, and 1455 of this title, section 1429 of Title 18, Crimes and Criminal Procedure, section 3304 of Title 26, Internal Revenue Code, and sections 402, 1382c, and 3753 of Title 42, The Public Health and Welfare, repealing section 1459 of this title and section 2691 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under sections 1101, 1105a, 1152, 1153, 1154, 1158, 1159, 1161, 1182, 1184, 1186, 1187, 1201, 1221, 1251, 1252, 1252a, 1252b, 1254, 1254a, 1255a, 1288, 1324a, 1324b, 1330, 1421, and 1440 of this title, section 1506 of Title 29, Labor, and section 3753 of Title 42, amending provisions set out as notes under sections 1101, 1160, 1255, and 1255a of this title, and repealing provisions set out as notes under section 1182 of this title] may be cited as the 'Immigration Act of 1990'."

Pub.L. 101-249, § 1, Mar. 6, 1990, 104 Stat. 94, provided that: "This Act [enacting section 1440-1 of this title] may be cited as the 'Posthumous Citizenship for Active Duty Service Act of 1989'."

1989 Amendments. Pub.L. 101-238, § 1, Dec. 18, 1989, 103 Stat. 2099, provided that: "This Act [amending this section and sections 1160 and 1182 of this title and enacting provisions set out as notes under sections 1182, 1255, 1255a, and 1324a of this title and amending provisions set out as a note under section 1255a of this title] may be cited as the 'Immigration Nursing Relief Act of 1989'."

1988 Amendments. Pub.L. 100-658, § 1, Nov. 15, 1988, 102 Stat. 3908, provided that: "This Act [enacting provisions set out as notes under this section and section 1153 of this title and amending provision set out as a note under section 1153 of this title] may be cited as the 'Immigration Amendments of 1988'."

8 U.S.C.A. § 1101

Pub.L. 100-525, § 1(a), Oct. 24, 1988, 102 Stat. 2609, provided that: "This Act [amending this section and sections 1103, 1104, 1105, 1152, 1154, 1157, 1160, 1161, 1182, 1184, 1186a, 1187, 1188, 1202, 1202a, 1222, 1223, 1224, 1227, 1251, 1252, 1254, 1255, 1255a, 1259, 1301, 1302, 1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1357, 1360, 1408, 1409, 1421, 1422, 1424, 1426, 1431, 1432, 1433, 1435, 1440, 1441, 1446, 1447, 1451, 1452, 1454, 1455, 1459, 1481, 1483, 1522, 1523, 1524 of this title, section 1546 of Title 18, Crimes and Criminal Procedure, section 1091 of Title 20, Education, and section 4195 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 1153, 1182, 1202, 1227, 1255, 1401, 1409, 1451, 1481, 1522 of this title, and section 4195 of Title 22, amending provisions set out as notes under this section and sections 1153, 1182, 1188, 1254, 1255a, 1356 of this title, and section 1802 of Title 29, Labor, and repealing provisions set out as a note under section 1255a of this title] may be cited as the 'Immigration Technical Corrections Act of 1988'."

1986 Amendments. Section 1(a) of Pub.L. 99-653, as amended Pub.L. 100- 525, § 8(a)(1), Oct. 24, 1988, 102 Stat. 2617, provided: "That this Act [amending this section and sections 1152, 1182, 1201, 1202, 1228, 1251, 1301, 1302, 1304, 1401, 1409, 1431, 1432, 1433, 1451, 1452, 1481, and 1483 of this title and section 4195 of Title 22, Foreign Relations and Intercourse, repealing section 1201a of this title, amending provisions set out as a note under section 1153 of this title and repealing provisions set out as notes under section 1153 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1986'."

[Amendment by section 8(a)(1) of Pub.L. 100-525 effective as if included in the enactment of Pub.L. 99-653, see section 309(b)(15) of Pub.L. 102-232, set out as a note under this section.]

Pub.L. 99-639, § 1, Nov. 10, 1986, 100 Stat. 3537, provided that: "This Act [enacting section 1186a of this title, amending sections 1154, 1182, 1184, 1251, 1255, and 1325 of this title, and enacting provisions set out as notes under sections 1154, 1182, 1184, and 1255 of this title] may be cited as the 'Immigration Marriage Fraud Amendments of 1986'."

Section 1(a) of Pub.L. 99-603 provided that: "This Act [see Tables for classification] may be cited as the 'Immigration Reform and Control Act of 1986'."

Pub.L. 99-605, § 1(a), Nov. 6, 1986, 100 Stat. 3449, provided that: "This Act [amending sections 1522 to 1524 of this title and enacting provisions set out as notes under section 1522 of this title] may be cited as the 'Refugee Assistance Extension Act of 1986'."

1982 Amendments. Pub.L. 97-363, § 1, Oct. 14, 1982, 96 Stat. 1734, provided that: "This Act [amending sections 1522, 1523, and 1524 of this title and enacting provisions set out as a note under section 1522 of this title] may be cited as the 'Refugee Assistance Amendments of 1982'."

1981 Amendments. Section 1(a) of Pub.L. 97-116 provided that: "[T]his Act [amending this section and notes under this section, sections 1105a, 1151, 1152, 1154, 1182, 1201, 1203, 1221, 1227, 1251, 1252, 1253, 1254, 1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1429, 1431, 1432, 1433, 1439, 1440, 1445, 1446, 1447, 1448, 1452, 1455, 1481, and 1483 of this title, and section 1429 of Title 18, Crimes and Criminal Procedure, repealing provisions formerly set out as a note under section 1182 of this title, and enacting provisions set out as notes under this section and sections 1151 and 1182 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1981'."

1980 Amendments. Section 1 of Pub.L. 96-212 provided: "That this Act [enacting sections 1157 to 1159 and 1521 to 1525 of this title, amending this section and sections 1151 to 1153, 1181, 1182, 1253, and 1254 of this title, and section 2601 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 1153, 1157, 1158, 1521, and 1522 of this title, amending provisions set out as notes under sections 1182 and 1522 of this title, and repealing provisions set out as a note under section 2601 of Title 22] may be cited

8 U.S.C.A. § 1101

as the 'Refugee Act of 1980'."

1976 Amendments. Section 1 of Pub.L. 94-571 provided: "That this Act [amending this section and sections 1151, 1152, 1153, 1154, 1181, 1182, 1251, 1254, and 1255 of this title and enacting provisions set out as notes under this section and sections 1153 and 1255 of this title] may be cited as the 'Immigration and Nationality Act Amendments of 1976'."

1952 Acts. Congress in enacting this chapter and various amendments to other laws provided in part, by section 1 of Act June 27, 1952, that it should be popularly known as the "Immigration and Nationality Act". For amendments to sections of other titles, see Tables.

Special Immigrant Status for Persons Serving as Translators with United States Armed Forces

Pub.L. 109-163, Div. A, Title X, § 1059, Jan. 6, 2006, 119 Stat. 3443, provided that:

"(a) In general.--For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), subject to subsection (c)(1) [of this note], the Secretary of Homeland Security may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a) (27) of such Act (8 U.S.C. 1101(a)(27) [subsec. (a)(27) of this section]), if the alien--

"(1) files with the Secretary of Homeland Security a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

"(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

"(b) Aliens described.--

"(1) Principal aliens.--An alien is described in this subsection if the alien--

"(A) is a national of Iraq or Afghanistan;

"(B) worked directly with United States Armed Forces as a translator for a period of at least 12 months;

"(C) obtained a favorable written recommendation from a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien; and

"(D) before filing the petition described in subsection (a)(1) [of this note], cleared a background check and screening, as determined by a general or flag officer in the chain of command of the United States Armed Forces unit that was supported by the alien.

"(2) Spouses and children.--An alien is described in this subsection if the alien is the spouse or child of a principal alien described in paragraph (1), and is following or accompanying to join the principal alien.

"(c) Numerical limitations.--

"(1) In general.--The total number of principal aliens who may be provided special immigrant status under this section during any fiscal year shall not exceed 50.

8 U.S.C.A. § 1101

"(2) Counting against special immigrant cap.--For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151-1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants described in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27) [subsec. (a)(27) of this section]) who are not described in subparagraph (A), (B), (C), or (K) of such section.

"(d) Application of Immigration and Nationality Act provisions.--The definitions in subsections (a) and (b) of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101 [subsecs. (a) and (b) of this section]) shall apply in the administration of this section."

Findings and Purposes for Battered Immigrant Women Protection Act of 2000

Pub.L. 106-386, Div. B, Title V, § 1502, Oct. 28, 2000, 114 Stat. 1518 provided that:

"(a) Findings.--Congress finds that--

"(1) the goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 [Pub.L. 103-322, Title IV, Sept. 13, 1994, 108 Stat. 1902] was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

"(2) providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control; and

"(3) there are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 [Pub.L. 103-322, Title IV, Sept. 13, 1994, 108 Stat. 1902; see Tables for classification] which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

"(b) Purposes.--The purposes of this title [Pub.L. 106-386, Title V, §§ 1501-1513, Oct. 28, 2000, 114 Stat. 1518, which enacted provisions set out as notes under this section and sections 1229a, 1229b, and 1255 of this title, amended this section and sections 1151, 1154, 1182, 1184, 1227, 1229a, 1229b, 1255, 1367, 1430, and 1641 of this title, section 1152 of Title 20, sections 3796gg, 3796hh, and 13971 of Title 42, and amended provisions set out as notes under this section and section 1255 of this title] are--

"(1) to remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and

"(2) to offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes."

Rulemaking

Pub.L. 109-162, Title VIII, § 828, Jan. 5, 2006, 119 Stat. 3066, provided that: "Not later than 180 days after the date of enactment of this Act [Jan. 5, 2006], the Attorney General, the Secretary of Homeland Security, and the Secretary of State shall promulgate regulations to implement the provisions contained in the Battered Immigrant Women Protection Act of 2000 (title V of Public Law 106-386) [Pub.L. 106-386, Div. B, Title V, Oct. 28, 2000, 114 Stat. 1518, which amended this section and 8 U.S.C.A. §§ 1151, 1154, 1182, 1184, 1227, 1229a, 1229b, 1255,

8 U.S.C.A. § 1101

1367, 1430, and 1641, 20 U.S.C.A. § 1152, and 42 U.S.C.A. §§ 3796gg, 3796hh, and 13971, enacted provisions set out as notes under this section and 8 U.S.C.A. §§ 1229a, 1229b, and 1255, and amended provisions set out as notes under this section and 8 U.S.C.A. § 1255], this Act, and the amendments made by this Act [Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub.L. 109-162, Jan. 5, 2006, 119 Stat. 2960; see Tables for classifications]."

Protection for Certain Crime Victims Including Victims of Crimes Against Women

Pub.L. 106-386, Div. B, Title V, § 1513(a), Oct. 28, 2000, 114 Stat. 1533, provided that:

"(a) Findings and purpose.--

"(1) Findings.--Congress makes the following findings:

"(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

"(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

"(2) Purpose.--

"(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act [subsec. (a)(15)(U)(iii) of this section] committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

"(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

"(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest."

Irish Peace Process Cultural and Training Program Act

Pub.L. 105-319, Oct. 30, 1998, 112 Stat. 3013, as amended Pub.L. 107-234, § 1, Oct. 4, 2002, 116 Stat. 1481, Pub.L. 108-449, § 1, Dec. 10, 2004, provided that:

"§ 1. Short Title

"This Act [amending this section and enacting this note] may be cited as the 'Irish Peace Process Cultural and Training Program Act of 1998'.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

"§ 2. Irish Peace Process Cultural and Training Program

"(a) Purpose.--

"(1) In general.--The Secretary of State and the Secretary of Homeland Security shall establish a program to allow young people from disadvantaged areas of designated counties suffering from sectarian violence and high structural unemployment to enter the United States for the purpose of developing job skills and conflict resolution abilities in a diverse, cooperative, peaceful, and prosperous environment, so that those young people can return to their homes better able to contribute toward economic regeneration and the Irish peace process. The program shall promote cross-community and cross-border initiatives to build grassroots support for long-term peaceful coexistence. The Secretary of State and the Secretary of Homeland Security shall cooperate with nongovernmental organizations to assist those admitted to participate fully in the economic, social, and cultural life of the United States.

"(2) Scope and duration of program.--

"(A) In general.--The program under paragraph (1) shall provide for the admission of not more than 4,000 aliens under section 101(a)(15)(Q)(ii) of the Immigration and Nationality Act [subsec. (a)(15)(Q)(ii) of this section] (including spouses and minor children) in each of 4 consecutive program years.

"(B) Offset in number of H-2B nonimmigrant admissions allowed.--Notwithstanding any other provision of law, for each alien so admitted in a fiscal year, the numerical limitation specified under section 214(g)(1)(B) of the Immigration and Nationality Act [section 1184(g)(1)(B) of this title] shall be reduced by 1 for that fiscal year or the subsequent fiscal year.

"(3) Records and report.--The Department of Homeland Security shall maintain records of the nonimmigrant status and place of residence of each alien admitted under the program. Not later than 120 days after the end of each program year, the Department of Homeland Security shall compile and submit to the Congress a report on the number of aliens admitted with nonimmigrant status under section 101(a)(15)(Q)(ii) [subsec. (a)(15)(Q)(ii) of this section] who have overstayed their visas.

"(4) Designated counties defined.--For the purposes of this Act [this note], the term 'designated counties' means the six counties of Northern Ireland and the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland.

"(5) Program participant requirements.--An alien entering the United States as a participant in the program shall satisfy the following requirements:

"(A) The alien shall be a citizen of the United Kingdom or the Republic of Ireland.

"(B) The alien shall be between 21 and 35 years of age on the date of departure for the United States.

"(C) The alien shall have resided continuously in a designated county for not less than 18 months before such date.

"(D) The alien shall have been continuously unemployed for not less than 12 months before such date.

"(E) The alien may not have a degree from an institution of higher education.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

"(b) [Omitted; amended this section]

"(c) **Cost-sharing.**--The Secretary of State shall verify that the United Kingdom and the Republic of Ireland continue to pay a reasonable share of the costs of the administration of the cultural and training programs carried out pursuant to this Act [this note].

"(d) **Authorization of appropriations.**--There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of this section. Amounts appropriated pursuant to this subsection are authorized to be available until expended.

"(e) **Sunset.**--

"(1) Effective October 1, 2008, the Irish Peace Process Cultural and Training Program Act of 1998 [this note] is repealed.

"(2) [Omitted; amended this section eff. Oct. 1, 2008]."

Immigration Emergency Resulting From Alien Smuggling

Presidential Determinations regarding the immigration emergency resulting from alien smuggling were contained in the following:

Presidential Determination No. 97-16, Feb. 12, 1997, 62 F.R. 13981.

Presidential Determination No. 95-49, Sept. 28, 1995, 60 F.R. 53677.

Amendments to Immigration and Nationality Act

Section 1(b) of Div. C of Pub.L. 104-208 provided that: "Except as otherwise specifically provided--

"(1) whenever in this division [see Short Title of 1996 Amendments note set out under this section] an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act [this chapter]; and

"(2) amendments to a section or other provision are to such section or other provision before any amendment made to such section or other provision elsewhere in this division."

Application of Certain Definitions

Section 1(c) of Div. C of Pub.L. 104-208 provided that: "Except as otherwise specifically provided in this division, for purposes of titles I and VI of this division, the terms 'alien', 'Attorney General', 'border crossing identification card', 'entry', 'immigrant', 'immigrant visa', 'lawfully admitted for permanent residence', 'national', 'naturalization', 'refugee', 'State', and 'United States' shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act [subsec. (a) of this section]."

Applicability of Title V of Division C of Pub.L. 104-208 to Foreign Assistance

Section 592 of Title V of Div. C of Pub.L. 104-208 provided that: "This title [see Effective Date of 1996 Amendment notes set out under this section] does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General."

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Notification to Public and Program Recipients of Changes Regarding Eligibility For Programs

Section 593 of Title V of Div. C of Pub.L. 104-208 provided that:

"(a) In general.--Each agency of the Federal Government or a State or political subdivision that administers a program affected by the provisions of this title [see Effective Date of 1996 Amendment note set out under this section], shall, directly or through the States, provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this title.

"(b) Failure to give notice.--Nothing in this section shall be construed to require or authorize continuation of eligibility if the notice under this section is not provided."

Definitions

Section 594 of Title V of Div. C of Pub.L. 104-208 provided that: "Except as otherwise provided in this title [see Effective Date of 1996 Amendment note set out under this section], for purposes of this title--

"(1) the terms 'alien', 'Attorney General', 'national', 'naturalization', 'State', and 'United States' shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act [subsec. (a) of this section]; and

"(2) the term 'child' shall have the meaning given such term in section 101(c) of the Immigration and Nationality Act [subsec. (c) of this section]."

Aliens Granted Refugee Status or Asylum Due to Persecution for Resistance to Coercive Population Control Methods

Section 601(a)(2) of Div. C of Pub.L. 104-208 provided that: "Not later than 90 days after the end of each fiscal year, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate describing the number and countries of origin of aliens granted refugee status or asylum under determinations pursuant to the amendment made by paragraph (1) [amending this section]. Each such report shall also contain projections regarding the number and countries of origin of aliens that are likely to be granted refugee status or asylum for the subsequent 2 fiscal years."

Sense of Congress Regarding American-Made Products; Requirements for Notice

Section 648 of Div. C of Pub.L. 104-208 provided that:

"(a) Purchase of American-made equipment and products.--It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this division should be American-made.

"(b) Notice to recipients of grants.--In providing grants under this division, the Attorney General, to the greatest extent practicable, shall provide to each recipient of a grant a notice describing the statement made in subsection (a) by the Congress."

Visas for Officials of Taiwan

Section 221 of Pub.L. 103-416, as amended Pub.L. 104-208, Div. C, Title III, § 308(d)(3)(E), Title VI, § 671(b)(12), Sept. 30, 1996, 110 Stat. 3009-617, 3009-722, provided that: "Whenever the President of Taiwan or any other high-level official of Taiwan shall apply to visit the United States for the purposes of discussions with

8 U.S.C.A. § 1101

United States Federal or State government officials concerning--

"(1) trade or business with Taiwan that will reduce the United States-Taiwan trade deficit;

"(2) prevention of nuclear proliferation;

"(3) threats to the national security of the United States;

"(4) the protection of the global environment;

"(5) the protection of endangered species, or

"(6) regional humanitarian disasters,

the official shall be admitted to the United States, unless the official is otherwise inadmissible under the immigration laws of the United States."

[Amendment by section 308(d)(3)(E) of Pub.L. 104-208 to take effect on the first day of the first month beginning more than 180 days after the date of the enactment of Pub.L. 104-208, which was approved Sept. 30, 1996, subject to transitional provisions and supplemented by authority of the Attorney General to promulgate regulations, see section 309 of Div. C of Pub.L. 104-208, set out as a note under this section.]

[Amendment by section 671(b)(12) of Div. C of Pub.L. 104-208 effective as if included in the enactment of Pub.L. 103-416, which was approved Oct. 25, 1994, see section 671(b)(14) of Div. C of Pub.L. 104-208, set out as a note under this section.]

Construction of Expedited Deportation Requirements

Section 225 of Pub.L. 103-416, as amended Pub.L. 104-132, Title IV, § 436(b)(2), Apr. 24, 1996, 110 Stat. 1275; Pub.L. 104-208, Div. C, Title III, § 308(c)(4)(B), Sept. 30, 1996, 110 Stat. 3009-616, provided that: "No amendment made by this Act [see section 1 of Pub.L. 103-416, set out as a Short Title of 1994 Amendments note under this section] shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."

[Amendment by section 436(b)(2) of Pub.L. 104-132 effective as if included in the enactment of Pub.L. 103-416, which was approved Oct. 25, 1994, see section 436(b)(3) of Pub.L. 104-132, set out as a note under section 1252 of this title.]

[Amendment by section 308(c)(4)(B) of Pub.L. 104-208 to take effect on the first day of the first month beginning more than 180 days after the date of the enactment of Pub.L. 104-208, which was approved Sept. 30, 1996, subject to transitional provisions and supplemented by authority of the Attorney General to promulgate regulations, see section 309 of Div. C of Pub.L. 104-208, set out as a note under this section.]

Improving Border Controls

Section 130006 of Pub.L. 103-322 provided:

"(a) **Authorization of appropriations.**--There are authorized to be appropriated for the Immigration and Naturalization Service to increase the resources for the Border Patrol, the Inspections Program, and the Deportation Branch to apprehend illegal aliens who attempt clandestine entry into the United States or entry into the United States with fraudulent documents or who remain in the country after their nonimmigrant visas expire--

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

- "(1) \$228,000,000 for fiscal year 1995;
- "(2) \$185,000,000 for fiscal year 1996;
- "(3) \$204,000,000 for fiscal year 1997; and
- "(4) \$58,000,000 for fiscal year 1998.

"Of the sums authorized in this section [this note], all necessary funds shall, subject to the availability of appropriations, be allocated to increase the number of agent positions (and necessary support personnel positions) in the Border Patrol by not less than 1,000 full-time equivalent positions in each of fiscal years 1995, 1996, 1997, and 1998 beyond the number funded as of October 1, 1994.

"(b) **Report.**--By September 30, 1996 and September 30, 1998, the Attorney General shall report to the Congress on the programs described in this section. The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [Pub.L. 103-322, Sept. 13, 1994, 108 Stat. 1796. For classification, see Short Title note set out under section 13701 of Title 42, Public Health and Welfare, and Tables.]."

Report on Admission of Certain Nonimmigrants

Sections 202(b), 208 of Pub.L. 102-232, eff. Apr. 1, 1992, provided that:

"(1) By not later than October 1, 1994, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the Senate and of the House of Representatives a report containing information relating to the admission of artists, entertainers, athletes, and related support personnel as nonimmigrants under subparagraphs (O) and (P) of section 101(a)(15) of the Immigration and Nationality Act [subsec. (a)(15) of this section], and information on the laws, regulations, and practices in effect in other countries that affect United States citizens and permanent resident aliens in the arts, entertainment, and athletics, in order to evaluate the impact of such admissions, laws, regulations, and practices on such citizens and aliens.

"(2) Not later than 30 days after the date the Committee of the Judiciary on the Senate receives the report under paragraph (1), the Chairman of the Committee shall make the report available to interested parties and shall hold a hearing respecting the report. No later than 90 days after the date of receipt of the report, such Committee shall report to the Senate its findings and any legislation it deems appropriate."

Regulations to Implement Changes

Section 303(a)(8) of Pub.L. 102-232 provided that: "The Secretary of Labor shall issue final or interim final regulations to implement the changes made by this section to section 101(a)(15)(H)(i)(b) [subsec. (a)(15)(H)(i)(b) of this section] and section 212(n) of the Immigration and Nationality Act [section 1182(n) of this title] no later than January 2, 1992".

[Section 303(a)(8) effective as if included in the enactment of Pub.L. 101-649, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Regulations Defining Terms Relating to Immigration Emergency

Pub.L. 102-140, Title VI, § 610, Oct. 28, 1991, 105 Stat. 832, as amended Pub.L. 103-416, Title II, § 219(1)(2), Oct. 25, 1994, 108 Stat. 4317, provided that:

8 U.S.C.A. § 1101

"(a) The Attorney General shall prescribe regulations under title 5, United States Code [Title 5, Government Organization and Employees], to carry out section 404(b)(1) of the Immigration and Nationality Act [set out as a note under this section], including a delineation of (1) scenarios that constitute an immigration emergency, (2) the process by which the President declares an immigration emergency, (3) the role of the Governor and local officials in requesting a declaration of emergency, (4) a definition of 'assistance as required by the Attorney General', and (5) the process by which States and localities are to be reimbursed.

"(b) The Attorney General shall prescribe regulations under title 5, United States Code [Title 5], to carry out section 404(b)(2) of such Act [set out as a note under this section], including providing a definition of the terms in section 404(b)(2)(A)(ii) and a delineation of 'in any other circumstances' in section 404(b)(2)(A)(iii) of such Act.

"(c) The regulations under this section shall be published for comment not later than 30 days after the date of enactment of this Act [Oct. 28, 1991] and issued in final form not later than 15 days after the end of the comment period."

Delay Until April 1, 1992 in Implementation of Provisions Relating to Non-Immigrant Artists, Athletes, Entertainers and Fashion Models

Section 3 of Pub.L. 102-110 provided that: "Section 214(g)(1)(C) of the Immigration and Nationality Act [section 1184(g)(1)(C) of this title] shall not apply to the issuance of visas or provision of status before April 1, 1992. Aliens seeking nonimmigrant admission as artists, athletes, entertainers, or fashion models (or for the purpose of accompanying or assisting in an artistic or athletic performance) before April 1, 1992, shall not be admitted under subparagraph (O)(i), (O)(ii), (P)(i), or (P)(iii) of section 101(a)(15) of such Act [subsec. (a)(15)(O)(i), (ii), (15)(P)(i), or (iii) of this section], but may be admitted under the terms of subparagraph (H)(i)(b) of such section [subsec. (a)(15)(H)(i)(b) of this section] (as in effect on September 30, 1991)."

Commission on Immigration Reform

Pub.L. 101-649, § 141, as amended Pub.L. 102-232, Title III, § 302(c)(1), Dec. 12, 1991, 105 Stat. 1744, provided that:

"(a) **Establishment and composition of Commission.--**(1) Effective October 1, 1991, there is established a Commission on Immigration Reform (in this section referred to as the 'Commission') which shall be composed of 9 members to be appointed as follows:

"(A) One member who shall serve as Chairman, to be appointed by the President.

"(B) Two members to be appointed by the Speaker of the House of Representatives who shall select such members from a list of nominees provided by the Chairman of the Committee on the Judiciary of the House of Representatives.

"(C) Two members to be appointed by the Minority Leader of the House of Representatives who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary of the House of Representatives.

"(D) Two members to be appointed by the Majority Leader of the Senate who shall select such members from a list of nominees provided by the Chairman of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

"(E) Two members to be appointed by the Minority Leader of the Senate who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration and Refugee

8 U.S.C.A. § 1101

Affairs of the Committee on the Judiciary of the Senate.

"(2) Initial appointments to the Commission shall be made during the 45-day period beginning on October 1, 1991. A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

"(3) Members shall be appointed to serve for the life of the Commission, except that the term of the member described in paragraph (1)(A) shall expire at noon on January 20, 1993, and the President shall appoint an individual to serve for the remaining life of the Commission.

"(b) **Functions of Commission.**--The Commission shall--

"(1) review and evaluate the impact of this Act and the amendments made by this Act [see Short Title of 1990 amendment note set out under this section], in accordance with subsection (c); and

"(2) transmit to the Congress--

"(A) not later than September 30, 1994, a first report describing the progress made in carrying out paragraph (1), and

"(B) not later than September 30, 1997, a final report setting forth the Commission's findings and recommendations, including such recommendations for additional changes that should be made with respect to legal immigration into the United States as the Commission deems appropriate.

"(c) **Considerations.**--

"(1) **Particular considerations.**--In particular, the Commission shall consider the following:

"(A) The requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members and the impact which the establishment of a national level of immigration has upon the availability and priority of family preference visas.

"(B) The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States.

"(C) The social, demographic, and natural resources impact of immigration.

"(D) The impact of immigration on the foreign policy and national security interests of the United States.

"(E) The impact of per country immigration levels on family-sponsored immigration.

"(F) The impact of the numerical limitation on the adjustment of status of aliens granted asylum.

"(G) The impact of the numerical limitations on the admission of nonimmigrants under section 214(g) of the Immigration and Nationality Act [section 1184(g) of this title].

"(2) **Diversity program.**--The Commission shall analyze the information maintained under section 203(c)(3) of the Immigration and Nationality Act [section 1153 (c)(3) of this title] and shall report to Congress in its report under subsection (b)(2) on--

8 U.S.C.A. § 1101

"(A) the characteristics of individuals admitted under section 203(c) of the Immigration and Nationality Act [section 1153(c) of this title], and

"(B) how such characteristics compare to the characteristics of family-sponsored immigrants and employment-based immigrants.

The Commission shall include in the report an assessment of the effect of the requirement of paragraph (2) of section 203(c) of the Immigration and Nationality Act [section 1153(c)(2) of this title] on the diversity, educational, and skill level of aliens admitted.

"(d) **Compensation of members.**--(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, pay at the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-18 of the General Schedule. Each member of the Commission who is such an officer or employee shall serve without additional pay.

"(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

"(e) **Meetings, staff, and authority of Commission.**--The provisions of subsections (e) through (g) of section 304 of the Immigration Reform and Control Act of 1986 [section 304 of Pub.L. 99-603, set out as a note under section 1160 of this title] shall apply to the Commission in the same manner as they apply to the Commission established under such section, except that paragraph (2) of subsection (e) thereof shall not apply.

"(f) **Authorization of appropriations.**--(1) There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.

"(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

"(g) **Termination date.**--The Commission shall terminate on the date on which a final report is required to be transmitted under subsection (b)(2)(B), except that the Commission may continue to function until January 1, 1998, for the purpose of concluding its activities, including providing testimony to standing committees of Congress concerning its final report under this section and disseminating that report.

"(h) **Congressional response.**--(1) No later than 90 days after the date of receipt of each report transmitted under subsection (b)(2), the Committees on the Judiciary of the House of Representatives and of the Senate shall initiate hearings to consider the findings and recommendations of the report.

"(2) No later than 180 days after the date of receipt of such a report, each such Committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

"(i) **Presidential report.**--The President shall conduct a review and evaluation and provide for the transmittal of reports to the Congress in the same manner as the Commission is required to conduct a review and evaluation and to transmit reports under subsection (b)."

[For termination, effective May 15, 2000, of reporting provisions pertaining to the activities of the Commission of Pub.L. 101-649, § 141(b) set out above, see Pub.L. 104-66, § 3003, as amended, set out as a note under 31 U.S.C.A. § 1113, and the 5th item on page 181 of House Document No. 103-7.]

[Amendment by section 302(c)(1) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649,

8 U.S.C.A. § 1101

which was approved on Nov. 29, 1990, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Special Immigrant Status For Certain Aliens Employed At United States Mission in Hong Kong (D Special Immigrants)

Section 152 of Pub.L. 101-649, as amended Pub.L. 102-232, Title III, § 302(d)(1), Dec. 12, 1991, 105 Stat. 1744, provided that:

"(a) In general.--Subject to subsection (c), an alien described in subsection (b) shall be treated as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act [subsec. (a)(27)(D) of this section].

"(b) Aliens covered.--An alien is described in this subsection if--

"(1) the alien is--

"(A) an employee at the United States consulate in Hong Kong under the authority of the Chief of Mission (including employment pursuant to section 5913 of Title 5, United States Code [section 5913 of Title 5, Government Organization and Employees]) and has performed faithful service as such an employee for a total of three years or more, or

"(B) a member of the immediate family (as defined in 6 Foreign Affairs Manual 117k as of the date of the enactment of this Act) of an employee described in subparagraph (A) who has been living with the employee in the same household;

"(2) the welfare of the employee or such an immediate family member is subject to a clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

"(3) the principal officer in Hong Kong, in the officer's discretion, has recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

"(c) Expiration.--Subsection (a) shall only apply to aliens who file an application for special immigrant status under this section by not later than January 1, 2002.

"(d) Limited waiver of numerical limitations.--The first 500 visas made available to aliens as special immigrants under this section shall not be counted against any numerical limitation established under section 201 or 202 of the Immigration and Nationality Act [section 1151 or 1152 of this title]."

[Amendment by section 302(d)(1) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, which was approved on Nov. 29, 1990, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Application of Treaty Trader For Certain Foreign States

Section 204(b) of Pub.L. 101-649 provided that: "Each of the following foreign states shall be considered, for purposes of section 101(a)(15)(E) of the Immigration and Nationality Act [subsec. (a)(15)(E) of this section], to be a foreign state described in such section if the foreign state extends reciprocal nonimmigrant treatment to nationals of the United States:

"(1) The largest foreign state in each region (as defined in section 203(c)(1) of the Immigration and Nationality

8 U.S.C.A. § 1101

Act [section 1153(c)(1) of this title] which (A) has 1 or more dependent areas (as determined for purposes of section 202 of such Act) and (B) does not have a treaty of commerce and navigation with the United States.

"(2) The foreign state which (A) was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 [section 314 of Pub.L. 99-603, set out as a note under section 1153 of this title] and (B) does not have a treaty of commerce and navigation with the United States, but (C) had such a treaty with the United States before 1925."

Clarification of Treatment of Certain International Accounting and Management Consulting Firms

Section 206(a) of Pub.L. 101-649, as amended Pub.L. 102-232, Title III, § 303(a)(9), Dec. 12, 1991, 105 Stat. 1748; Pub.L. 106-95, § 6, Nov. 12, 1999, 113 Stat. 1319, provided that: "In applying sections 101(a)(15)(L) and 203(b)(1)(C) of the Immigration and Nationality Act [8 U.S.C.A. §§ 1101(a)(15)(L) and 1153(b)(1)(C)], and for no other purpose, in the case of a partnership that is organized in the United States to provide accounting or management consulting services and that markets its accounting or management consulting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is collectively owned and controlled by the member accounting and management consulting firms or by the elected members (partners, shareholders, members, employees) thereof, an entity that is organized outside the United States to provide accounting or management consulting services shall be considered to be an affiliate of the United States accounting or management consulting partnership if it markets its accounting or management consulting services under the same internationally recognized name directly or indirectly under an agreement with the same worldwide coordinating organization of which the United States partnership is also a member. Those partnerships organized within the United States and entities organized outside the United States which are considered affiliates under this subsection shall continue to be considered affiliates to the extent such firms enter into a plan of association with a successor worldwide coordinating organization, which need not be collectively owned and controlled."

[Amendment by section 303(a)(9) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, which was approved Nov. 29, 1990, see section 310(1) of Pub.L. 102-232, set out as a note under section 1101 of this title.]

Admission of Nonimmigrants For Cooperative Research, Development, and Coproduction Projects

Section 222 of Pub.L. 101-649, as amended Pub.L. 102-232, Title III, § 303(b)(3), Dec. 12, 1991, 105 Stat. 1748, provided that:

"(a) **In general.**--Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who--

"(1) has a residence in a foreign country which the alien has no intention of abandoning, and

"(2) is coming to the United States, upon a basis of reciprocity, to perform services of an exceptional nature requiring such merit and ability relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense, but not to exceed a period of more than 10 years,

or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

"(b) **Numerical limitation.**--The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section at any time may not exceed 100."

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

[Amendment by section 303(b)(3) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Establishment of Special Education Exchange Visitor Program

Section 223 of Pub.L. 101-649, as amended Pub.L. 102-232, Title III, § 303(b)(4), Dec. 12, 1991, 105 Stat. 1748, provided that:

"(a) In general.--Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who--

"(1) has a residence in a foreign country which the alien has no intention of abandoning, and

"(2) is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in a special education training program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities,

or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

"(b) Numerical limitation.--The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section in any fiscal year may not exceed 50."

[Amendment by section 303(b)(4) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, which was approved on Nov. 29, 1990, see section 310(1) of Pub.L. 102-232, set out as a note under this section.]

Extension of H-1 Immigration Status for Certain Non-Immigrants Employed in Cooperative Research and Development Projects and Coproduction Projects

Pub.L. 101-189, Div. A, Title IX, § 937, Nov. 29, 1989, 103 Stat. 1538, provided that: "The Attorney General shall provide for the extension through December 31, 1991, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) [subsec. (a)(15)(H)(i) of this section] for an alien to perform temporarily services relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense in the case of an alien who has had such status for a period of at least five years if such status has not expired as of the date of the enactment of this Act [Nov. 29, 1989] but would otherwise expire during 1989, 1990, or 1991, due only to the time limitations with respect to such status."

Extension of H-1 Status for Certain Registered Nurses Through December 31, 1989

Pub.L. 100-658, § 4, Nov. 15, 1988, 102 Stat. 3909, provided that:

"The Attorney General shall provide for the extension through December 31, 1989, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act [subsec. (a)(15)(H)(i) of this section] for an alien to perform temporarily services as a registered nurse in the case of an alien who has had such status for a period of at least 5 years if--

"(1) such status has not expired as of the date of the enactment of this Act [Nov. 15, 1988] but would otherwise expire during 1988 or 1989, due only to the time limitation with respect to such status; or

"(2)(A) the alien's status as such a nonimmigrant expired during the period beginning on January 1, 1987, and ending on the date of the enactment of this Act [Nov. 15, 1988], due only to the time limitation with respect to such

8 U.S.C.A. § 1101

status,

"(B) the alien is present in the United States as of the date of the enactment of this Act [Nov. 15, 1988],

"(C) the alien has been employed as a registered nurse in the United States since the date of expiration of such status, and

"(D) in the case of an alien whose status expired during 1987, the alien's employer has filed with the Immigration and Naturalization Service, before the date of the enactment of this Act [Nov. 15, 1988], an appeal of a petition filed in connection with the alien's application for extension of such status."

Authorization of In-Country Refugee Status for Soviet Nationals and Persons Habitually Residing in the Soviet Union

For determination by the President that nationals of the Soviet Union and persons without any nationality whose country of habitual residence is the Soviet Union may, if otherwise qualified, be considered refugees for the purposes of admission to the United States while still within the Soviet Union, see Presidential Determination No. 88-16 of May 20, 1988, 53 F.R. 21405, set out as a note under section 1157 of this title.

Nonimmigrant Traders and Investors Under United States-Canada Free-Trade Agreement

For provisions allowing Canadian citizens to be classifiable as nonimmigrants under subsec. (a)(15)(E) of this section upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, see section 307(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, set out in a note under section 2112 of Title 19, Customs Duties.

Residence Within the United States Continued During Period of Absence

Section 2(o)(2) of Pub.L. 100-525 provided that: "Only for purposes of section 101(a)(27)(I) of the Immigration and Nationality Act [subsec. (a)(27)(I) of this section], an alien who is or was an officer or employee of an international organization (or is the unmarried son or daughter or surviving spouse of such an officer or employee or former officer or employee) is considered to be residing and physically present in the United States during a period in which the alien is residing in the United States but is absent from the United States because of the officer's or employee's need to conduct official business on behalf of the organization or because of customary leave, but only if during the period of the absence the officer or employee continues to have a duty station in the United States and, in the case of such an unmarried son or daughter, the son or daughter is not enrolled in a school outside the United States."

Amerasian Immigration

Pub.L. 100-202, § 101(e) [Title V, § 584], Dec. 22, 1987, 101 Stat. 1329- 183, as amended Pub.L. 101-167, Title II, Nov. 21, 1989, 103 Stat. 1211; Pub.L. 101-302, Title II, May 25, 1990, 104 Stat. 228; Pub.L. 101-513, Title II, Nov. 5, 1990, 104 Stat. 1996; Pub.L. 101-649, Title VI, § 603(a)(20), Nov. 29, 1990, 104 Stat. 5084; Pub.L. 102-232, Title III, § 307(l)(8), Dec. 12, 1991, 105 Stat. 1757, provided that:

"(a)(1) Notwithstanding any numerical limitations specified in the Immigration and Nationality Act [this chapter], the Attorney General may admit aliens described in subsection (b) to the United States as immigrants if--

"(A) they are admissible (except as otherwise provided in paragraph (2)) as immigrants, and

"(B) they are issued an immigrant visa and depart from Vietnam on or after March 22, 1988.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

"(2) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) of the Immigration and Nationality Act [section 1182(a)(4), (5), and (7)(A) of this title] shall not be applicable to any alien seeking admission to the United States under this section, and the Attorney General on the recommendation of a consular officer may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3) [section 1182 (a)(2)(C) or (a)(3)(A), (B), (C), or (E)] with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation by a consular officer.

"(3) Notwithstanding section 221(c) of the Immigration and Nationality Act [section 1201(c) of this title], immigrant visas issued to aliens under this section shall be valid for a period of one year.

"(b)(1) An alien described in this section is an alien who, as of the date of the enactment of this Act [Dec. 22, 1987], is residing in Vietnam and who establishes to the satisfaction of a consular officer or an officer of the Immigration and Naturalization Service after a face-to-face interview, that the alien--

"(A)(i) was born in Vietnam after January 1, 1962, and before January 1, 1976, and (ii) was fathered by a citizen of the United States (such an alien in this section referred to as a 'principal alien');

"(B) is the spouse or child of a principal alien and is accompanying, or following to join, the principal alien; or

"(C) subject to paragraph (2), either (i) is the principal alien's natural mother (or is the spouse or child of such mother), or (ii) has acted in effect as the principal alien's mother, father, or next-of-kin (or is the spouse or child of such an alien), and is accompanying, or following to join, the principal alien.

"(2) An immigrant visa may not be issued to an alien under paragraph (1)(C) unless the officer referred to in paragraph (1) has determined, in the officer's discretion, that (A) such an alien has a bona fide relationship with the principal alien similar to that which exists between close family members and (B) the admission of such an alien is necessary for humanitarian purposes or to assure family unity. If an alien described in paragraph (1)(C)(ii) is admitted to the United States, the natural mother of the principal alien involved shall not, thereafter, be accorded any right, privilege, or status under the Immigration and Nationality Act [this chapter] by virtue of such parentage.

"(3) For purposes of this section, the term 'child' has the meaning given such term in section 101(b)(1)(A), (B), (C), (D), and (E) of the Immigration and Nationality Act [subsec. (b)(1)(A), (B), (C), (D), and (E) of this section].

"(c) Any alien admitted (or awaiting admission) to the United States under this section shall be eligible for benefits under chapter 2 of title IV of the Immigration and Nationality Act [subchapter IV of this chapter] to the same extent as individuals admitted (or awaiting admission) to the United States under section 207 of such Act [section 1157 of this title] are eligible for benefits under such chapter.

"(d) The Attorney General, in cooperation with the Secretary of State, shall report to Congress 1 year, 2 years, and 3 years, after the date of the enactment of this Act [Dec. 22, 1987] on the implementation of this section. Each such report shall include the number of aliens who are issued immigrant visas and who are admitted to the United States under this section and number of waivers granted under subsection (a)(2) and the reasons for granting such waivers.

"(e) Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act [this chapter] shall apply in the administration of this section and nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act [this chapter] or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible."

8 U.S.C.A. § 1101

[Pub.L. 100-461, Title II, Oct. 1, 1988, 102 Stat. 2268-15, as amended Pub.L. 101-167, Title II, Nov. 21, 1989, 103 Stat. 1211; Pub.L. 101- 513, Title II, Nov. 5, 1990, 104 Stat. 1996, provided in part: "That the provisions of subsection (c) of section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as contained in section 101(e) of Public Law 100-202 [set out above], shall apply to an individual who (1) departs from Vietnam after the date of the enactment of this Act [Oct. 1, 1988] and (2) is described in subsection (b) of such section, but who is issued an immigrant visa under section 201(b) or 203(a) of the Immigration and Nationality Act [section 1151(b) or 1153(a) of this title] (rather than under subsection (a) of such section), or would be described in subsection (b) of such section if such section also applied to principal aliens who were citizens of the United States (rather than merely to aliens).]

[Amendment by section 603(a)(20) of Pub.L. 101-649 applicable to individuals entering the United States on or after June 1, 1991, see section 601(e)(1) of Pub.L. 101-649, set out as a note under this section.]

[Amendment by section 307(l)(8) effective as if included in section 603(a) of Pub.L. 101-629, see section 307(l) of Pub.L. 102-232, set out as a note under section 1157 of this title.]

Alien Employees of American University of Beirut; Return to United States as Special Immigrants

Priv.Law 98-53, Oct. 30, 1984, 98 Stat. 3437, provided: "That an alien lawfully admitted to the United States for permanent residence shall be considered, for purposes of section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)) [subsec. (a)(27)(A) of this section], to be temporarily visiting abroad during any period (before or after the date of the enactment of this Act [Oct. 30, 1984]) in which the alien is employed by the American University of Beirut."

Commission for Study of International Migration and Cooperative Economic Development

Section 601 of Pub.L. 99-603, as amended Pub.L. 100-525, § 2(r), Oct. 24, 1988, 102 Stat. 2614, provided for the establishment, membership, etc., of a Commission for the Study of International Migration and Cooperative Economic Development to examine, in consultation with the governments of Mexico and other sending countries in the Western Hemisphere, the conditions which contribute to unauthorized migration to the United States and mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to such unauthorized migration and to report to the President and Congress, not later than 3 years after appointment of the members of the Commission, on the results of the Commission's examination with recommendations on providing mutually beneficial reciprocal trade and investment programs to alleviate such unauthorized migration.

"(a) Establishment and Composition of Commission.--(1) There is established a Commission for the Study of International Migration and Cooperative Economic Development (in this section referred to as the 'Commission'), to be composed of twelve members--

"(A) three members to be appointed by the Speaker of the House of Representatives;

"(B) three members to be appointed by the Minority Leader of the House of Representatives;

"(C) three members to be appointed by the Majority Leader of the Senate; and

"(D) three members to be appointed by the Minority Leader of the Senate.

"(2) Members shall be appointed for the life of the Commission. Appointments to the Commission shall be made within 90 days after the date of the enactment of this Act [Nov. 6, 1986]. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

8 U.S.C.A. § 1101

"(3) A majority of the members of the Commission shall elect a Chairman.

"(b) **Duty of Commission.**--The Commission, in consultation with the governments of Mexico and other sending countries in the Western Hemisphere, shall examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and mutually beneficial, reciprocal trade and investment programs to alleviate such conditions. For purposes of this section, the term 'sending country' means a foreign country a substantial number of whose nationals migrate to, or remain in, the United States without authorization.

"(c) **Report to the President and Congress.**--Not later than three years after the appointment of the members of the Commission, the Commission shall prepare and transmit to the President and to the Congress a report describing the results of the Commission's examination and recommending steps to provide mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to unauthorized migration to the United States.

"(d) **Compensation of members, meetings, staff, authority of commission, and authorization of appropriations.**--(1) The provisions of subsections (d), (e)(3), (f), (g), and (h) of section 304 [8 U.S.C.A. § 1160 note] shall apply to the Commission in the same manner as they apply to the Commission established under section 304. Not more than 1 percent of the amounts appropriated for the Commission may be used, at the sole discretion of the Chairman, for official entertainment.

"(2) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

"(e) **Termination Date.**--The Commission shall terminate on the date on which a report is required to be transmitted by subsection (c), except that the Commission may continue to function for not more than thirty days thereafter for the purpose of concluding its activities."

Sense of Congress Respecting Consultation of President with President of Mexico on Implementation and Effect of Pub.L. 99-603

Section 407 of Pub.L. 99-603 provided that: "It is the sense of the Congress that the President of the United States should consult with the President of the Republic of Mexico within 90 days after enactment of this Act [Nov. 6, 1986], regarding the implementation of this Act [see Short Title of 1986 Amendment note set out above] and its possible effect on the United States or Mexico. After the consultation, it is the sense of the Congress that the President should report to the Congress any legislative or administrative changes that may be necessary as a result of the consultation and the enactment of this legislation."

Denial of Crew Member Nonimmigrant Visa in Cases of Strikes

Section 315(d) of Pub.L. 99-603 provided that:

"(1) Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act [Nov. 6, 1986], an alien may not be admitted to the United States as an alien crewman (under section 101(a)(15)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D)) [subsec. (a)(15)(D) of this section] for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service.

"(2) Paragraph (1) shall not apply to an alien employee who was employed before the date of the strike concerned and who is seeking admission to enter the United States to continue to perform services as a crewman to the same extent and on the same routes as the alien performed such services before the date of the strike."

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Eligibility of H-2 Agricultural Workers for Certain Legal Assistance

Section 305 of Pub.L. 99-603 provided that: "A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) [subsec. (a)(15)(H)(ii)(a) of this section] for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) [subsec. (a)(20) of this section] for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) [42 U.S.C.A. § 2996 et seq.], but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted."

Authorization of Appropriations for Enforcement and Service Activities of Immigration and Naturalization Service; Increased and Supplemental Authorizations for Service and for Other Agencies

Section 111 of Pub.L. 99-603 provided that:

"(a) Two essential elements.--It is the sense of Congress that two essential elements of the program of immigration control established by this Act [see section 1(a) of Pub.L. 99-603, set out as a Short Title of 1986 Amendment note under this section] are--

"(1) an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry, and

"(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act [this chapter].

"(b) Increased authorization of appropriations for INS and EOIR.--In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice--

"(1) for the Immigration and Naturalization Service, for fiscal year 1987, \$422,000,000, and for fiscal year 1988, \$419,000,000; and

"(2) for the Executive Office of Immigration Review, for fiscal year 1987, \$12,000,000, and for fiscal year 1988, \$15,000,000.

Of the amounts authorized to be appropriated under paragraph (1) sufficient funds shall be available to provide for an increase in the border patrol personnel of the Immigration and Naturalization Service so that the average level of such personnel in each of fiscal years 1987 and 1988 is at least 50 percent higher than such level for fiscal year 1986.

"(c) Use of funds for improved services.--Of the funds appropriated to the Department of Justice for the Immigration and Naturalization Service, the Attorney General shall provide for improved immigration and naturalization services and for enhanced community outreach and in-service training of personnel of the Service. Such enhanced community outreach may include the establishment of appropriate local community taskforces to improve the working relationship between the Service and local community groups and organizations (including employers and organizations representing minorities).

8 U.S.C.A. § 1101

"(d) Supplemental authorization of appropriations for wage and hour enforcement.--There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department in order to deter the employment of unauthorized aliens and remove the economic incentive for employers to exploit and use such aliens."

Treatment of Departures from Territorial Waters of Guam as Departures from Guam

Section 2 of Pub.L. 99-505 provided that: "In the administration of section 101(a)(15)(D)(ii) of the Immigration and Nationality Act (added by the amendment made by section 1 of this Act) [subsec. (a)(15)(D)(ii) of this section], an alien crewman shall be considered to have departed from Guam after leaving the territorial waters of Guam, without regard to whether the alien arrives in a foreign state before returning to Guam."

Adjustment of Status of Nonimmigrant Aliens Residing in the Virgin Islands to Permanent Resident Alien Status

The status of any alien who was inspected and admitted to the Virgin Islands of the United States either as a nonimmigrant alien worker under section 1101(a)(15)(H)(ii) of this title or as a spouse or minor child of such worker and has resided continuously in the Virgin Islands of the United States since June 30, 1975, to be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes application for such adjustment during the one-year period beginning Sept. 30, 1982, is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except for the grounds of exclusion specified in subsec. (a)(14), (20), (21), (25), (32) of this section, and is physically present in the Virgin Islands at the time of filing such application for adjustment, such alien not to be deported for failure to maintain nonimmigrant status until final action is taken on the alien's application for adjustment, see section 2(a), (b) of Pub.L. 97-271, set out as a note under section 1255 of this title.

Limitation on Admissions of Aliens Seeking Employment in the Virgin Islands

Notwithstanding any other provision of law, the Attorney General not to be authorized, after Sept. 30, 1982, to approve any petition filed under section 1184(c) of this title in the case of importing any alien as a nonimmigrant under subsec. (a)(15)(H)(ii) of this section for employment in the Virgin Islands of the United States other than as an entertainer or as an athlete and for a period not exceeding 45 days, see section 3 of Pub.L. 97- 271, set out as a note under section 1255 of this title.

Study and Evaluation of Exchange Programs for Graduate Medical Education of Alien Graduates of Foreign Medical Schools; Report to Congress Not-Later-Than January 15, 1983

Section 5(e) of Pub.L. 97-116 provided that: "The Secretary of Health and Human Services, after consultation with the Attorney General, the Secretary of State, and the Director of the International Communication Agency [now Director of the United States Information Agency], shall evaluate the effectiveness and value to foreign nations and to the United States of exchange programs for the graduate medical education or training of aliens who are graduates of foreign medical schools, and shall report to Congress, not later than January 15, 1983, on such evaluation and include in such report such recommendations for changes in legislation and regulations as may be appropriate."

Limitation on Admission of Special Immigrants

Section 3201(c) of Pub.L. 96-70, which had provided that notwithstanding any other provision of law, not more than 15,000 individuals could be admitted to the United States as special immigrants under subparagraphs (E), (F),

8 U.S.C.A. § 1101

and (G) of subsec. (a)(27) of this section, of which not more than 5,000 could be admitted in any fiscal year, was repealed by Pub.L. 103-416, Title II, § 212(a), Oct. 25, 1994, 108 Stat. 4314.

Authorization of Appropriations

Section 404 of Act June 27, 1952, as amended Pub.L. 97-116, § 18(s), Dec. 29, 1981, 95 Stat. 1621; Pub.L. 99-603, Title I, § 113, Nov. 6, 1986, 100 Stat. 3383; Pub.L. 101-649, Title VII, § 705(a), Nov. 29, 1990, 104 Stat. 5087; Pub.L. 102-232, Title III, § 308(d), Dec. 12, 1991, 105 Stat. 1757, provided that:

"(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [this chapter] (other than chapter 2 of title IV) [subchapter IV of this chapter].

"(b)(1) There are authorized to be appropriated (for fiscal year 1991 and any subsequent fiscal year) to an immigration emergency fund, to be established in the Treasury, an amount sufficient to provide for a balance of \$35,000,000 in such fund, to be used to carry out paragraph (2) and to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

"(2)(A) Funds which are authorized to be appropriated by paragraph (1), subject to the dollar limitation contained in subparagraph (B), shall be available, by application for the reimbursement of States and localities providing assistance as required by the Attorney General, to States and localities whenever--

"(i) a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter,

"(ii) the lives, property, safety, or welfare of the residents of a State or locality are endangered, or

"(iii) in any other circumstances as determined by the Attorney General.

In applying clause (i), the providing of parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

"(B) Not more than \$20,000,000 shall be made available for all localities under this paragraph.

"(C) For purposes of subparagraph (A), the requirement of paragraph (1) that an immigration emergency be determined shall not apply.

"(D) A decision with respect to an application for reimbursement under subparagraph (A) shall be made by the Attorney General within 15 days after the date of receipt of the application."

[Section 705(b) of Pub.L. 101-649 provided that: "Section 404(b)(2)(A)(i) of the Immigration and Nationality Act, as added by the amendment made by subsection (a)(5) [section 404 (b)(2)(A)(i) of Act June 27, 1952, set out as a note under this section], shall apply with respect to increases in the number of asylum applications filed in a calendar quarter beginning on or after January 1, 1989. The Attorney General may not spend any amounts from the immigration emergency fund pursuant to the amendments made by subsection (a) [amending section 404 of Act June 27, 1952, set out as a note under this section], before October 1, 1991."]

8 U.S.C.A. § 1101

[Amendment by section 308(d) of Pub.L. 102-232 effective as if included in the enactment of Pub.L. 101-649, see section 310(1) of Pub.L. 102-232, set out as a note under section 1101 of this title.]

Definitions; Applicability of Subsections (a) and (b)

Section 14 of Pub.L. 85-316 provided that: "Except as otherwise specifically provided in this Act [enacting section 1255b and former sections 1182b, 1182c, 1201a, 1205, 1251a, 1255a, and 1401b of this title, amending this section, section 1153(a)(1), and former section 1434(c) of this title, and enacting notes formerly set out under sections 1151, 1153, and 1205 of this title, and section 1971a of Appendix to Title 50], the definitions contained in subsections (a) and (b) of section 101 of the Immigration and Nationality Act [subsecs. (a) and (b) of this section], shall apply to sections 4, 5, 6, 7, 8, 9, 12, 13, and 15 of this Act [section 1255b and former sections 1182b, 1182c, 1201a, 1205, 1251a, and 1255a of this title, and notes formerly set out under section 1153 of this title and section 1971a of Appendix to Title 50]."

Additional Definitions

Many of the terms listed in this section are similarly defined in § 782 of Title 50, War and National Defense.

Admission of Alaska as State

Effectiveness of amendment of this section by Pub.L. 85-508 was dependent upon the admission of Alaska into the Union under § 8(b) of Pub.L. 85- 508. Admission was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, as required by §§ 1 and 8(c) of Pub.L. 85-508. See notes preceding § 21 of Title 48, Territories and Insular Possessions.

Admission of Hawaii as State

Admission of Hawaii into the Union was accomplished Aug. 21, 1959 upon issuance of Proc. No. 3309, Aug. 25, 1959, 25 F.R. 6868, 73 Stat. c74, as required by §§ 1 and 7(c) of Pub.L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding 491 of Title 48, Territories and Insular Possessions.

Philippine Traders as Nonimmigrants

Philippine traders classifiable as non-immigrants under subsec. (a)(15)(E) of this section, see § 1184a of this title.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 12711

<Apr. 11, 1990, 55 F.R. 13897>

POLICY IMPLEMENTATION WITH RESPECT TO NATIONALS OF PEOPLE'S REPUBLIC OF CHINA

By the authority vested in me as President by the Constitution and laws of the United States of America, the Attorney General and the Secretary of State are hereby ordered to exercise their authority, including that under the Immigration and Nationality Act (8 U.S.C. 1101-1557) [this chapter], as follows:

Section 1. The Attorney General is directed to take any steps necessary to defer until January 1, 1994, the enforced departure of all nationals of the People's Republic of China (PRC) and their dependents who were in the United States on or after June 5, 1989, up to and including the date of this order (hereinafter "such PRC nationals").

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Sec. 2. The Secretary of State and the Attorney General are directed to take all steps necessary with respect to such PRC nationals (a) to waive through January 1, 1994, the requirement of a valid passport and (b) to process and provide necessary documents, both within the United States and at U.S. consulates overseas, to facilitate travel across the borders of other nations and reentry into the United States in the same status such PRC nationals had upon departure.

Sec. 3. The Secretary of State and the Attorney General are directed to provide the following protections:

(a) irrevocable waiver of the 2-year home country residence requirement that may be exercised until January 1, 1994, for such PRC nationals;

(b) maintenance of lawful status for purposes of adjustment of status or change of nonimmigrant status for such PRC nationals who were in lawful status at any time on or after June 5, 1989, up to and including the date of this order;

(c) authorization for employment of such PRC nationals through January 1, 1994; and

(d) notice of expiration of nonimmigrant status (if applicable) rather than the institution of deportation proceedings, and explanation of options available for such PRC nationals eligible for deferral of enforced departure whose nonimmigrant status has expired.

Sec. 4. The Secretary of State and the Attorney General are directed to provide for enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization, as implemented by the Attorney General's regulation effective January 29, 1990.

Sec. 5. The Attorney General is directed to ensure that the Immigration and Naturalization Service finalizes and makes public its position on the issue of training for individuals in F-1 visa status and on the issue of reinstatement into lawful nonimmigrant status of such PRC nationals who have withdrawn their applications for asylum.

Sec. 6. The Departments of Justice and State are directed to consider other steps to assist such PRC nationals in their efforts to utilize the protections that I have extended pursuant to this order.

Sec. 7. This order shall be effective immediately.

GEORGE BUSH

MEMORANDA OF PRESIDENT

<Feb. 7, 1995, 60 F.R. 7885>

DETECTING ILLEGAL IMMIGRATION

Memorandum for the Heads of Executive Departments and Agencies

It is a fundamental right and duty for a nation to protect the integrity of its borders and its laws. This Administration shall stand firm against illegal immigration and the continued abuse of our immigration laws. By closing the back door to illegal immigration, we will continue to open the front door to legal immigrants.

My Administration has moved swiftly to reverse the course of a decade of failed immigration policies. Our initiatives have included increasing overall Border personnel by over 50 percent since 1993. We also are

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

strengthening worksite enforcement and work authorization verification to deter employment of illegal aliens. Asylum rules have been reformed to end abuse by those falsely claiming asylum, while offering protection to those in genuine fear of persecution. We are cracking down on smugglers of illegal aliens and reforming criminal alien deportation for quicker removal. And we are the first Administration to obtain funding to reimburse States for a share of the costs of incarcerating criminal illegal aliens.

While we already are doing more to stem the flow of illegal immigration than has any previous Administration, more remains to be done. In conjunction with the Administration's unprecedented budget proposal to support immigration initiatives, this directive provides a blueprint of policies and priorities for this Administration's continuing work to curtail illegal immigration. With its focus on strong border deterrence backed up by effective worksite enforcement, removal of criminal and other deportable aliens and assistance to states, this program protects the security of our borders, our jobs and our communities for all Americans--citizens and legal immigrants alike.

COMPREHENSIVE BORDER CONTROL STRATEGY**A. Deterring Illegal Immigration At Our Borders**

I have directed the Attorney General to move expeditiously toward full implementation of our comprehensive border control strategy, including efforts at the southwest border. To support sustained long-term strengthening of our deterrence capacity, the Administration shall seek funding to add new Border Patrol agents to reach the goal of at least 7,000 agents protecting our borders by the year 2000.

Flexible Border Response Capacity

To further this strategy, the Department of Justice shall implement the capacity to respond to emerging situations anywhere along our national borders to deter buildups of illegal border crossers, smuggling operations, or other developing problems.

Strategic Use of High Technology

Through the strategic use of sensors, night scopes, helicopters, light planes, all-terrain vehicles, fingerprinting and automated recordkeeping, we have freed many Border Patrol agents from long hours of bureaucratic tasks and increased the effectiveness of these highly-trained personnel. Because these tools are essential for the Immigration and Naturalization Service (INS) to do its job, I direct the Attorney General to accelerate to the greatest extent possible their utilization and enhancement to support implementation of our deterrence strategy.

Strong Enforcement Against Repeat Illegal Crossers

The Department of Justice shall assess the effectiveness of efforts underway to deter repeat illegal crossers, such as fingerprinting and dedicating prosecution resources to enforce the new prosecution authority provided by the Violent Crime Control and Law Enforcement Act of 1994 [Pub.L. 103-322, Sept. 13, 1994, 108 Stat. 1796; for complete classification of this Act to the Code, see Short Title of 1994 Acts note set out under section 13701 of Title 42, The Public Health and Welfare and Tables].

The Department of Justice shall determine whether accelerated expansion of these techniques to additional border sectors is warranted.

B. Deterring Alien Smuggling

This Administration has had success deterring large ship-based smuggling directly to United States shores. In

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

response, smugglers are testing new routes and tactics. Our goal: similar success in choking off these attempts by adjusting our anti-smuggling initiatives to anticipate shifting smuggling patterns.

To meet new and continuing challenges posed along transport routes and in foreign locations by smuggling organizations, we will augment diplomatic and enforcement resources at overseas locations to work with host governments, and increase related intelligence gathering efforts.

The Departments of State and Justice, in cooperation with other relevant agencies, will report to the National Security Council within 30 days on the structure of interagency coordination to achieve these objectives.

Congressional action will be important to provide U.S. law enforcement agencies with needed authority to deal with international smuggling operations. I will propose that the Congress pass legislation providing wiretap authority for investigation of alien smuggling cases and providing authorization to seize the assets of groups engaged in trafficking in human cargo.

In addition, I will propose legislation to give the Attorney General authority to implement procedures for expedited exclusion to deal with large flows of undocumented migrants, smuggling operations, and other extraordinary migration situations.

C. Visa Overstay Deterrence

Nearly half of this country's illegal immigrants come into the country legally and then stay after they are required by law to depart, often using fraudulent documentation. No Administration has ever made a serious effort to identify and deport these individuals. This Administration is committed to curtailing this form of illegal immigration.

Therefore, relevant departments and agencies are directed to review their policies and practices to identify necessary reforms to curtail visa overstayers and to enhance investigations and prosecution of those who fraudulently produce or misuse passports, visas, and other travel related documents. Recommendations for administrative initiatives and legislative reform shall be presented to the White House Interagency Working Group on Immigration by June 30, 1995.

REDUCING THE MAGNET OF WORK OPPORTUNITIES, WORKSITE ENFORCEMENT, AND DETERRENCE

Border deterrence cannot succeed if the lure of jobs in the United States remains. Therefore, a second major component of the Administration's deterrence strategy is to toughen worksite enforcement and employer sanctions. Employers who hire illegal immigrants not only obtain unfair competitive advantage over law-abiding employers, their unlawful use of illegal immigrants suppresses wages and working conditions for our country's legal workers. Our strategy, which targets enforcement efforts at employers and industries that historically have relied upon employment of illegal immigrants, will not only strengthen deterrence of illegal immigration, but better protect American workers and businesses that do not hire illegal immigrants.

Central to this effort is an effective, nondiscriminatory means of verifying the employment authorization of all new employees. The Administration fully supports the recommendation of the Commission on Legal Immigration Reform to create pilot projects to test various techniques for improving workplace verification, including a computer database test to validate a new worker's social security number for work authorization purposes. The Immigration and Naturalization Service (INS) and Social Security Administration are directed to establish, implement, monitor, and review the pilots and provide me with an interim report on the progress of this program by March 1, 1996.

8 U.S.C.A. § 1101

In addition, the INS is directed to finalize the Administration's reduction of the number of authorized documents to support work verification for noncitizens. Concurrently, the Administration will seek further reduction legislatively in the number of documents that are acceptable for proving identity and work authorization. The Administration will improve the security of existing documents to be used for work authorization and seek increased penalties for immigration fraud, including fraudulent production and use of documents.

The Department of Labor shall intensify its investigations in industries with patterns of labor law violations that promote illegal immigration.

I also direct the Department of Labor, INS, and other relevant Federal agencies to expand their collaboration in cracking down on those who subvert fair competition by hiring illegal aliens. This may include increased Federal authority to confiscate assets that are the fruits of that unfair competition.

The White House Interagency Working Group on Immigration shall further examine the link between immigration and employment, including illegal immigration, and recommend to me other appropriate measures.

DETENTION AND REMOVAL OF DEPORTABLE ILLEGAL ALIENS

The Administration's deterrence strategy includes strengthening the country's detention and deportation capability. No longer will criminals and other high risk deportable aliens be released back into communities because of a shortage of detention space and ineffective deportation procedures.

A. Comprehensive Deportation Process Reform

The Department of Justice, in consultation with other relevant agencies, shall develop a streamlined, fair, and effective procedure to expedite removal of deportable aliens. As necessary, additional legislative authority will be sought in this area. In addition, the Department of Justice shall increase its capacity to staff deportation and exclusion hearings to support these objectives.

B. National Detention and Removal Plan

To address the shortage of local detention space for illegal aliens, the Administration shall devise a National Detention, Transportation, and Removal Policy that will permit use of detention space across the United States and improve the ability to remove individuals with orders of deportation. The Department of Justice, in consultation with other agencies as appropriate and working under the auspices of the White House Interagency Working Group on Immigration, shall finalize this plan by April 30, 1995.

The Administration will seek support and funding from the Congress for this plan and for our efforts to double the removal of illegal aliens with final orders of deportation.

C. Identification and Removal of Criminal Aliens

The Institutional Hearing Program is successfully expediting deportation of incarcerated criminal aliens after they serve their sentences.

To further expedite removal of criminal aliens from this country and reduce costs to Federal and State governments, the Department of Justice is directed to develop an expanded program of verification of the immigration status of criminal aliens within our country's prisons. In developing this program, the viability of expanding the work of the Law Enforcement Support Center should be assessed and all necessary steps taken to increase coordination and cooperative efforts with State, and local law enforcement officers in identification of criminal aliens.

8 U.S.C.A. § 1101

TARGETED DETERRENCE AREAS

Many of the Administration's illegal immigration enforcement initiatives are mutually reinforcing. For example, strong interior enforcement supports border control. While there have been efforts over the years at piecemeal cooperation, this Administration will examine, develop, and test a more comprehensive coordinated package of deterrence strategies in selected metropolitan areas by multiple Federal, State, and local agencies.

The White House Interagency Working Group on Immigration shall coordinate the development of this interagency and intergovernmental operation.

VERIFICATION OF ELIGIBILITY FOR BENEFITS

The law denies most government benefits to illegal aliens. The government has a duty to assure that taxpayer-supported public assistance programs are not abused. As with work authorization, enforcement of eligibility requirements relies upon a credible system of verification. The INS, working with the White House Interagency Working Group on Immigration as appropriate, shall review means of improving the existing benefits verification program. In addition, we will seek new mechanisms--including increased penalties for false information used to qualify for benefits--to protect the integrity of public programs.

ANTI-DISCRIMINATION

Our efforts to combat illegal immigration must not violate the privacy and civil rights of legal immigrants and U.S. citizens. Therefore, I direct the Attorney General, the Secretary of Health and Human Services, the Chair of the Equal Employment Opportunity Commission, and other relevant Administration officials to vigorously protect our citizens and legal immigrants from immigration-related instances of discrimination and harassment. All illegal immigration enforcement measures shall be taken with due regard for the basic human rights of individuals and in accordance with our obligations under applicable international agreements.

ASSISTANCE TO STATES

States today face significant costs for services provided to illegal immigrants as a result of failed policies of the past. Deterring illegal immigration is the best long-term solution to protect States from growing costs for illegal immigration. This is the first Administration to address this primary responsibility squarely. We are targeting most of our Federal dollars to those initiatives that address the root causes that lead to increased burdens on States.

The Federal Government provides States with billions of dollars to provide for health care, education, and other services and benefits for immigrants. This Administration is proposing increases for immigration and immigration-related spending of 25 percent in 1996 compared to 1993 levels. In addition, this Administration is the first to obtain funding from the Congress to reimburse States for a share of the costs of incarcerated illegal aliens.

This Administration will continue to work with States to obtain more Federal help for certain State costs and will oppose inappropriate cost-shifting to the States.

INTERNATIONAL COOPERATION

This Administration will continue to emphasize international cooperative efforts to address illegal immigration.

Pursuant to a Presidential Review Directive (PRD), the Department of State is now coordinating a study on United States policy toward international refugee and migration affairs. I hereby direct that, as part of that PRD process, this report to the National Security Council include the relationship of economic development and migration in the

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Western Hemisphere and, in particular, provide recommendations for further foreign economic policy measures to address causes of illegal immigration.

The Department of State shall coordinate an interagency effort to consider expanded arrangements with foreign governments for return of criminal and deportable aliens.

The Department of State also shall seek to negotiate readmission agreements for persons who could have sought asylum in the last country from which they arrived. Such agreements will take due regard of U.S. obligations under the Protocol Relating to the Status of Refugees.

The Department of State further shall implement cooperative efforts with other nations receiving smuggled aliens or those used as transshipment points by smugglers. In particular, we will look to countries in our hemisphere to join us by denying their territory as bases for smuggling operations.

The Department of State shall initiate negotiations with foreign countries to secure authority for the United States Coast Guard to board source country vessels suspected of transporting smuggled aliens.

This directive shall be published in the **Federal Register**.

WILLIAM J. CLINTON

CROSS REFERENCES

Criminal alien procedural improvements including extradition, see 18 USCA § 3181.

Fees for certain custom services for arrival of any passenger whose journey originated in territory or possession of U.S. or any adjacent island, see 19 USCA § 58c.

Definition of the terms--

Alien enemies, see 50 USCA § 21.

Crew list visa, see section 1201(f) of this title.

National of the United States, see 10 USCA § 1060a and 18 USCA §§ 178, 831, 1116, 1119, 1201, 2280, 2281, and 2332a.

Order of deportation, see 8 USCA § 1252(c).

Permits to enter, see 8 USCA § 1185(f).

Person, see 8 USCA §§ 1185(c) and 1322(d).

Religious training and belief, see 8 USCA § 1448.

Transportation line and transportation company, see 8 USCA § 1228(d).

United States, see 8 USCA § 1185(c).

Immigration and Naturalization Service, see 8 USCA § 1551 et seq.

Peace Corps programs, nonimmigrant status of foreign participants, see 22 USCA § 2508.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines § 2L1.2, 18 USCA.

CODE OF FEDERAL REGULATIONS

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Adult education programs, see 34 CFR § 425.1 et seq.

Aliens granted asylum and refugees, adjustment of status, see 8 CFR § 209.1 et seq.

Availability of service records, see 8 CFR § 103.8 et seq.

Certificate of naturalization or repatriation, see 8 CFR § 343.1.

Certification of temporary foreign labor for certain occupations, see 20 CFR § 655.0 et seq.

Classification of alien as immediate relative of citizen or as preference immigrant, see 8 CFR § 204.1 et seq.

Lawful admission presumed, see 8 CFR § 101.1 et seq.

Manifests, lists, etc., relating to arrivals and departures, see 8 CFR §§ 231.1 et seq., 251.1 et seq.

Nonimmigrant classification, change in, see 8 CFR § 248.1 et seq.

Permanent resident status--

Adjustment from, see 8 CFR § 247.1 et seq.

Adjustment to, see 8 CFR § 245.1 et seq.

Rescission of adjustment, see 8 CFR § 246.1 et seq.

Petitions, revocation of approval, see 8 CFR § 205.1 et seq.

Physical and mental examination and inspection of arriving aliens, see 8 CFR §§ 232.1, 233.1 et seq., 234.1 et seq., 235.1 et seq.; 42 CFR § 34.1 et seq.

Powers and duties of officers of Immigration and Naturalization Service, see 8 CFR § 103.1 et seq.

Procedures for asylum, see 8 CFR § 208.1 et seq.

Refugees, admission, see 8 CFR § 207.1 et seq.

Registration and fingerprinting of aliens, see 8 CFR §§ 101.4, 264.1 et seq.

Requirements for admission, etc., of nonimmigrant classes, see 8 CFR § 214.1 et seq.

Student assistance programs, see 34 CFR §§ 668.1 et seq., 674 to 676, 682, 692.

Visas, passports, and other documentation--

Immigrants, see 8 CFR § 211.1 et seq.; 22 CFR § 42.1 et seq.

Nonimmigrants, see 8 CFR § 212.1 et seq.; 22 CFR § 41.1 et seq.

Visitors or students, admission under bond, see 8 CFR § 221.1.

LAW REVIEW COMMENTARIES

A "hard look" at the executive branch's asylum decisions. Kevin R. Johnson, 1991 Utah L.Rev. 279.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Adjustment of status. Stanley Mailman, 212 N.Y.L.J. 3 (Oct. 24, 1994).

America's scapegoats: The undocumented worker and Hoffman Plastic Compounds, Inc. v. National Labor Relations Board. Comment, 38 New Eng. L. Rev. 1009 (2004).

American Competitiveness and Workforce Improvement Act of 1998: Balancing economic and labor interests under the new H-1B visa program. Jung S, Hahm, 85 Cornell L.Rev. 1673 (2000).

Analysis of the Clinton administration's proposed asylum reform regulations. Mary Waltermire, 1 U.C.Davis J.Int'l L. & Pol'y 1 (1995).

Applying Chada: The fate of the war powers resolution. Robert A. Weikert, 24 Santa Clara L.Rev. 697 (1984).

Asylum adjudications: Do State Department advisory opinions violate refugee's rights and U.S. international obligations? Richard K. Preston, 45 Md.L.Rev. 91 (1986).

Changing face of immigration law. Ira J. Kurzban and David S. Berger, 66 Fla.B.J. 11 (May 1992).

Consequences of nonappearance: Interpreting new Section 242B of the Immigration and Nationality Act. Iris Gomez, 30 San Diego L.Rev. 75 (1993).

Credibility findings in deportation proceedings: "Bear[ing] witness unto the truth." Henry G. Watkins, 2 Geo.Immigr.L.J. 231 (1987).

Debating conviction against conviction--Constitutional considerations on the sanctuary movement. Ruti G. Teitel, 14 Hastings Const.L.Q. 25 (1986).

Detention of aliens. Paul Wickham Schmidt, 24 San Diego L.Rev. 305 (1987).

Disregarding a definition in *Perdomo-Padilla v. Ashcroft*: Making the INA definition of a "national" mean what it does not say. Comment, 73 U. Cin. L. Rev. 235 (2004).

Employers' obligations under the Immigration Reform and Control Act of 1986. William A. Smith, 61 N.Y.St.B.J. 36 (1989).

Employment of nonimmigrant aliens after IMMACT90. Sarah Lea Tobocman and Larry S. Rifkin, 66 Fla.B.J. 48 (May 1992).

Enforcing the hidden U.S. equal rights law. Ann Fagan Ginger, 20 Golden Gate U.L.Rev. 385 (1990).

Exclusion and membership: The dual identity of the undocumented worker under United States law. Linda S. Bosniak, 1988 Wis.L.Rev. 955 (1988).

Expanded rules under NAFTA. Michael D. Patrick, 211 N.Y.L.J. 3 (Jan. 24, 1994).

Federal sentences for aliens convicted of illegal reentry following deportation: Who needs the aggravation? James P. Fleissner & James A. Shapiro, 9 Geo.Immigr.L.J. 451 (1995).

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Five years later: Fifth Circuit case law developments under the Illegal Immigration Reform and Immigrant Responsibility Act. Patricia Flynn and Judith Patterson, 53 *Baylor L. Rev.* 557 (2001).

Fixing the wheel: A critical analysis of the immigrant investor visa. Ronald R. Rose, 29 *San Diego L.Rev.* 615 (1992).

Foreign nurses no longer welcome. Stanley Mailman, 215 *N.Y.L.J.* 3 (Feb. 26, 1996).

Forum choices for the review of agency adjudication: A study of the immigration process. Stephen H. Legomsky, 71 *Iowa L.Rev.* 1297 (1986).

Fraud and materiality: Has the Supreme Court redefined immigration and naturalization fraud? Michael Wolf, 62 *Temp.L.Rev.* 481 (1989).

From definition to exploration: Social groups and political asylum eligibility. Maureen Graves, 26 *San Diego L.Rev.* 739 (1989).

From judicial to administrative denaturalization: For better or for worse? Vinineath Nuon Gopal, 72 *U.Colo.L.Rev.* 779 (2001).

General practitioners guide to the amnesty legalization provision of a new immigration law. Duncan A. Campbell, III, 16 *Colo.Law.* 1347 (Aug. 1987).

Guilty pleas and the hidden minefield of immigration consequences for alien defendants: Achieving a "just result" by adjusting Maine's Rule 11 Procedure. Comment, 54 *Me.L.Rev.* 157 (2002).

Guo Chun Di v. Carroll: Refugee status of Chinese nationals fleeing persecution resulting from China's coercive population control measures. 20 *N.C.J.Int'l L. & Com.Reg.* 685 (1995).

Hiring foreign talent--Nonimmigrant business visas after the 1990 act. Steven J. Klearman, 38 *Fed.B.News & J.* 430 (1991).

HUD shuts the door: Restrictions on housing assistance to noncitizens. 9 *Geo.Immigr.L.J.* 801 (1995).

Immigration Act of 1990--A new world of possibilities. Pamela Cowan and Steven S. Miller, 45 *Wash.St.B.News* 19 (Mar. 1991).

In the best interests of the INS: An analysis of the 1997 amendment to the Special Immigrant Juvenile Law. Note, 27 *J. Legis.* 441 (2001).

Incorporation of international human rights standards into sexual orientation asylum claims: Cases of involuntary "medical" intervention. 105 *Yale L.J.* 255 (1995).

Individual responsibility for assisting the Nazis in persecuting civilians. Stephen J. Massey, 71 *Minn.L.Rev.* 97 (1986).

Is the Attorney General the custodian of an INS detainee? Personal jurisdiction and the "immediate custodian" rule in immigration-related habeas actions. Rachel E. Rosenbloom, 27 *N.Y.U Rev. L. & Soc. Change* 543 (2002).

8 U.S.C.A. § 1101

Kids will be kids? Reconsidering conceptions of children's rights underlying immigration law. David B. Thronson, 63 Ohio St.L.J. 979 (2002).

Labor certification: Six different ways and reasons for establishing dissimilarity between two employment positions. Lorna Rogers Burgess, 29 San Diego L.Rev. 643 (1992).

Labor-condition application process. Michael D. Patrick, 211 N.Y.L.J. 3 (May 23, 1994).

Latin American adoptions in Connecticut--is there any room for lawyers? Note, 10 U.Bridgeport L.Rev. 115 (1989).

Lawful residence through employment. Michael D. Patrick, 210 N.Y.L.J. 3 (Nov. 29, 1993).

Limited liability companies for foreign investors. Stanley Mailman, 213 N.Y.L.J. 3 (Feb. 27, 1995).

Lost century of American immigration law (1776-1875). Gerald L. Neuman, 93 Colum.L.Rev. 1833 (1993).

Matter of A-A-: Board of immigration appeals statutory misinterpretation denies discretionary relief to aggravated felons. 34 Santa Clara L.Rev. 247 (1993).

New era: The Immigration Act of 1990. Howard S. "Sam" Myers and Elizabeth A. Thompson, 48 Bench & B.Minn. 13 (Jan.1991).

New INS Guidelines on gender persecution: Their effect on asylum in the United States for women fleeing the forced sterilization and abortion policies of the People's Republic of China. 21 N.C.J.Int'l L. & Com.Reg. 621 (1996).

New techniques for managing high-volume asylum systems. Stephen H. Legomsky, 81 Iowa L.Rev. 671 (1996).

1996 Immigration Act: Its impact on U.S. legal residents and undocumented aliens. Charles C. Foster, 34 Hous.Law. 28 (Jan./Feb. 1997).

Ninth Circuit and the protection of asylum seekers since the passage of the Refugee Act of 1980. Carolyn P. Blum, 23 San Diego L.Rev. 327 (1986).

No where to run . . . no where to hide: Battered women seeking asylum in the United States find protection hard to come by: Matter of R--A--. Note, 11 Geo.Mason U.Civ.Rts. L.J. 301 (2001).

O and P visas for nonimmigrants and the impact of organized labor on foreign artists and entertainers and American audiences. Tiddy Blum, Fordham Intell.Prop.Media & Ent.L.J. 533 (1993).

Organization membership and political opinion as grounds for refugee status. 18 Hous.J.Int'l L. 465 (1996).

Petitioning on behalf of an alien spouse: Due process under the immigration laws. Comment, 74 Cal.L.Rev. 1747 (1986).

Political asylum and other forms of relief. William Sanchez and Adalsinda Lomangino, 66 Fla.B.J. 18 (May 1992).

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Political asylum in the Ninth Circuit and the case of Elias-Zacarias. Bruce J. Einhorn, 29 San Diego L.Rev. 597 (1992).

Political asylum under the 1980 Refugee Act: An unfulfilled promise. Arthur C. Helton, 17 U.Mich.J.L.Ref. 243 (1984).

"Political opinions" of refugees: Interpreting international sources. Comment, 63 Wash.L.Rev. 395 (1988).

Post-war friendship, commerce and navigation treaties--Interpreting the right of foreign treaty employers in the United States to engage in selective employment discrimination "of their choice": Is it justified? Comment, 6 DePaul Bus.L.J. 101 (1993).

Protection and custody of children in United States immigration court proceedings. Judges J. Daniel Dowell, Philip J. Montante, Jr., Ira Sandron, Jose Simonet, 16 Nova L.Rev. 1285 (1992).

Protection for alien workers under the U.S. employment discrimination laws. Kimberley A. Chandler, 22 Colo.Law. 1911 (1993).

Protection for undocumented workers under the FLSA: An evaluation in light of IRCA. Comment, 25 San Diego L.Rev. 398 (1988).

Proving the existence of persecution in asylum and withholding claims. Joni L. Andrioff, 62 Chi.-Kent L.Rev. 107 (1985).

Redefining refugee: A proposal for relief for the victims of civil strife. Michael G. Heyman, 24 San Diego L.Rev. 449 (1987).

Refugee in the United States: The sanctuary movement should use the legal system. Paul Wickham Schmidt, 55 Hofstra L.Rev. 79 (Fall, 1986).

Refugee Act of 1980: An empty promise to exploited children. Jill C. Stroguludis, 29 John Marshall L.R. 995 (1996).

Reinterpreting the Immigration and Nationality Act's categorical bar to discretionary relief for "aggravated felons" in light of international law: Extending Beharry v. Reno. Note, 21 Ariz. J. Int'l & Comp. L. 535 (2004).

Religion and the Immigration and Nationality Act: Using old saws on new bones. Enid Trucios-Haynes, 9 Geo.Immigr.L.J. 1 (1995).

Representing aliens in criminal cases--Recent amendments to the Immigration and Naturalization Act. Mary L. Sfasciotti, 79 Ill.B.J. 78 (1991).

Resistance to military conscription or forced recruitment by insurgents as a basis for refugee protection: A comparative perspective. Arthur C. Helton, 29 San Diego L.Rev. 581 (1992).

Resolving challenges to statutes containing unconstitutional legislative veto provisions. Note, 85 Colum.L.Rev. 1808 (1985).

Safe haven for Salvadorans in the context of contemporary international law--A case study in equivocation.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Todd Howland, Amy Beer, Tim Everett and Evangeline Nichols Ordaz, 29 San Diego L.Rev. 671 (1992).

Setting our sights: United States and Canadian investor visa programs. 4 Minn.J.Global Trade 271 (1995).

Simpson-Rodino: A closer look. Matthew D. Ross, 7 Cal.Law. 51 (April 1987).

Stepfamilies in the federal law. Margaret M. Mahoney, 48 U.Pitt.L.Rev. 491 (1987).

Storytelling out of school: Undocumented college residency, race, and reaction. Michael A. Olivas, 22 Hastings Const.L.Q. 1019 (1995).

Stranger and afraid: Undocumented workers and federal employment law. Peter Margulies, 38 DePaul L.Rev. 553 (1989).

Subsidiary assertion of foreign parent corporation rights under commercial treaties to hire employees "of their choice." Note, 86 Colum.L.Rev. 139 (1986).

Swords into ploughshares: Why the United States should provide refuge to young men who refuse to bear arms for reasons of conscience. Karen Musalo, 26 San Diego L.Rev. 849 (1989).

Taming the asylum adjudication process: An agenda for the twenty-first century. Katherine L. Vaughns, 30 San Diego L.Rev. 1 (1993).

The balance of interest between national security controls and first amendment interest in academic freedom. M. Christina Ramirez, 13 J.C. & U.L. 179 (1986).

The habeas corpus suspension clause after *INS v. St. Cyr*. Gerald Neuman, 33 Colum. Hum. Rts. L.Rev 555 (2002).

The McCarran-Walter Act and ideological exclusion: A call for reform. Comment, 43 U.Miami L.Rev. 1141 (1989).

The need for a codified definition of "persecution" in United States refugee law. Sophie H. Pirie, 39 Stan.L.Rev. 187 (1986).

The sanctuary movement: An analysis of the legal and moral questions involved. John F. Godar, 30 St.Louis U.L.J. 1221 (1986).

The torch dims: Ambiguity of asylum and the "well-founded fear of persecution" standard in *Sadeghi v. INS*. 20 N.C.J.Int'l L. & Com.Reg. 721 (1995).

Treaty status: Immigration loss's over look benefit. Ralph Ehrenpreis (December 1980) 3 L.A.Law. 34.

Underground railroad and the sanctuary movement: A comparison of history, litigation, and values. Note, 60 S.Cal.L.Rev. 1429 (1987).

U.S. asylum policy and population control in the People's Republic of China. 8 Hous.J.Int'l L. 557 (1996).

U.S. immigration law update: Hiring foreign nationals in the United States-- making immigration law user friendly. Charles C. Foster and Gary Endelman, 9 Corp.Couns.Rev. 153 (Nov. 1990).

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

United States asylum law: Recognizing persecution based on gender. 89 *Geo.Immigr.L.J.* 137 (1995).

United States Supreme Court and the protection of refugees. Lung-chu Chen, 67 *St.John's L.Rev.* 469 (1993).

Update on adjustment of status. Michael D. Patrick, 214 *N.Y.L.J.* 3 (Sept. 1, 1995).

Visa petition appeals and motions. Thomas K. Ware, 38 *Fed.B.News & J.* 437 (1991).

Walking a gray line: The "color of law" test governing noncitizen eligibility for public benefits. Robert Rubin, 24 *San Diego L.Rev.* 411 (1987).

Well-founded fear of persecution--The standard of proof in political asylum resolved, or is it?: *I.N.S. v. Cardoza-Fonseca*. Note, 22 *U.S.F.L.Rev.* 385 (1988).

Working visas for athletes and entertainers. Michael D. Patrick, 211 *N.Y.L.J.* 3 (March 28, 1994).

Yang v. Maugans: Just when you thought it was safe to get in the water. 21 *N.C.J.Int'l L. & Com.Reg.* 667 (1996).

LIBRARY REFERENCES

Corpus Juris Secundum

CJS Aliens § 1, Alien Defined.

CJS Aliens § 4, Classification of Aliens.

CJS Aliens § 14, Rights, Duties, Obligations, and Protections Under Laws of United States.

CJS Aliens § 116, Hostage Taking.

CJS Aliens § 349, Other Representatives.

CJS Aliens § 517, Issuance of Visas and Other Documentation.

CJS Aliens § 541, Declaration of Immigration Emergency.

CJS Aliens § 544, Impact of IIRIRA.

CJS Aliens § 545, "Admission" and "Admitted" Defined.

CJS Aliens § 564, Waiver of Documentation.

CJS Aliens § 574, Individuals Regarded as Arrivals.

CJS Aliens § 594, Claim to Lawful Permanent Resident, Refugee, or Asylee Status, or U.S. Citizenship.

CJS Aliens § 627, FLEUTI and IIRIRA and Its Aftermath.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

CJS Aliens § 628, Abandonment of Lawful Permanent Residence.

CJS Aliens § 671, "Immigrant" and "Immigrant Visa" Defined.

CJS Aliens § 673, Who is Entitled to Immigrant Classification.

CJS Aliens § 679, Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens.

CJS Aliens § 680, Who is Permanent Resident Alien Entitled to Sponsor Immigrant.

CJS Aliens § 686, Married Sons or Daughters of United States Citizens.

CJS Aliens § 689, Siblings Required to be Children of Common Parents.

CJS Aliens § 692, Siblings by Means of Adoption.

CJS Aliens § 697, Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.

CJS Aliens § 699, Reduction in Classifications.

CJS Aliens § 701, Ministers and Religious Workers.

CJS Aliens § 702, United States Government Employees Abroad.

CJS Aliens § 703, Certain Foreign Medical Graduates.

CJS Aliens § 704, Minor Aliens Declared Dependent on Juvenile Court.

CJS Aliens § 705, Armed Forces Foreign Enlistees With Honorable Active Duty Records.

CJS Aliens § 709, International Broadcasting Employees.

CJS Aliens § 717, Immediate Relatives of United States Citizens.

CJS Aliens § 719, Permanent Residents Returning from Temporary Stay Abroad.

CJS Aliens § 723, Certain Former United States Citizens.

CJS Aliens § 726, Who May File Petition.

CJS Aliens § 727, Filing of Certain Petitions With Secretary of State.

CJS Aliens § 730, Petition Validity for Certain Special Immigrants; Extension.

CJS Aliens § 754, Other Records.

CJS Aliens § 757, Passport.

CJS Aliens § 772, Who May Issue Visas.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

CJS Aliens § 774, Order of Issuance.

CJS Aliens § 778, Contents and Validity of Visa -- Visa Issued to Religious Worker.

CJS Aliens § 794, New Visa Issued to Nonquota Immigrant.

CJS Aliens § 801, Who is a Nonimmigrant.

CJS Aliens § 804, Eligibility.

CJS Aliens § 805, Eligibility -- Applicability of Grounds for Denial of Visas and Refusal of Admission.

CJS Aliens § 806, Other Officials or Employees (A-2).

CJS Aliens § 807, Other Officials or Employees (A-2) -- Applicability of Grounds for Denial of Visas and Refusal of Admission.

CJS Aliens § 809, Eligibility.

CJS Aliens § 813, Eligibility.

CJS Aliens § 818, Eligibility.

CJS Aliens § 822, Treaty Traders -- Alien's or Firm's Activities in United States Must Constitute Trade.

CJS Aliens § 823, Treaty Traders -- Alien's or Firm's Activities in United States Must Constitute Trade -- Substantial Trade Required.

CJS Aliens § 826, Treaty Investors -- Eligibility.

CJS Aliens § 830, Designation as Student; Eligibility.

CJS Aliens § 832, Exchange Students.

CJS Aliens § 834, Eligibility.

CJS Aliens § 835, Derivative Classification of Immediate Family Members.

CJS Aliens § 837, Aliens Eligible for H Status.

CJS Aliens § 838, Derivative Status of Spouse and Children.

CJS Aliens § 839, Eligibility.

CJS Aliens § 841, Eligibility for Q-1 Status.

CJS Aliens § 843, Q-2 Eligibility.

CJS Aliens § 844, Eligibility for Q-1 Status -- Derivative Status for Spouses and Children (Q-3).

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

CJS Aliens § 849, Classification.

CJS Aliens § 850, Classification and Eligibility.

CJS Aliens § 852, Inclusion of Spouse and Children.

CJS Aliens § 854, Eligibility.

CJS Aliens § 857, Eligibility.

CJS Aliens § 858, Eligibility -- Spouse and Children of P-1, P-2, and P-3 Beneficiaries.

CJS Aliens § 862, Eligibility.

CJS Aliens § 863, Spouses and Children.

CJS Aliens § 864, Basic Criteria.

CJS Aliens § 872, Eligibility.

CJS Aliens § 875, Employment Authorization.

CJS Aliens § 878, Revocation of Approved Status.

CJS Aliens § 879, Removal.

CJS Aliens § 883, Eligibility; Numerical Limitations.

CJS Aliens § 885, Waiver of Inadmissibility; Referrals; Employment Authorization.

CJS Aliens § 886, Eligibility.

CJS Aliens § 895, Where to Apply.

CJS Aliens § 901, Passport.

CJS Aliens § 937, Who is a Refugee.

CJS Aliens § 941, Ineligible Aliens -- Participants in Persecution.

CJS Aliens § 945, Derivative Status for Spouse or Child Accompanying or Following to Join.

CJS Aliens § 948, Proving Subjective Component of Fear.

CJS Aliens § 958, Persecutor's Subjective Intent to Harm or Punish.

CJS Aliens § 959, Impact of General Conditions on Applicant; Nationality.

CJS Aliens § 963, Basic Forms of Persecution.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

CJS Aliens § 966, Fear of Forced Abortion or Coerced Sterilization.

CJS Aliens § 969, Test is Victim's Political Opinion.

CJS Aliens § 990, Standard of Proof.

CJS Aliens § 995, Government Employees.

CJS Aliens § 996, Former Members of Military Establishment.

CJS Aliens § 999, Annual Limitation Fixed by President.

CJS Aliens § 1004, Where to File.

CJS Aliens § 1012, Termination of Status.

CJS Aliens § 1021, Alien Must be Refugee.

CJS Aliens § 1022, Spouse and Children of Principal Alien.

CJS Aliens § 1136, Aliens Subject to Being Denied Admission.

CJS Aliens § 1137, What Constitutes Affiliation.

CJS Aliens § 1138, Exceptions.

CJS Aliens § 1144, What Constitutes Conviction.

CJS Aliens § 1167, Commission of Serious Criminal Offense by Person Granted Diplomatic Immunity.

CJS Aliens § 1183, Other Illegal Entrants and Immigration Violators -- Student Visa Abusers.

CJS Aliens § 1216, Aliens Committing Fraud or Making Willful Misrepresentations.

CJS Aliens § 1217, Certain Immigrant Members of Totalitarian Party With Close Family Ties in United States.

CJS Aliens § 1239, Alienage Requirement.

CJS Aliens § 1272, Ten-Year Period Applicable to § Nonimmigrants.

CJS Aliens § 1281, Definitions Under IIRIRA.

CJS Aliens § 1282, What Constitutes Requisite Conviction.

CJS Aliens § 1293, Fraud and Deceit; Embezzlement.

CJS Aliens § 1295, Theft Offenses.

CJS Aliens § 1466, Lawful Immigration Status When Adjustment Application Filed.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

CJS Aliens § 1467, Continuous Lawful Status Since Entry Into United States.

CJS Aliens § 1471, Who is Eligible Parolee.

CJS Aliens § 1475, Waivers of Inadmissibility -- Special Immigrant Declared Dependent on a Juvenile Court, and Others.

CJS Aliens § 1481, General Rule.

CJS Aliens § 1489, Factors Considered in Exercise of Discretion -- Applicant's Good-Faith Entry -- Maintenance of Status; Good Moral Character.

CJS Aliens § 1499, Interview and Medical Examination.

CJS Aliens § 1512, Who is Eligible for Relief -- Applicant Must Have Entered U.S. Prior to January 1, 1972, and Have Maintained Continuous U.S. Residence.

CJS Aliens § 1513, Who is Eligible for Relief -- Applicant Must be of Good Moral Character.

CJS Aliens § 1514, Who is Eligible for Relief -- Applicant Must Not be Ineligible for Citizenship or Deportable as Terrorist.

CJS Aliens § 1521, Who is Eligible for Adjustment.

CJS Aliens § 1543, Reentry After Deportation.

CJS Aliens § 1564, Indictment.

CJS Aliens § 1707, Alien Stowaways.

CJS Aliens § 1744, Naturalization Defined; Congressional Authority.

CJS Aliens § 1749, Necessity of Being Honest With BCIS and Court.

CJS Aliens § 1750, Presumption of Lawful Admission for Permanent Residence.

CJS Aliens § 1754, Meaning of "Residence".

CJS Aliens § 1770, Basic Requirement.

CJS Aliens § 1772, Requirements.

CJS Aliens § 1776, What Constitutes False Testimony to Obtain Benefit Under Ina.

CJS Aliens § 1777, What Constitutes False Testimony to Obtain Benefit Under Ina -- Testimony Need Not be Material; Intent to Deceive Required.

CJS Aliens § 1779, Conviction of Aggravated Felony.

CJS Aliens § 1780, Requirements.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

CJS Aliens § 1786, Particular Acts as Meeting Requirement.

CJS Aliens § 1822, "Parent," "Father," "Mother," and "Child" Defined.

CJS Aliens § 1825, One Parent Must be Citizen at Child's Birth -- Application to Adopted Child.

CJS Aliens § 1828, Eligibility.

CJS Aliens § 1829, Eligibility -- Necessity of Residence Outside United States, Temporary Presence in United States, and of Being "Child".

CJS Aliens § 1832, Application to Adopted Child.

CJS Aliens § 1857, When Permanent Resident Status Not Required -- Induction, Enlistment, or Recall to Temporary Active Duty in Qualifying Area.

CJS Aliens § 1860, Proof of Good Moral Character, Attachment, and Favorable Disposition.

CJS Aliens § 1942, Willful Misrepresentation or Concealment of Material Fact -- Materiality.

CJS Aliens § 1947, Participation in Activities Of, or Collaboration With, Nazis -- Ineligibility for Visa Under Displaced Persons Act.

CJS Aliens § 1949, Naturalization Illegally Procured.

CJS Citizens § 2, General Considerations.

CJS Citizens § 4, Citizen Defined -- Comparison With Other Terms.

CJS Citizens § 9, Persons Born or Living in United States Possessions.

CJS Citizens § 10, Persons Born Abroad in General.

CJS Citizens § 12, Persons of Unknown Parentage.

CJS Citizens § 17, Dual Nationality.

CJS Citizens § 18, Failure to Take Up Residence in United States.

CJS Civil Rights § 158, Basis of Discrimination -- National Origin.

CJS International Law § 64, Admission of Representatives and Personnel to United States.

RESEARCH REFERENCES

ALR Library

8 ALR, Fed. 2nd Series 203, Construction and Application of "Sentence Imposed" Provision of United States Sentencing Guideline § 2L1.2(B) Pertaining to Unlawfully Entering or Remaining in U.S. After Commission of Felony...

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

6 ALR, Fed. 2nd Series 67, Sufficiency of Evidence to Establish Alien's Past Persecution Entitling Alien to Status of Refugee Under § 101(A)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(42)(A))-- Alleged Persecution...

5 ALR, Fed. 2nd Series 525, Who is "National" of the United States for Removability Purposes.

4 ALR, Fed. 2nd Series 117, Sufficiency of Evidence to Establish Alien's Past Persecution Entitling Alien to Status of Refugee Under Sec 101(A)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. Sec 1101(A)(42)(A))--Alleged Persecution...

1 ALR, Fed. 2nd Series 89, Sufficiency of Evidence to Establish Alien's Past Persecution Entitling Alien to Status of Refugee Under Sec 101(A)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. Sec 1101(A)(42)(A))--Alleged...

199 ALR, Fed. 307, Sufficiency of Evidence to Establish Alien's Past Persecution Entitling Alien to Status of Refugee Under § 101(A)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(42)(A))-- Alleged...

196 ALR, Fed. 337, Validity, Construction, and Application of Hardship Standard for Cancellation of Removal of Alien Under 8 U.S.C.A. § 1229b(B)(1)(D), Including Jurisdictional Issues.

196 ALR, Fed. 365, Construction and Application of 8 U.S.C.A. § 1440 Permitting Naturalization Through Active Duty Service in Armed Forces During Certain Periods of Military Hostilities.

194 ALR, Fed. 383, Validity, Construction, and Application of Child Citizenship Act.

193 ALR, Fed. 673, Abandonment of Lawful Permanent-Resident Status.

191 ALR, Fed. 343, Validity, Construction, and Application of Nicaraguan Adjustment and Central American Relief Act.

189 ALR, Fed. 115, Validity, Construction, and Application of "Permanent Residence" Provision of 28 U.S.C.A. § 1332(a).

187 ALR, Fed. 325, Validity, Construction, and Application of Mandatory Predeportation Detention Provision of Immigration and Nationality Act (8 U.S.C.A. § 1226(C)) as Amended.

185 ALR, Fed. 221, Commencement of Deportation Proceedings Under the Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

184 ALR, Fed. 385, Construction and Application of United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment.

184 ALR, Fed. 485, Validity, Construction, and Application of Federal Brady Act, and Implementing Federal and State Regulations Thereunder.

182 ALR, Fed. 1, Award of Damages Under State-Sponsored Terrorism Exception to Foreign Sovereign Immunities Act (28 U.S.C.A. § 1605(A)(7)).

182 ALR, Fed. 147, Sufficiency of Evidence to Establish Alien's Well-Founded Fear of Persecution Entitling Alien to Status of Refugee Under § 101(A)(42)(A) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. §

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

1101(A)(42)(A)--Alleged...

180 ALR, Fed. 243, Evidence Warranting Refusal of Admission, Removal, or Denaturalization for Nazi-Related Conduct.

180 ALR, Fed. 369, Sufficiency of Evidence to Establish Alien's Well-Founded Fear of Persecution Entitling Alien to Status of Refugee Under § 101(A)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(42)(A)--Alleged...

179 ALR, Fed. 357, Necessity and Sufficiency of Evidence Corroborating Alien's Testimony to Establish Basis for Asylum or Withholding of Removal.

177 ALR, Fed. 203, Sufficiency of Evidence to Establish Alien's Well-Founded Fear of Persecution Entitling Alien to Status of Refugee Under § 101(A)(42)(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(42)(A)--Alleged...

177 ALR, Fed. 459, Illegal Reentry Under § 276 of Immigration and Nationality Act (8 U.S.C.A. § 1326) of Alien Who Has Been Denied Admission, Excluded, Deported, or Removed or Has Departed United States While Order of Exclusion...

176 ALR, Fed. 1, State-Sponsored Terrorism Exception to Immunity of Foreign States and Their Property Under Foreign Sovereign Immunities Act of 1976, 28 U.S.C.A. § 1605(A)(7).

175 ALR, Fed. 67, Validity, Construction, and Application of 8 U.S.C.A. § 1401(C)-(G), Providing for American Citizenship in Certain Circumstances of Child Born Outside United States, or Found Within United States and of Unknown Parentage...

168 ALR, Fed. 575, What Constitutes "Aggravated Felony" for Which Alien Can be Deported or Removed Under § 237(A)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(A)(2)(A)(iii)).

167 ALR, Fed. 663, What Laws Are Neutral and of General Applicability Within Meaning of Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876.

122 ALR, Fed. 375, Alien's Eligibility, as Persecuted Refugee, for Discretionary Grant of Asylum Under §§ 101(A)(42), 208 of Immigration and Nationality Act of 1952 (8 U.S.C.A. §§ 1101(A)(42), 1158), 99 A.L.R. Fed. 278...

109 ALR, Fed. 816, Who is "Alien Crewman" Working in "Capacity Required for Normal Operation and Service" of Vessel, Under 8 U.S.C.A. § 1101(A)(15)(D), Entitled to Work Without Special Certification Required in 8 U.S.C.A. §....

103 ALR, Fed. 274, Propriety and Prejudicial Effect of in Absentia Exclusion Proceedings Conducted Pursuant to Immigration and Nationality Act of 1952.

96 ALR, Fed. 336, What Constitutes "Adversary Adjudication" by Administrative Agency Entitling Prevailing Party to Award of Attorneys' Fees Under Equal Access to Justice Act (5 U.S.C.A. § 504).

99 ALR, Fed. 278, Alien's Eligibility, as Persecuted Refugee, for Discretionary Grant of Asylum Under §§ 101(A)(42), 208 of Immigration and Nationality Act of 1952 (8 U.S.C.A. §§ 1101(A)(42), 1158).

91 ALR, Fed. 764, Applicability and Effect of Collateral Estoppel Doctrine in Deportation Proceedings.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

93 ALR, Fed. 544, Compliance With Requirement of 8 CFR § 242.1(C), Pertaining to Show Cause Orders in Deportation Proceedings, that Alien be Notified of Right to Counsel.

94 ALR, Fed. 619, Propriety, in Criminal Case, of Federal District Court Order Restricting Defendant's Right to Re-Enter or Stay in United States.

95 ALR, Fed. 262, Applicability and Effect of Equitable Estoppel Doctrine in Immigration and Naturalization Proceedings.

86 ALR, Fed. 135, Alien's Entitlement, as Spouse of United States Citizen, to "Immediate Relative" Status Under § 201, 204, and 205 of Immigration and Nationality Act of 1952 (8 U.S.C.A. §§ 1151, 1154, 1155).

81 ALR, Fed. 279, Construction and Application of § 340(J) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1451(J)), Authorizing Correction, Reopening, Modification, and Vacation of Naturalization...

81 ALR, Fed. 531, Validity and Construction of Department of Labor's "50% Rule," Requiring Employer Hiring Seasonal Foreign Workers to Employ Qualified Domestic Workers Until Fifty Percent of Period of Work Contract Has...

82 ALR, Fed. 624, Eligibility for Discretionary Parole Status Under § 212(D)(5) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1182(D)(5)), Providing for Temporary Admission of Aliens.

83 ALR, Fed. 16, Alien's Entitlement, Due to Threat to Life or Freedom, to Withholding of Deportation Under § 243(H) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1253(H)).

83 ALR, Fed. 350, When is Aiding of Alien's Illegal Entry Into United States "Knowingly" So as to be Ground for Exclusion Under § 212(A)(31) of Immigration and Nationality Act (8 U.S.C.A. § 1182(A)(31)) or for Deportation Under § 241(a)(13) of Immigration and Nationality Act (8 U.S.C.A. § 1251(a)(13)).

83 ALR, Fed. 790, Eligibility for "Treaty Trader" or "Treaty Investor" Status Under § 101(A)(15)(E) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(A)(15)(E)).

84 ALR, Fed. 114, Actionability, Under Federal and State Antidiscrimination Legislation, of Foreign Employer's Discriminating in Favor of Foreign Workers in Hiring and Other Employment Matters.

84 ALR, Fed. 815, Necessity and Sufficiency of Notice of Claimed Refugee's Right to Apply for Asylum Under § 208 of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1158).

77 ALR, Fed. 379, What Constitutes Concealment of Material Facts or Willful Misrepresentation Warranting Revocation of Naturalization Under § 340 of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1451).

77 ALR, Fed. 828, Excludability of Alien Under § 212(A)(1-7) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1182(A)(1-7)), Excluding Aliens for Mental or Physical Defect, Disease, or Disability.

80 ALR, Fed. 8, Eligibility, for Discretionary Admission Under § 212(C) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1182(C)), of Alien Returning to Unrelinquished Domicile After Trip Abroad.

80 ALR, Fed. 676, Alien's Entitlement to Sixth-Preference Classification Under § 203(A)(6) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1153(A)(6)), Where Labor Certification Has Been Granted.

63 ALR, Fed. 520, When is Illegitimate Child "Legitimated" for Purposes of § 101(B)(1)(C) of Immigration and

8 U.S.C.A. § 1101

Nationality Act (8 U.S.C.A. § 1101(B)(1)(C)).

65 ALR, Fed. 742, What Constitutes "Final Deportation Order" Appealable to United States Court of Appeals Under § 106 of Immigration and Nationality Act (8 U.S.C.A. § 1105a).

54 ALR, Fed. 182, Who is "Stepchild" for Purposes of § 101(B)(1)(B) of Immigration and Nationality Act (8 U.S.C.A. § 1101(B)(1)(B)).

46 ALR, Fed. 176, Admissibility and Weight of Blood Test Results in Immigration Preference or Derivative Citizenship Proceedings Under Immigration and Nationality Act (8 U.S.C.A. §§ 1101 et seq.).

48 ALR, Fed. 281, Waiver of Deportation Based on Family Relationships, Under § 241(F) of Immigration and Nationality Act (8 U.S.C.A. § 1251(F)).

48 ALR, Fed. 509, Foreign Residence Requirement for Educational (Exchange) Visitors Under § 212(E) of Immigration and Nationality Act (8 U.S.C.A. § 1182(E)).

41 ALR, Fed. 608, Labor Certifications Prerequisite to Admission of Aliens Under 8 U.S.C.A. § 1182(A)(14).

43 ALR, Fed. 903, Issuance of Visa to Fiancee or Fiance of Citizen Under § 214(D) of Immigration and Nationality Act (8 U.S.C.A. § 1184(D)).

44 ALR, Fed. 574, Right of Alien Who is Under Deportation Proceedings to Depart Voluntarily from United States, Under § 244(E) of Immigration and Nationality Act (8 U.S.C.A. § 1254(E)).

45 ALR, Fed. 185, Suspension of Deportation and Adjustment of Status for Permanent Residence of Alien Under § 244(A)(1) of Immigration and Nationality Act (8 U.S.C.A. § 1254(A)(1)).

36 ALR, Fed. 300, Validity, Construction, and Application of Provisions of Immigration and Nationality Act of 1952 (8 U.S.C.A. §§ 1101 et seq.), Evincing Congressional Intent to Prefer Domestic Laborers, in Cases Involving Alien...

32 ALR, Fed. 538, Construction and Application of § 212(A)(23) of Immigration and Nationality Act (8 U.S.C.A. § 1182(A)(23)), Excluding Aliens Who Are Drug "Traffickers" or Who Have Been Convicted of Violating Narcotics or...

33 ALR, Fed. 120, Definition of "Adultery" Within Meaning of § 101(F)(2) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1101(F)(2)).

26 ALR, Fed. 709, What Constitutes "Convicted" Within Meaning of § 241(A)(4, 11, 14-16, 18) of Immigration and Nationality Act (8 U.S.C.A. § 1251(A)(4, 11, 14-16, 18)) Providing that Alien Shall be Deported Who Has Been Convicted...

23 ALR, Fed. 480, What Constitutes "Crime Involving Moral Turpitude" Within Meaning of §§ 212(A)(9) and 241(A)(4) of Immigration and Nationality Act (8 U.S.C.A. §§ 1182(A)(9), 1251(A)(4)), and Similar Predecessor Statutes...

24 ALR, Fed. 339, Construction and Application of § 319(A) of Immigration and Nationality Act (8 U.S.C.A. § 1430(A)), Making Special Provisions for Naturalization of Aliens Married to United States Citizens.

18 ALR, Fed. 287, Construction and Application of § 203(A)(3) of Immigration and Nationality Act of 1952 (8

8 U.S.C.A. § 1101

U.S.C.A. § 1153(A)(3)) as Amended Giving Preference Visas to Professionals or Persons Having Ability in Arts and...

13 ALR, Fed. 145, Construction and Application of 28 U.S.C.A. § 1361 Conferring on Federal District Courts Original Jurisdiction of Actions in Nature of Mandamus to Compel Federal Officer, Employee, or Agency to Perform Duty Owed...

6 ALR, Fed. 764, Alien's Claim of Exemption, and His Relief or Discharge, from Military Service as Ground for Denying Him Citizenship Under § 315(A) of Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1426(A)) and § 454(A) of...

4 ALR, Fed. 557, Construction and Application of § 245 of the Immigration and Nationality Act of 1952 (8 U.S.C.A. § 1255) Authorizing Adjustment of Status of Alien to that of Permanent Resident.

60 ALR 5th 459, What Constitutes "Agricultural" or "Farm" Labor Within Social-Security or Unemployment-Compensation Acts.

43 ALR 4th 579, Admissibility and Weight of Blood-Grouping Tests in Disputed Paternity Cases.

15 ALR 4th 582, Adequacy of Defense Counsel's Representation of Criminal Client Regarding Appellate and Postconviction Remedies.

10 ALR 4th 8, Adequacy of Defense Counsel's Representation of Criminal Client Regarding Guilty Pleas.

95 ALR 3rd 891, Part-Time or Intermittent Workers as Covered by or as Eligible for Benefits Under State Unemployment Compensation Act.

38 ALR 3rd 1213, Constitutionality of Enactment or Regulation Forbidding or Restricting Employment of Aliens in Public Employment or on Public Works.

22 ALR 3rd 749, What Absence from United States Constitutes Interruption of Permanent Residence So as to Subject Alien to Exclusion or Deportation on Re-Entry.

9 ALR 3rd 203, Modern Status of Doctrine of Res Judicata in Criminal Cases.

22 ALR 2nd 244, What Constitutes Showing of "Good Moral Character" on the Part of an Applicant for Naturalization.

15 ALR 2nd 550, Expatriation by Foreign Naturalization or by Taking Oath of Allegiance to a Foreign State.

174 ALR 549, Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

170 ALR 1248, Employment in Agriculture Within Exemption Provisions of the Fair Labor Standards Act.

159 ALR 496, What Constitutes Residence or Domicil Within State for Purpose of Jurisdiction in Divorce.

156 ALR 1466, Who is "Enemy" Within Trading With the Enemy Act.

149 ALR 349, Justiciable Controversy Within Declaratory Judgment Act as Predicable Upon Advice, Opinion, or Ruling of Public Administrative Officer.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

151 ALR 1121, Extent of Power of Political Party, Committee, or Officer to Exclude Persons from Participating in Its Primaries as Voters or Candidates.

146 ALR 369, Relief in Habeas Corpus for Violation of Accused's Right to Assistance of Counsel.

138 ALR 1464, Construction and Application of Statute Providing for Constructive or Substituted Service of Process on Nonresident Motorists.

139 ALR 892, Construction and Application of State Social Security or Unemployment Compensation Act as Affected by Terms of the Federal Act or Judicial or Administrative Rulings Thereunder.

131 ALR 1322, Criminal Responsibility of One Co-Operating in Offense Which He is Incapable of Committing Personally.

132 ALR 738, Assumption of Jurisdiction by Court Before Completion of Administrative Procedure as Ground of Prohibition.

95 ALR 1115, Character of Offense as a Felony as Affected by Discretion of Court or Jury as Regards Punishment.

99 ALR 336, Power to Remove Public Officer Without Notice and Hearing.

70 ALR 100, Validity and Effect of Sentence of Banishment, or Suspension of Sentence or Probation on Condition of Leaving State or Locality.

71 ALR 1213, Effect of Marriage of Alien Woman to One Then an American Citizen on Right to Enter or Remain in This Country.

64 ALR 1468, Power of Executive to Sign Bill After Adjournment, or During Recess of Legislature.

57 ALR 131, Right of Heir, Next of Kin, or Other Person Interested in Decedent's Estate to Attack His Marriage on Ground of His Mental Incompetency.

57 ALR 1131, Right of Alien to Re-Enter After Temporary Absence.

36 ALR 887, Power to Admit to Bail in Deportation Case.

30 ALR 686, Writ of Error Coram Nobis as Remedy Where Plea of Guilt is Entered Under Fraud, Duress, or Mistake.

18 ALR 1185, Disloyalty or Mental Reservation as Ground for Cancellation of Certificate of Citizenship.

12 ALR 197, Exclusion or Deportation of Alien Because of Political Views or Opinions.

15 ALR 309, Statutory or Municipal Regulation of Removal of Ashes or Other Rubbish.

8 ALR 1286, Limitation of Time for Deportation of Alien.

1 ALR 321, Refusal of Naturalization for Violation of Law.

Encyclopedias

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

4 Am. Jur. Proof of Facts 2d 595, Nonestablishment of Domicil in Foreign Jurisdiction.

35 Am. Jur. Proof of Facts 2d 459, Extreme Hardship Suspending Deportation of Alien.

39 Am. Jur. Proof of Facts 2d 587, Establishment of Person's Domicil.

13 Am. Jur. Proof of Facts 3d 665, Political Asylum--Well-Founded Fear of Persecution.

25 Am. Jur. Proof of Facts 3d 415, Employment Handicap Discrimination Based on Gender Dysphoria (Transsexualism).

16 Am. Jur. Trials 257, Selective Service Litigation.

26 Am. Jur. Trials 327, Representation of an Alien in Exclusion, Rescission and Deportation Hearings.

65 Am. Jur. Trials 127, Relocation of Children by the Custodial Parent.

Am. Jur. 2d Aliens and Citizens § 4, Meaning of "Immigration Laws" and "Alien".

Am. Jur. 2d Aliens and Citizens § 5, Overview.

Am. Jur. 2d Aliens and Citizens § 9, Refugees, Parole, and Asylum.

Am. Jur. 2d Aliens and Citizens § 14, Effect of Nicaraguan Adjustment and Central American Relief Act.

Am. Jur. 2d Aliens and Citizens § 15, Criminal Aliens.

Am. Jur. 2d Aliens and Citizens § 18, Transportation of Aliens.

Am. Jur. 2d Aliens and Citizens § 19, Other Provisions.

Am. Jur. 2d Aliens and Citizens § 23, Antiterrorism and Effective Death Penalty Act of 1996.

Am. Jur. 2d Aliens and Citizens § 28, Violent Crime Control and Law Enforcement Act of 1994 and Battered Immigrant Women Protection Act of 2000.

Am. Jur. 2d Aliens and Citizens § 38, Attorney General.

Am. Jur. 2d Aliens and Citizens § 44, Geographic Responsibilities; Ports of Entry.

Am. Jur. 2d Aliens and Citizens § 265, Liaison With Department of Homeland Security and Internal Security Officers.

Am. Jur. 2d Aliens and Citizens § 266, Generally; Issuance of Visas and Other Documentation.

Am. Jur. 2d Aliens and Citizens § 289, Declaration of Immigration Emergency.

Am. Jur. 2d Aliens and Citizens § 293, "Immigrant" and "Immigrant Visa" Defined.

Am. Jur. 2d Aliens and Citizens § 295, Who is Entitled to Immigrant Classification.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 296, Spouse or Child Accompanying or Following to Join Principal Alien.

Am. Jur. 2d Aliens and Citizens § 303, Priority Workers -- Multinational Executives or Managers.

Am. Jur. 2d Aliens and Citizens § 306, Reduction in Classifications.

Am. Jur. 2d Aliens and Citizens § 307, Broadcaster or Grantee of Broadcasting Board of Governors.

Am. Jur. 2d Aliens and Citizens § 308, Ministers and Religious Workers.

Am. Jur. 2d Aliens and Citizens § 309, United States Government Employees Abroad.

Am. Jur. 2d Aliens and Citizens § 310, United States Government Employees Abroad -- Certain Aliens Employed at U.S. Mission in Hong Kong.

Am. Jur. 2d Aliens and Citizens § 311, Former Employees in Panama Canal Zone.

Am. Jur. 2d Aliens and Citizens § 312, Foreign Medical Graduates.

Am. Jur. 2d Aliens and Citizens § 313, International Organizations Officers and Employees, and Immediate Family Members.

Am. Jur. 2d Aliens and Citizens § 314, Minor Aliens Declared Dependent on Juvenile Court.

Am. Jur. 2d Aliens and Citizens § 316, Armed Forces Foreign Enlistees With Honorable Active Duty Records.

Am. Jur. 2d Aliens and Citizens § 317, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- Derivative Beneficiaries.

Am. Jur. 2d Aliens and Citizens § 319, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- Revocation of Classification.

Am. Jur. 2d Aliens and Citizens § 336, Alien Born in Foreign State Not of Parents' Birth or Residence.

Am. Jur. 2d Aliens and Citizens § 338, Permanent Residents Returning from Temporary Stay Abroad.

Am. Jur. 2d Aliens and Citizens § 339, Permanent Residents Returning from Temporary Stay Abroad -- Determination of Intent to Return to United States.

Am. Jur. 2d Aliens and Citizens § 341, Commuters.

Am. Jur. 2d Aliens and Citizens § 342, Certain Former United States Citizens.

Am. Jur. 2d Aliens and Citizens § 346, Proxy Marriage.

Am. Jur. 2d Aliens and Citizens § 357, When is Alien "Unmarried" for Preference Purposes.

Am. Jur. 2d Aliens and Citizens § 363, Derivative Definition of Parent.

Am. Jur. 2d Aliens and Citizens § 364, Derivative Definition of Son or Daughter.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 365, Recognition of Stepparent-Stepchild Relationship.

Am. Jur. 2d Aliens and Citizens § 372, Child Born in Wedlock.

Am. Jur. 2d Aliens and Citizens § 373, Child Born Out of Wedlock.

Am. Jur. 2d Aliens and Citizens § 386, Deprivation of Rights of Natural or Prior Adoptive Parents.

Am. Jur. 2d Aliens and Citizens § 387, Adoption in Foreign Country.

Am. Jur. 2d Aliens and Citizens § 391, Eligibility as Dependent on Approved Visa Petition.

Am. Jur. 2d Aliens and Citizens § 392, Orphan Child Defined.

Am. Jur. 2d Aliens and Citizens § 394, Immediate Relative Defined.

Am. Jur. 2d Aliens and Citizens § 396, Automatic Conversion from Preference Classifications.

Am. Jur. 2d Aliens and Citizens § 398, Automatic Conversion of Petitions to Accord First-Preference Status.

Am. Jur. 2d Aliens and Citizens § 399, Automatic Conversion of Petitions to Accord First-Preference Status -- Priority Date.

Am. Jur. 2d Aliens and Citizens § 404, Automatic Conversion of Petition to Accord Third-Preference Status.

Am. Jur. 2d Aliens and Citizens § 405, Preference for Siblings of Adult Citizens.

Am. Jur. 2d Aliens and Citizens § 446, Derivative Beneficiaries.

Am. Jur. 2d Aliens and Citizens § 453, Evidence of Adopted Child or Son or Daughter.

Am. Jur. 2d Aliens and Citizens § 467, Good Moral Character.

Am. Jur. 2d Aliens and Citizens § 472, Derivative Beneficiaries.

Am. Jur. 2d Aliens and Citizens § 475, Parent-Child Relationship.

Am. Jur. 2d Aliens and Citizens § 480, Good Moral Character.

Am. Jur. 2d Aliens and Citizens § 491, Evidence If Petitioner is Adopted Son or Daughter.

Am. Jur. 2d Aliens and Citizens § 524, Eligibility for Adoption.

Am. Jur. 2d Aliens and Citizens § 525, Eligibility for Adoption -- Child Already in United States.

Am. Jur. 2d Aliens and Citizens § 526, Who May File Petition.

Am. Jur. 2d Aliens and Citizens § 527, Petition Filed Alone.

Am. Jur. 2d Aliens and Citizens § 528, Petition Filed Concurrently With Advanced Processing Application.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 529, Advanced Processing Application.

Am. Jur. 2d Aliens and Citizens § 536, Orphan Petition; Advanced Processing Application Not Approved or Pending.

Am. Jur. 2d Aliens and Citizens § 643, Definitions; Executive Capacity; Managerial Capacity.

Am. Jur. 2d Aliens and Citizens § 645, Determining Executive or Managerial Capacity.

Am. Jur. 2d Aliens and Citizens § 646, Determining Executive or Managerial Capacity -- When Staffing Levels Used as Factor in Determination.

Am. Jur. 2d Aliens and Citizens § 649, What Constitutes "Profession".

Am. Jur. 2d Aliens and Citizens § 669, What Constitutes "Profession".

Am. Jur. 2d Aliens and Citizens § 671, What Constitutes "Profession" -- Particular Occupations as Professions.

Am. Jur. 2d Aliens and Citizens § 675, Eligibility and Visa Availability.

Am. Jur. 2d Aliens and Citizens § 676, Limitations on Ministers or Religious Workers and on Broadcasters.

Am. Jur. 2d Aliens and Citizens § 776, Where to File.

Am. Jur. 2d Aliens and Citizens § 778, Alien.

Am. Jur. 2d Aliens and Citizens § 779, Alien or Any Person on Behalf of Alien.

Am. Jur. 2d Aliens and Citizens § 815, Burden of Proof.

Am. Jur. 2d Aliens and Citizens § 819, Who May File Petition.

Am. Jur. 2d Aliens and Citizens § 820, Filing of Certain Petitions With Secretary of State.

Am. Jur. 2d Aliens and Citizens § 833, Consular Office in District of Alien's Residence.

Am. Jur. 2d Aliens and Citizens § 847, Passport.

Am. Jur. 2d Aliens and Citizens § 854, Personal Appearance.

Am. Jur. 2d Aliens and Citizens § 858, Execution of Waiver Where Required.

Am. Jur. 2d Aliens and Citizens § 866, Order of Issuance.

Am. Jur. 2d Aliens and Citizens § 872, Grounds.

Am. Jur. 2d Aliens and Citizens § 887, New Visa Issued to Special Immigrant.

Am. Jur. 2d Aliens and Citizens § 900, Termination of Status -- Status as Foreign Government Official.

Am. Jur. 2d Aliens and Citizens § 901, Generally; Foreign Government Officials.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 902, Temporary Visitors for Business or Pleasure.

Am. Jur. 2d Aliens and Citizens § 903, Aliens in Transit Across the United States.

Am. Jur. 2d Aliens and Citizens § 904, Alien Crewmembers.

Am. Jur. 2d Aliens and Citizens § 905, Treaty Traders and Investors.

Am. Jur. 2d Aliens and Citizens § 906, Students; Academic Students.

Am. Jur. 2d Aliens and Citizens § 907, Students; Academic Students -- Vocational and Other Nonacademic Students.

Am. Jur. 2d Aliens and Citizens § 908, International Organizations Representatives.

Am. Jur. 2d Aliens and Citizens § 909, Temporary Workers.

Am. Jur. 2d Aliens and Citizens § 910, Representatives of Foreign Information Media; Accompanying Spouse and Children Thereof.

Am. Jur. 2d Aliens and Citizens § 911, Teachers and Students Participating in Designated Programs; Accompanying Spouses and Minor Children; Exchange Program Participants.

Am. Jur. 2d Aliens and Citizens § 912, Fiancée or Fiancé of Citizens Seeking to Enter Country Solely to Conclude Marriage or Attain Particular Status; Accompanying Minor Children.

Am. Jur. 2d Aliens and Citizens § 913, Intracompany Transferees; Accompanying Spouses and Minor Children.

Am. Jur. 2d Aliens and Citizens § 914, Parent of Special Immigrant Who is Child; Children of Parent or Special Immigrant.

Am. Jur. 2d Aliens and Citizens § 916, Nafta Professional; Alien Admitted Under Treaty of Commerce and Navigation; Spouses Thereof.

Am. Jur. 2d Aliens and Citizens § 917, Alien With Extraordinary Ability in Sciences, Arts, Education, Business, or Athletics; Spouse or Child Thereof.

Am. Jur. 2d Aliens and Citizens § 918, Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group; Spouse or Child Thereof.

Am. Jur. 2d Aliens and Citizens § 919, Participant in International Cultural Exchange Program; Certain Persons Having Residence in Northern Ireland or Republic of Ireland; Spouses or Children Thereof.

Am. Jur. 2d Aliens and Citizens § 920, Alien in Religious Occupation; Spouse and Children Thereof.

Am. Jur. 2d Aliens and Citizens § 921, Certain Victims of Trafficking in Persons; Spouse, Children, and Other Particular Relatives Thereof.

Am. Jur. 2d Aliens and Citizens § 922, Aliens Providing Information or Aiding in Investigation or Prosecution of Crime or Terrorism; Spouses, Children, or Parents Thereof.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 923, Alien Witness or Informant in Criminal Matter.

Am. Jur. 2d Aliens and Citizens § 924, Alien Witness or Informant in Counterterrorism Matter.

Am. Jur. 2d Aliens and Citizens § 927, Filing Request.

Am. Jur. 2d Aliens and Citizens § 941, Presumptions.

Am. Jur. 2d Aliens and Citizens § 942, Burden of Proof.

Am. Jur. 2d Aliens and Citizens § 944, Submitting Visa Application; Required Information.

Am. Jur. 2d Aliens and Citizens § 945, Where to Apply.

Am. Jur. 2d Aliens and Citizens § 954, Passport.

Am. Jur. 2d Aliens and Citizens § 967, Waivers for S Nonimmigrants.

Am. Jur. 2d Aliens and Citizens § 970, Issuance Conditioned on Posting of Bond.

Am. Jur. 2d Aliens and Citizens § 985, Grounds for Revocation.

Am. Jur. 2d Aliens and Citizens § 998, Who is a Refugee.

Am. Jur. 2d Aliens and Citizens § 1001, Derivative Status for Spouse or Child Accompanying or Following to Join Refugee Qualified for Admission.

Am. Jur. 2d Aliens and Citizens § 1003, Participants in Persecution.

Am. Jur. 2d Aliens and Citizens § 1008, Persecutor's Motives.

Am. Jur. 2d Aliens and Citizens § 1018, Alien's Burden of Proof, Generally.

Am. Jur. 2d Aliens and Citizens § 1020, Subjective and Objective Components of Fear -- Reasonable Possibility of Persecution.

Am. Jur. 2d Aliens and Citizens § 1041, Membership in National Police Force.

Am. Jur. 2d Aliens and Citizens § 1043, Pregnancy, Fertility, or Resistance to Compulsory Population-Control Measures.

Am. Jur. 2d Aliens and Citizens § 1051, Selective Application of Population-Control Policy to Members of Particular Religious Group.

Am. Jur. 2d Aliens and Citizens § 1057, Occupation -- Government Employees; Members of Military Establishment or Police Force.

Am. Jur. 2d Aliens and Citizens § 1062, Annual Limitation Fixed by President.

Am. Jur. 2d Aliens and Citizens § 1066, Where to File Application.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 1073, Termination of Status.

Am. Jur. 2d Aliens and Citizens § 1086, Alien Must be Refugee.

Am. Jur. 2d Aliens and Citizens § 1087, Spouse and Children of Principal Alien.

Am. Jur. 2d Aliens and Citizens § 1089, Grant of Asylum is Discretionary.

Am. Jur. 2d Aliens and Citizens § 1114, Immigration Court.

Am. Jur. 2d Aliens and Citizens § 1135, Authority of Asylum Officer.

Am. Jur. 2d Aliens and Citizens § 1139, Denial as Matter of Discretion.

Am. Jur. 2d Aliens and Citizens § 1155, Eligibility.

Am. Jur. 2d Aliens and Citizens § 1173, Who is Eligible for Adjustment.

Am. Jur. 2d Aliens and Citizens § 1175, Waiver of Certain Grounds of Inadmissibility.

Am. Jur. 2d Aliens and Citizens § 1182, Who is Eligible.

Am. Jur. 2d Aliens and Citizens § 1187, Creation of Record of Admission for Permanent Residence.

Am. Jur. 2d Aliens and Citizens § 1191, Qualified Family Member Who is Not PRC National.

Am. Jur. 2d Aliens and Citizens § 1219, Applying for Permit -- Application Requirements.

Am. Jur. 2d Aliens and Citizens § 1234, Commuters.

Am. Jur. 2d Aliens and Citizens § 1245, Canadian Nationals and Certain Bahamian Nationals and British Subjects.

Am. Jur. 2d Aliens and Citizens § 1247, Bearers of Mexican Diplomatic or Official Passports.

Am. Jur. 2d Aliens and Citizens § 1250, Aliens Leaving Guam, Puerto Rico, or Virgin Islands; Guam Visa Waiver Program.

Am. Jur. 2d Aliens and Citizens § 1251, Other Nonimmigrant Aliens.

Am. Jur. 2d Aliens and Citizens § 1252, Introduction.

Am. Jur. 2d Aliens and Citizens § 1268, Individuals Regarded as Arrivals.

Am. Jur. 2d Aliens and Citizens § 1301, Representatives of Information Media.

Am. Jur. 2d Aliens and Citizens § 1302, Resident Aliens.

Am. Jur. 2d Aliens and Citizens § 1307, Transits With Visas.

Am. Jur. 2d Aliens and Citizens § 1398, Basic Rules.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 1413, "Totalitarianism," "Totalitarian Party," and "Dictatorship," Defined.

Am. Jur. 2d Aliens and Citizens § 1489, Alien Witnesses With Information Regarding Crime and Terrorism.

Am. Jur. 2d Aliens and Citizens § 1514, Alienage Requirement.

Am. Jur. 2d Aliens and Citizens § 1516, Inapplicability of Certain Removal Grounds to Aliens Declared Dependent of Juvenile Court.

Am. Jur. 2d Aliens and Citizens § 1518, Effect of Expungement of Conviction of Deportable Offense.

Am. Jur. 2d Aliens and Citizens § 1526, Particular Circumstances.

Am. Jur. 2d Aliens and Citizens § 1527, Cases Necessitating Secretary of State's Approval.

Am. Jur. 2d Aliens and Citizens § 1536, What Constitutes Requisite Conviction.

Am. Jur. 2d Aliens and Citizens § 1537, What Constitutes Requisite Conviction -- Effect of Expungement of Conviction.

Am. Jur. 2d Aliens and Citizens § 1544, Definition.

Am. Jur. 2d Aliens and Citizens § 1582, "Admission" Defined.

Am. Jur. 2d Aliens and Citizens § 1598, Verified Lawful Permanent Residency.

Am. Jur. 2d Aliens and Citizens § 1707, Voluntary Departure Prior to Completion of Removal Proceedings.

Am. Jur. 2d Aliens and Citizens § 1768, Eligibility; Aliens Not Eligible for Extension.

Am. Jur. 2d Aliens and Citizens § 1776, Particular Factors Considered in Exercise of Discretion.

Am. Jur. 2d Aliens and Citizens § 1801, Who is Eligible; Relief as Discretionary.

Am. Jur. 2d Aliens and Citizens § 1805, Who is Eligible for Relief; Record of Admission Must Not Otherwise be Available.

Am. Jur. 2d Aliens and Citizens § 1842, Allegiance and Obedience to, and Rights and Protection Under, U.S. Laws.

Am. Jur. 2d Aliens and Citizens § 1881, Classes of Aliens Who May be Employed.

Am. Jur. 2d Aliens and Citizens § 1882, Nonimmigrants.

Am. Jur. 2d Aliens and Citizens § 1883, Nonimmigrants -- Employment of Nonimmigrants With Specific Employer.

Am. Jur. 2d Aliens and Citizens § 1907, Coast Guard.

Am. Jur. 2d Aliens and Citizens § 1920, Exceptions.

Am. Jur. 2d Aliens and Citizens § 1926, Railroad Unemployment Insurance Act.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 2074, Generally; Personal Property Rights.

Am. Jur. 2d Aliens and Citizens § 2118, Jurisdiction Over Actions Involving Immigration Laws.

Am. Jur. 2d Aliens and Citizens § 2136, Certain Nonimmigrants of Specific Countries.

Am. Jur. 2d Aliens and Citizens § 2187, Legal Services.

Am. Jur. 2d Aliens and Citizens § 2198, Military Service.

Am. Jur. 2d Aliens and Citizens § 2215, Sources of Citizenship.

Am. Jur. 2d Aliens and Citizens § 2216, Who is "Ineligible to Citizenship".

Am. Jur. 2d Aliens and Citizens § 2233, Circumstances Under Which Citizenship Granted.

Am. Jur. 2d Aliens and Citizens § 2240, Birth on or After December 24, 1952.

Am. Jur. 2d Aliens and Citizens § 2242, Birth on or After January 13, 1941, But Before December 24, 1952.

Am. Jur. 2d Aliens and Citizens § 2243, Birth on or After December 24, 1952.

Am. Jur. 2d Aliens and Citizens § 2249, Definition of "National".

Am. Jur. 2d Aliens and Citizens § 2250, Persons to Whom Status Granted at Birth.

Am. Jur. 2d Aliens and Citizens § 2270, Generally; Congressional Authority.

Am. Jur. 2d Aliens and Citizens § 2277, Requirement that Alien be Lawfully Admitted for Permanent Residence; Illegal Entry.

Am. Jur. 2d Aliens and Citizens § 2281, Generally; Residence and Physical Presence Requirements.

Am. Jur. 2d Aliens and Citizens § 2282, Meaning of "Residence".

Am. Jur. 2d Aliens and Citizens § 2290, Absence for Continuous Period of One Year or More.

Am. Jur. 2d Aliens and Citizens § 2303, Generally; Basic Requirement.

Am. Jur. 2d Aliens and Citizens § 2306, Generally; Persons Expressly Declared by Statute or Regulation to be Not of Good Moral Character.

Am. Jur. 2d Aliens and Citizens § 2307, Giving False Testimony to Obtain Benefit Under INA.

Am. Jur. 2d Aliens and Citizens § 2309, Conviction of Aggravated Felony.

Am. Jur. 2d Aliens and Citizens § 2310, Conviction of Aggravated Felony -- Illicit Trafficking in Controlled Substance.

Am. Jur. 2d Aliens and Citizens § 2323, Involvement in or Support of Communist or Totalitarian Organization.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Am. Jur. 2d Aliens and Citizens § 2343, Generally; When Permitted.

Am. Jur. 2d Aliens and Citizens § 2361, Applicability to Adopted Children.

Am. Jur. 2d Aliens and Citizens § 2362, Definition; "Child," "Parent," "Father," and "Mother".

Am. Jur. 2d Aliens and Citizens § 2364, Applicability to Adopted Children.

Am. Jur. 2d Aliens and Citizens § 2379, Generally; Eligibility Requirements for Naturalization.

Am. Jur. 2d Aliens and Citizens § 2392, Generally; Prohibition.

Am. Jur. 2d Aliens and Citizens § 2406, Spouse and Children of Murdered Aliens.

Am. Jur. 2d Aliens and Citizens § 2498, Materiality.

Am. Jur. 2d Aliens and Citizens § 2698, Documents Included in Offenses -- Social Security Cards.

Am. Jur. 2d Aliens and Citizens § 2714, Firearms Offenses.

Am. Jur. 2d Domicil § 8, Residence; Definition and Distinctions, Generally.

Am. Jur. 2d Job Discrimination § 994, Immigration Act Liability.

Am. Jur. 2d Job Discrimination § 1062, Liability Under the Immigration Act.

Am. Jur. 2d NTS, Computers and the Internet § 1, Generally; Access to Government Information Online; Government Websites.

Am. Jur. 2d Passports § 1, Generally; Definitions.

Am. Jur. 2d Rewards § 5, Federal Statutes Authorizing Payment of Rewards, Generally.

Am. Jur. 2d Social Security and Medicare § 58, Services Performed by Nonresident Aliens Temporarily Present in U.S.

Am. Jur. 2d Social Security and Medicare § 59, Nonimmigrant Alien Temporarily in U.S.

Am. Jur. 2d Social Security and Medicare § 63, Nonimmigrant Alien Defined.

Am. Jur. 2d Social Security and Medicare § 67, Services Performed by Foreign Agricultural Workers.

Am. Jur. 2d Workers' Compensation § 126, Determination of "Employee" Status -- Residence or Citizenship of Worker.

Forms

Federal Procedural Forms § 40:1, Scope of Division.

Federal Procedural Forms § 40:3, Introduction; Law Governing Immigration; Responsibilities of Federal Officers and Agencies.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedural Forms § 5:10, Motion -- to Dismiss Indictment Charging Defendant With Refusal to Register [50 App. U.S.C.A. § 453; Fed R Crim P Rule 12].

Federal Procedural Forms § 5:12, Motion -- to Arrest Judgment -- in Prosecution for Failure to Submit to Military Induction [50 App. U.S.C.A. § 456(A)(1); Fed R Crim P Rule 34].

Federal Procedural Forms § 61:1, Statutes of Limitation, and Other Time Limits, Within United States Code.

Federal Procedural Forms § 20:94, Temporary Detention to Permit Revocation of Conditional Release, Deportation, or Exclusion.

Federal Procedural Forms § 25:12, Complaint -- to Compel Bilingual Electoral Process -- Class Action [28 U.S.C.A. §§ 1343, 2201, 2202; 42 U.S.C.A. §§ 1971 et Seq., 1983; Fed R Civ P Rules 8(A), 23, 57, 65].

Federal Procedural Forms § 32:53, State-Sponsored Terrorism.

Federal Procedural Forms § 40:66, Issuance of Visas and Other Documentation.

Federal Procedural Forms § 40:128, Scope of Division.

Federal Procedural Forms § 40:130, "Immigrant" and "Immigrant Visa" Defined.

Federal Procedural Forms § 40:132, Who is Entitled to Immigrant Classification.

Federal Procedural Forms § 40:134, Family-Sponsored Immigrants.

Federal Procedural Forms § 40:137, Fourth Preference Special Immigrants.

Federal Procedural Forms § 40:138, Fifth Preference; Employment Creation Immigrants.

Federal Procedural Forms § 40:141, Diversity Immigrants -- Approval and Validity of Petitions.

Federal Procedural Forms § 40:143, Immediate Relatives of United States Citizens.

Federal Procedural Forms § 40:144, Permanent Residents Returning from Temporary Stay Abroad.

Federal Procedural Forms § 40:145, Permanent Residents Returning from Temporary Stay Abroad -- Records and Documents Required.

Federal Procedural Forms § 40:146, Commuters.

Federal Procedural Forms § 40:147, Certain Former United States Citizens.

Federal Procedural Forms § 40:155, Who May File Petition.

Federal Procedural Forms § 40:156, Filing of Certain Petitions With Secretary of State.

Federal Procedural Forms § 40:163, Where to Apply -- Consular Office in District of Alien's Residence.

Federal Procedural Forms § 40:167, Priority Date.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedural Forms § 40:168, Necessary Documents, Generally.

Federal Procedural Forms § 40:171, Other Required Documents or Information; Passport.

Federal Procedural Forms § 40:174, Personal Appearance.

Federal Procedural Forms § 40:183, Period of Validity; Extension.

Federal Procedural Forms § 40:184, Refusal of Visa.

Federal Procedural Forms § 40:189, Status; Who is a Nonimmigrant.

Federal Procedural Forms § 40:190, Status; Who is a Nonimmigrant -- Termination of Status.

Federal Procedural Forms § 40:191, Status; Who is a Nonimmigrant -- Change of Status.

Federal Procedural Forms § 40:193, Presumptions as to Status.

Federal Procedural Forms § 40:195, Where to Apply.

Federal Procedural Forms § 40:200, Supporting Documentation; Additional Information -- Passport.

Federal Procedural Forms § 40:203, Personal Appearance; Waiver.

Federal Procedural Forms § 40:208, Issuance Conditioned on Posting of Bond.

Federal Procedural Forms § 40:209, Contents and Form of Visa.

Federal Procedural Forms § 40:217, Derivative Status for Spouse or Child Accompanying or Following to Join Refugee Qualified for Admission.

Federal Procedural Forms § 40:219, Where to File.

Federal Procedural Forms § 40:220, What Must be Filed.

Federal Procedural Forms § 40:236, Notice; Effect of Decision.

Federal Procedural Forms § 40:239, Who May Apply for Asylum -- Termination of Status.

Federal Procedural Forms § 40:243, State Department Comments.

Federal Procedural Forms § 40:277, Eligibility; Visas 92.

Federal Procedural Forms § 40:314, Border Crossing Cards.

Federal Procedural Forms § 40:317, Border Crossing Cards -- Mexican Residents.

Federal Procedural Forms § 40:372, Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360) [8 U.S.C.A. § 1154(F); 8 C.F.R. § 204.4].

Federal Procedural Forms § 40:376, Application for Immigrant Visa and Alien Registration (Form OF-230) [8

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

U.S.C.A. § 1202(A); 22 C.F.R. § 42.63(a)].

Federal Procedural Forms § 40:383, Complaint -- for Declaratory Judgment and Injunctive Relief -- to Review Denial of Petition for Alien Relative -- Adopted Child [5 U.S.C.A. § 702; 8 U.S.C.A. §§ 1153, 1154, 1329; 28 U.S.C.A. §§ 1331, 1361, 1391(e) and 2201; Fed R Civ P Rule 8(a) 57, 65].

Federal Procedural Forms § 40:411, Application for Issuance of Permit to Reenter the United States (Form I-131) [8 U.S.C.A. § 1203; 8 C.F.R. § 223.2].

Federal Procedural Forms § 40:414, Crewman's Landing Permit (Form I-95AB) [8 U.S.C.A. § 1282(A); 8 C.F.R. § 252.1].

Federal Procedural Forms § 40:435, Claim to Lawful Permanent Resident, Refugee, or Asylee Status, or United States Citizenship -- Verified Lawful Permanent Residents.

Federal Procedural Forms § 40:442, Application.

Federal Procedural Forms § 40:469, Prior to Completion of Removal Proceedings.

Federal Procedural Forms § 40:546, Scope of Division.

Federal Procedural Forms § 40:548, Aliens Not Eligible for Extension.

Federal Procedural Forms § 40:550, How and Where to Apply; Fees; Conditions and Departure Agreements -- Personal Employees or Family Members of Foreign Governmental Officials; International Organization Representatives.

Federal Procedural Forms § 40:558, Eligibility; Lawful Immigration Status; Continuous Lawful Status.

Federal Procedural Forms § 40:564, What to File -- S Nonimmigrants; Alien Witness or Informant.

Federal Procedural Forms § 40:568, Eligibility; Relief as Discretionary; Required Showing.

Federal Procedural Forms § 40:571, Eligibility; Record of Admission Not Otherwise Available.

Federal Procedural Forms § 40:588, Application -- Change to § Classification at Request of Law Enforcement Agency.

Federal Procedural Forms § 40:592, Who is Eligible for Adjustment.

Federal Procedural Forms § 40:595, Proceedings Upon Denial of Application.

Federal Procedural Forms § 40:617, Scope of Division.

Federal Procedural Forms § 40:630, Naturalization Defined; Required Compliance With Statute and Regulations; Private Bills.

Federal Procedural Forms § 40:737, Application Requirements -- Application on Behalf of Adopted Child.

Nichols Cyclopedia of Legal Forms Annotated § 1.1121, Research Checklist.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Nichols Cyclopedia of Legal Forms Annotated § 4.4814, Conservation Reserve Program Contract.

2 West's Federal Forms § 1571, Complaint Challenging Order of Deportation Because of Lack of Notification of Statutory Right to Appeal.

2 West's Federal Forms § 1572, Complaint for Injunction and Declaratory Judgment -- Enjoining State Educational Institution's Action Refusing In-State Tuition to G-4 Nonimmigrant Aliens.

2A West's Federal Forms § 1646, Complaint for Employment Discrimination -- Unconstitutional Discrimination by City on Account of Discharge as Alien Barred from Employment by State Law.

27 West's Legal Forms § 7.50, Bond With Surety on Behalf of a Nonimmigrant Alien Student.

Am. Jur. Pl. & Pr. Forms Aliens and Citizens § 1, Introductory Comments.

Am. Jur. Pl. & Pr. Forms Aliens and Citizens § 5, Complaint in Federal Court -- for Declaratory Judgment and Injunctive Relief -- to Review Denial of Petition for Alien Relative -- Adopted Child.

Am. Jur. Pl. & Pr. Forms Elections § 196, Complaint in Federal Court -- to Compel Bilingual Electoral Process -- Class Action.

Treatises and Practice Aids

Eckstrom's Licensing Foreign & Domestic Ops Jt Vent App 5B, License Exceptions (15 C.F.R. Part 740).

Federal Procedure, Lawyers Edition § 45:5, President -- Declaration of Immigration Emergency; Migration and Refugee Assistance.

Federal Procedure, Lawyers Edition § 45:9, Secretary of State.

Federal Procedure, Lawyers Edition § 22:17, Offenses by or Against U.S. Nationals.

Federal Procedure, Lawyers Edition § 45:13, Consular and Diplomatic Officers -- Issuance of Visa and Other Documentation.

Federal Procedure, Lawyers Edition § 45:31, Immigration Emergency Fund.

Federal Procedure, Lawyers Edition § 45:35, Immigration Emergency Fund -- Procedures for State or Local Governments Applying for Funding.

Federal Procedure, Lawyers Edition § 45:57, Offices of Regional Directors -- Officers in Charge of Certain Foreign Offices.

Federal Procedure, Lawyers Edition § 45:71, Geographic Responsibilities; Ports of Entry.

Federal Procedure, Lawyers Edition § 36:343, Adjustment of Status; Need for Waiver of Foreign Residence Requirement.

Federal Procedure, Lawyers Edition § 45:151, Fingerprinting.

Federal Procedure, Lawyers Edition § 45:190, Other Representatives.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:219, Jurisdiction.

Federal Procedure, Lawyers Edition § 45:308, Department of Labor's Role Under the INA and Regulations.

Federal Procedure, Lawyers Edition § 45:355, Derivative Beneficiaries.

Federal Procedure, Lawyers Edition § 45:362, Evidence of Parent-Child Relationship -- Primary Evidence -- for Adopted Child, Son, or Daughter.

Federal Procedure, Lawyers Edition § 45:376, Good Moral Character.

Federal Procedure, Lawyers Edition § 45:380, Derivative Beneficiaries.

Federal Procedure, Lawyers Edition § 45:383, Parent-Child Relationship.

Federal Procedure, Lawyers Edition § 45:388, Good Moral Character.

Federal Procedure, Lawyers Edition § 45:398, Evidence to Support Petition -- Primary Evidence -- If Petitioner is Adopted Son or Daughter.

Federal Procedure, Lawyers Edition § 45:428, Eligibility for Adoption.

Federal Procedure, Lawyers Edition § 45:429, Eligibility for Adoption -- Child Already in United States.

Federal Procedure, Lawyers Edition § 45:430, Who May File Petition.

Federal Procedure, Lawyers Edition § 45:436, Orphan Petition -- Advanced Processing Application Approved.

Federal Procedure, Lawyers Edition § 45:442, Required Documentation.

Federal Procedure, Lawyers Edition § 45:445, Petition Filed After Approval of Advanced Processing Application.

Federal Procedure, Lawyers Edition § 45:472, Approval of Petition/Application Without Meeting Preadoption Requirements.

Federal Procedure, Lawyers Edition § 45:487, Authority of Consular Officers to Approve Petition.

Federal Procedure, Lawyers Edition § 45:500, One and Two-Stage Processing.

Federal Procedure, Lawyers Edition § 45:531, Where to File.

Federal Procedure, Lawyers Edition § 45:533, Alien.

Federal Procedure, Lawyers Edition § 45:534, Alien or Any Person on Behalf of Alien.

Federal Procedure, Lawyers Edition § 45:572, Burden of Proof.

Federal Procedure, Lawyers Edition § 45:707, Who May File.

Federal Procedure, Lawyers Edition § 45:714, Description of H-1B Category.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:810, Approval of Petition -- Period of Validity of Approved Petition -- Extension of Validity.

Federal Procedure, Lawyers Edition § 45:811, Approval of Petition -- Effect of Changes in Terms and Conditions of Employment.

Federal Procedure, Lawyers Edition § 45:812, Approval of Petition -- Revocation of Approval.

Federal Procedure, Lawyers Edition § 45:818, Description of O Category.

Federal Procedure, Lawyers Edition § 45:834, Overview.

Federal Procedure, Lawyers Edition § 45:843, Approval of Petition -- Period of Validity of Petition.

Federal Procedure, Lawyers Edition § 45:845, Approval of Petition -- Effect of Changes in Terms and Conditions of Employment.

Federal Procedure, Lawyers Edition § 45:848, Effect of Strike.

Federal Procedure, Lawyers Edition § 45:849, Revocation of Approval of Petition.

Federal Procedure, Lawyers Edition § 45:851, Eligibility.

Federal Procedure, Lawyers Edition § 45:860, Effect of Changes in Terms and Conditions of Employment.

Federal Procedure, Lawyers Edition § 45:868, Approval -- Period of Validity.

Federal Procedure, Lawyers Edition § 45:869, Approval -- Period of Validity -- Extension of Petition Validity.

Federal Procedure, Lawyers Edition § 45:871, Revocation of Approval of Petition.

Federal Procedure, Lawyers Edition § 45:873, Eligibility.

Federal Procedure, Lawyers Edition § 45:882, Effect of Changes in Terms and Conditions of Employment.

Federal Procedure, Lawyers Edition § 45:905, Period of Validity.

Federal Procedure, Lawyers Edition § 45:906, Extension of Validity of Petition.

Federal Procedure, Lawyers Edition § 45:908, Revocation of Approval of Petition.

Federal Procedure, Lawyers Edition § 45:910, Necessity for and Purpose of Visa Petition; Who May File.

Federal Procedure, Lawyers Edition § 45:914, Form and Content; Supporting Documents and Other Evidence -- Blanket Petitions.

Federal Procedure, Lawyers Edition § 45:922, Individual Petitions.

Federal Procedure, Lawyers Edition § 45:928, Validity of Approved Petition -- Extension of Visa Petition Validity.

Federal Procedure, Lawyers Edition § 45:931, Notice of Intent to Revoke Petition.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:932, Classification as Nonimmigrant Fiancé or Fiancée.

Federal Procedure, Lawyers Edition § 45:942, Who May File Petition.

Federal Procedure, Lawyers Edition § 45:943, Filing of Certain Petitions With Secretary of State.

Federal Procedure, Lawyers Edition § 45:946, Petition Validity for Certain Special Immigrants; Extension.

Federal Procedure, Lawyers Edition § 45:956, Consular Office in District of Alien's Residence.

Federal Procedure, Lawyers Edition § 45:959, Basic Rules.

Federal Procedure, Lawyers Edition § 45:968, Court Orders and Findings Pertaining to Special Immigrant Juveniles.

Federal Procedure, Lawyers Edition § 45:971, Passport.

Federal Procedure, Lawyers Edition § 45:978, Personal Appearance.

Federal Procedure, Lawyers Edition § 45:984, Notification of Petitioner in Special Immigrant Juvenile Cases.

Federal Procedure, Lawyers Edition § 45:991, Order of Issuance.

Federal Procedure, Lawyers Edition § 22:1831, Generally; to Permit Revocation of Conditional Release, Deportation, or Exclusion.

Federal Procedure, Lawyers Edition § 22:2348, Necessity for Treaty Obligation.

Federal Procedure, Lawyers Edition § 45:1015, New Visa Issued to Nonquota Immigrant.

Federal Procedure, Lawyers Edition § 45:1025, Presumptions -- of Immigrant Status.

Federal Procedure, Lawyers Edition § 45:1030, Where to Apply.

Federal Procedure, Lawyers Edition § 45:1032, Required Forms.

Federal Procedure, Lawyers Edition § 45:1033, Supporting Documentation.

Federal Procedure, Lawyers Edition § 45:1040, Passport.

Federal Procedure, Lawyers Edition § 45:1043, Passport -- Exemption from Requirement.

Federal Procedure, Lawyers Edition § 45:1045, Personal Appearance.

Federal Procedure, Lawyers Edition § 45:1053, 8 U.S.C.A. § 1182(D)(1) Waivers for S Nonimmigrants.

Federal Procedure, Lawyers Edition § 45:1054, 8 U.S.C.A. § 1182(D)(1) Waivers for S Nonimmigrants -- Removal in Absence of Waiver.

Federal Procedure, Lawyers Edition § 45:1056, Issuance Conditioned on Posting of Bond.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:1057, Issuance in United States.

Federal Procedure, Lawyers Edition § 45:1065, Limitations on Validity -- Automatic Extension of Validity at Ports of Entry.

Federal Procedure, Lawyers Edition § 45:1073, Grounds for Revocation.

Federal Procedure, Lawyers Edition § 45:1092, Who is a Refugee.

Federal Procedure, Lawyers Edition § 45:1094, Ineligible Aliens -- Participants in Persecution.

Federal Procedure, Lawyers Edition § 45:1100, Derivative Status for Spouse or Child Accompanying or Following to Join Refugee Qualified for Admission.

Federal Procedure, Lawyers Edition § 45:1102, Where to File -- INS Office.

Federal Procedure, Lawyers Edition § 45:1114, Decision; Effect of Termination.

Federal Procedure, Lawyers Edition § 45:1124, Alien Must be Refugee.

Federal Procedure, Lawyers Edition § 45:1125, Spouse and Children of Principal Alien.

Federal Procedure, Lawyers Edition § 45:1127, Grant of Asylum Discretionary.

Federal Procedure, Lawyers Edition § 45:1151, Immigration Court.

Federal Procedure, Lawyers Edition § 45:1166, Burden of Proof.

Federal Procedure, Lawyers Edition § 45:1174, Grant of Asylum -- Authority of Asylum Officer.

Federal Procedure, Lawyers Edition § 45:1178, Denial -- Denial as Matter of Discretion.

Federal Procedure, Lawyers Edition § 45:1185, Review of Decision; Appeal.

Federal Procedure, Lawyers Edition § 45:1198, Eligibility.

Federal Procedure, Lawyers Edition § 45:1215, Continuous Physical Presence and Residence; Qualified, Registered Immigrant.

Federal Procedure, Lawyers Edition § 45:1257, -- Application Requirements.

Federal Procedure, Lawyers Edition § 45:1268, Commuters.

Federal Procedure, Lawyers Edition § 45:1287, Canadian Nationals and Certain Bahamian Nationals and British Subjects.

Federal Procedure, Lawyers Edition § 45:1288, British, French, and Netherlands Nationals, and Nationals of Certain Caribbean Islands.

Federal Procedure, Lawyers Edition § 45:1289, Bearers of Mexican Diplomatic or Official Passports.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:1293, Aliens Leaving Guam, Puerto Rico, or Virgin Islands; Guam Visa Waiver Program.

Federal Procedure, Lawyers Edition § 45:1294, Other Nonimmigrant Aliens.

Federal Procedure, Lawyers Edition § 45:1295, Introduction.

Federal Procedure, Lawyers Edition § 45:1307, Nonresident Alien Mexican Border Crossing Cards -- Combined B-1/B-2 Visitor Visa and BCC.

Federal Procedure, Lawyers Edition § 45:1315, Aliens Leaving Guam, Puerto Rico, or Virgin Islands.

Federal Procedure, Lawyers Edition § 45:1326, Impact of IIRIRA.

Federal Procedure, Lawyers Edition § 45:1327, "Admission" and "Admitted" Defined.

Federal Procedure, Lawyers Edition § 45:1330, Individuals Regarded as Arrivals.

Federal Procedure, Lawyers Edition § 45:1347, Immigration Inspection Fee.

Federal Procedure, Lawyers Edition § 45:1384, Representatives of Information Media.

Federal Procedure, Lawyers Edition § 45:1385, Resident Aliens.

Federal Procedure, Lawyers Edition § 45:1386, Resident Aliens -- What is Brief, Casual and Innocent Stay.

Federal Procedure, Lawyers Edition § 45:1391, Resident Aliens -- Who May Have Abandoned Lawful Permanent Residence.

Federal Procedure, Lawyers Edition § 45:1396, Transits With Visas.

Federal Procedure, Lawyers Edition § 45:1405, When Forms Not Required.

Federal Procedure, Lawyers Edition § 45:1452, Termination of Parole.

Federal Procedure, Lawyers Edition § 45:1480, Aliens Committing Fraud or Making Willful Misrepresentations.

Federal Procedure, Lawyers Edition § 45:1481, Certain Immigrant Members of Totalitarian Party With Close Family Ties in United States.

Federal Procedure, Lawyers Edition § 45:1536, Admission Defined.

Federal Procedure, Lawyers Edition § 45:1557, Claim to Lawful Permanent Resident, Refugee, or Asylee Status, or U.S. Citizenship -- Verified Lawful Permanent Residents.

Federal Procedure, Lawyers Edition § 45:1626, Aliens Ineligible for Relief.

Federal Procedure, Lawyers Edition § 45:1630, Annual Limitation.

Federal Procedure, Lawyers Edition § 45:1635, Prior to Completion of Removal Proceedings.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:1649, Aliens Imprisoned, Arrested, or on Parole, Supervised Release, or Probation -- Exception for Removal of Nonviolent Offenders Prior to Completion of Prison Sentence.

Federal Procedure, Lawyers Edition § 45:1753, Aliens Not Eligible for Extension.

Federal Procedure, Lawyers Edition § 45:1774, H Nonimmigrants -- Period of Extension -- Restrictions on Length of Stay in H Status.

Federal Procedure, Lawyers Edition § 45:1783, H-1B, H-2B, and H-3 Aliens Who Have Spent Some Time in L Status.

Federal Procedure, Lawyers Edition § 45:1786, Refugees.

Federal Procedure, Lawyers Edition § 45:1792, Foreign Government Officials.

Federal Procedure, Lawyers Edition § 45:1798, Change to § Classification at Request of Law Enforcement Agency.

Federal Procedure, Lawyers Edition § 45:1809, Application.

Federal Procedure, Lawyers Edition § 45:1810, Restrictions on Ability to Apply.

Federal Procedure, Lawyers Edition § 45:1814, Change from G Nonimmigrant to Another Nonimmigrant Classification.

Federal Procedure, Lawyers Edition § 45:1815, Change from Other Nonimmigrant Status to G Status.

Federal Procedure, Lawyers Edition § 45:1817, Change from that of H Nonimmigrant.

Federal Procedure, Lawyers Edition § 45:1821, Change from Exchange Visitor to Other Nonimmigrant Status.

Federal Procedure, Lawyers Edition § 45:1826, H-1B, H-2B, and H-3 Aliens.

Federal Procedure, Lawyers Edition § 45:1831, Alien Must be in Lawful Immigration Status When Adjustment Application Filed.

Federal Procedure, Lawyers Edition § 45:1832, Alien Must Have Continuously Maintained Lawful Status Since Entry Into United States.

Federal Procedure, Lawyers Edition § 45:1837, Who is an Eligible Parolee.

Federal Procedure, Lawyers Edition § 45:1841, Waiver of Inadmissibility -- Under 8 U.S.C.A. § 1255(H)(2), for 8 U.S.C.A. § 1101(A)(27)(J) Aliens, of Inadmissibility Under 8 U.S.C.A. § 1182(A)(4), (5)(A), (7)(a).

Federal Procedure, Lawyers Edition § 45:1846, General Rule.

Federal Procedure, Lawyers Edition § 45:1848, Crewmembers.

Federal Procedure, Lawyers Edition § 45:1851, Exchange Visitors.

Federal Procedure, Lawyers Edition § 45:1853, Armed Forces Foreign Enlistees With Honorable Active Duty Records.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:1855, S Nonimmigrants.

Federal Procedure, Lawyers Edition § 45:1856, S Nonimmigrants -- INS Regulations -- Eligibility.

Federal Procedure, Lawyers Edition § 45:1857, S Nonimmigrants -- INS Regulations -- Family Members.

Federal Procedure, Lawyers Edition § 45:1858, S Nonimmigrants -- INS Regulations -- Waivers of Inadmissibility.

Federal Procedure, Lawyers Edition § 45:1859, Special Immigrant Juveniles.

Federal Procedure, Lawyers Edition § 45:1861, Employment-Based First, Second, and Third Preference Immigrants and Special Immigrant Religious Workers.

Federal Procedure, Lawyers Edition § 45:1874, Medical Examination -- Who Must be Examined.

Federal Procedure, Lawyers Edition § 45:1885, S Nonimmigrants -- Application.

Federal Procedure, Lawyers Edition § 45:1887, S Nonimmigrants -- Visa Number Limitation.

Federal Procedure, Lawyers Edition § 45:1888, S Nonimmigrants -- Filing and Decision.

Federal Procedure, Lawyers Edition § 45:1895, Who is Eligible; Relief as Discretionary With Attorney General.

Federal Procedure, Lawyers Edition § 45:1909, Who is Eligible for Adjustment.

Federal Procedure, Lawyers Edition § 45:1911, Waiver of Certain Grounds of Inadmissibility.

Federal Procedure, Lawyers Edition § 45:1956, Who is Eligible for Relief -- Applicant Must Have Entered U.S. Prior to January 1, 1972, and Have Maintained Continuous U.S. Residence.

Federal Procedure, Lawyers Edition § 45:1957, Who is Eligible for Relief -- Applicant Must be of Good Moral Character.

Federal Procedure, Lawyers Edition § 45:1958, Who is Eligible for Relief -- Applicant Must Not be Ineligible for Citizenship.

Federal Procedure, Lawyers Edition § 45:2030, Persons to Whom Status Granted at Birth.

Federal Procedure, Lawyers Edition § 45:2052, Documentation.

Federal Procedure, Lawyers Edition § 45:2056, Application on Behalf of Child.

Federal Procedure, Lawyers Edition § 45:2229, Application for Certificate of Citizenship on Behalf of Child Born Outside United States.

Federal Procedure, Lawyers Edition § 45:2281, Employment Covered Under Prohibition.

Federal Procedure, Lawyers Edition § 45:2508, Offense and Penalty.

Federal Procedure, Lawyers Edition § 45:2525, Indictment.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Federal Procedure, Lawyers Edition § 45:2536, Sentencing -- Circumstances Justifying Upward Departure from Sentencing Guidelines -- Constitutional Considerations.

Federal Procedure, Lawyers Edition § 45:1047.5, Retention of Nonimmigrant Visa Applications.

Federal Procedure, Lawyers Edition § 45:938.15, Required Information; Monitoring Program.

Immigration Law and Business § 1:6, The Refugee Act of 1980.

Immigration Law and Business § 2:8, Persons Exempt from Visa and Passport Requirements -- Canadian and Mexican Nationals.

Immigration Law and Business § 3:4, Foreign State Numerical Limits and Chargeability.

Immigration Law and Business § 3:7, Qualifying Family Relationships: Definitions of "Child" and "Parent".

Immigration Law and Business § 3:8, Qualifying Family Relationships: Definitions of "Child" and "Parent" -- Stepchildren.

Immigration Law and Business § 5:6, Statutory Requirements -- Residence Requirements and Preserving Continuity of Residence.

Immigration Law and Business § 5:9, Statutory Requirements -- Residence Requirements and Preserving Continuity of Residence -- Other Special Classes.

Immigration Law and Business § 2:11, Admission to the United States and Extension of Stay.

Immigration Law and Business § 2:15, B-1 Visitors for Business.

Immigration Law and Business § 2:17, B-2 Visitors for Pleasure.

Immigration Law and Business § 2:20, F Academic Students.

Immigration Law and Business § 2:28, M Vocational Students.

Immigration Law and Business § 2:29, J Exchange Visitors.

Immigration Law and Business § 2:35, J Exchange Visitors -- the Foreign Residence Requirement and Its Waiver.

Immigration Law and Business § 2:42, Q International Cultural Exchange Aliens.

Immigration Law and Business § 2:44, H-1B Workers in Specialty Occupations.

Immigration Law and Business § 2:45, H-1B Workers in Specialty Occupations -- "Specialty Occupation".

Immigration Law and Business § 2:66, H-3 Trainees.

Immigration Law and Business § 2:67, O Extraordinary Ability Entertainers, Athletes, and Others.

Immigration Law and Business § 2:68, P Entertainers and Athletes.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and Business § 2:69, L Intracompany Transferees.

Immigration Law and Business § 2:71, L Intracompany Transferees -- Managerial or Executive Capacity or Specialized Knowledge.

Immigration Law and Business § 2:74, E Treaty Aliens.

Immigration Law and Business § 2:75, E Treaty Aliens -- E-1 Treaty Traders.

Immigration Law and Business § 2:76, E Treaty Aliens -- E-2 Treaty Investors.

Immigration Law and Business § 2:83, Diplomatic and International Organization Aliens -- a Diplomats.

Immigration Law and Business § 2:84, Diplomatic and International Organization Aliens -- G Representatives to International Organizations.

Immigration Law and Business § 2:85, Diplomatic and International Organization Aliens -- NATO Representatives and Employees.

Immigration Law and Business § 2:86, Diplomatic and International Organization Aliens -- Use of the C Transit Category for Diplomatic Personnel in Transit to the United Nations and Through the United States.

Immigration Law and Business § 2:87, Diplomatic and International Organization Aliens -- N Family Members of G-4 Special Immigrants.

Immigration Law and Business § 2:88, I Representatives of Information Media.

Immigration Law and Business § 2:89, K Fiances and Family Members Awaiting Permanent Residence Processing.

Immigration Law and Business § 2:90, C Transit Aliens; TRWOV's.

Immigration Law and Business § 2:91, D Crewmen.

Immigration Law and Business § 2:93, R Religious Workers.

Immigration Law and Business § 3:14, Qualifying Family Relationships: Definitions of "Child" and "Parent" -- Adopted Children.

Immigration Law and Business § 3:15, Qualifying Family Relationships: Definitions of "Child" and "Parent" -- Orphans and Amerasian Children.

Immigration Law and Business § 3:16, Qualifying Family Relationships: Definitions of "Child" and "Parent" -- Qualifying as a "Parent".

Immigration Law and Business § 3:18, Spouses and Sham Marriages -- Validity of Marriage at Its Inception.

Immigration Law and Business § 3:30, Introduction.

Immigration Law and Business § 3:31, Introduction -- the Preference Structure.

Immigration Law and Business § 3:32, First Preference for Priority Workers.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and Business § 3:35, First Preference for Priority Workers -- Multinational Executives and Managers.

Immigration Law and Business § 3:38, Second Preference for Exceptional Ability Aliens and Advanced-Degree Professionals -- Advanced-Degree Professionals.

Immigration Law and Business § 3:39, Second Preference for Exceptional Ability Aliens and Advanced-Degree Professionals -- Advanced-Degree Professionals -- Foreign Medical Graduates.

Immigration Law and Business § 3:43, Third Preference for Other Professionals, Skilled Workers, and Unskilled Workers -- Professionals Without Advanced Degrees.

Immigration Law and Business § 3:46, Petition Process for the First Three Employment-Based Preferences.

Immigration Law and Business § 3:51, Fourth Preference for Special Immigrants.

Immigration Law and Business § 3:52, Fourth Preference for Special Immigrants -- Ministers of Religion and Religious Workers.

Immigration Law and Business § 3:53, Fourth Preference for Special Immigrants -- Former U.S. Government Employees.

Immigration Law and Business § 3:54, Fourth Preference for Special Immigrants -- G-4 Special Immigrants.

Immigration Law and Business § 3:55, Fourth Preference for Special Immigrants -- Other Special Immigrant Categories.

Immigration Law and Business § 3:78, Jurisdiction.

Immigration Law and Business § 3:86, Statutory Requirements.

Immigration Law and Business § 5:10, Statutory Requirements -- Good Moral Character.

Immigration Law and Business § 5:17, Birth in the United States or Territories Under Its Jurisdiction.

Immigration Law and Business § 5:18, Birth Outside of the United States.

Immigration Law and Business § 6:35, Grounds Relating to Labor Certification and Qualification of Certain Immigrants -- Labor Certification.

Immigration Law and Business § 6:49, Documentation Grounds -- Documentation for Intending Immigrants.

Immigration Law and Business § 6:51, Ineligibility for Citizenship Ground.

Immigration Law and Business § 6:54, Miscellaneous Grounds -- International Abduction in Child Custody Cases.

Immigration Law and Business § 6:61, Section 212(H) and (i) Waivers -- Statutory Eligibility for Each Waiver.

Immigration Law and Business § 6:66, Criminal-Based Grounds.

Immigration Law and Crimes § 1:1, Introduction.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and Crimes § 1:7, Categories of Criminal Activity Incurring Immigration Consequences.

Immigration Law and Crimes § 2:3, Applicability of Exceptions to Admissibility for Foreign Convictions.

Immigration Law and Crimes § 2:8, Drug Trafficking as Aggravated Felony.

Immigration Law and Crimes § 2:9, Foreign Controlled Substance Convictions.

Immigration Law and Crimes § 3:4, Guilty Pleas and Independent Admissions.

Immigration Law and Crimes § 3:6, Admissions of Crime, Time of Entry, and Deportability.

Immigration Law and Crimes § 3:8, Particularly Serious Crimes -- Cases Commenced Prior to April 1, 1997.

Immigration Law and Crimes § 3:9, Particularly Serious Crimes -- Cases Commenced on or After April 1, 1997.

Immigration Law and Crimes § 5:2, Definition of "Admitted".

Immigration Law and Crimes § 6:1, Introduction.

Immigration Law and Crimes § 6:2, Moral Turpitude -- Defined.

Immigration Law and Crimes § 6:4, Moral Turpitude -- Divisible Statutes.

Immigration Law and Crimes § 6:5, Sentenced to Confinement.

Immigration Law and Crimes § 7:7, Inadmissibility for Visa, Document, or Immigration Fraud -- Materiality.

Immigration Law and Crimes § 7:8, False Testimony.

Immigration Law and Crimes § 7:9, Marriage Fraud.

Immigration Law and Crimes § 9:3, Statutory Preclusions to Showing Good Moral Character.

Immigration Law and Crimes § 9:4, Crime-Related Preclusions.

Immigration Law and Crimes § 9:5, Date of Conviction for Preclusion for Aggravated Felonies.

Immigration Law and Crimes § 9:7, Moral Turpitude Offenses.

Immigration Law and Crimes § 9:8, Controlled Substances Offenses and Good Moral Character.

Immigration Law and Crimes § 9:9, Discretionary Factors.

Immigration Law and Crimes App C, Appendix C. Selected Model Pleadings.

Immigration Law and Crimes App G, Appendix G. Judicial Recommendations Against Deportation Prior to November 29, 1990.

Immigration Law and Crimes App H, Appendix H. California's Compliance Plan Under IMMACT § 507.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and Crimes § 10:8, Statutory and Discretionary Provisions of the § 212(H) Waiver; Family Relationship.

Immigration Law and Crimes § 2:10, "Relating To" a Controlled Substance.

Immigration Law and Crimes § 2:17, Statutory Definition.

Immigration Law and Crimes § 2:18, Exhaustion or Waiver of Appeal.

Immigration Law and Crimes § 2:21, Crime of Domestic Violence.

Immigration Law and Crimes § 3:11, Drug Traffickers.

Immigration Law and Crimes § 3:12, Relatives of Drug Traffickers.

Immigration Law and Crimes § 4:10, Common Law Writs; Coram Nobis.

Immigration Law and Crimes § 4:12, Habeas Corpus.

Immigration Law and Crimes § 4:13, Vacating the Sentence.

Immigration Law and Crimes § 4:15, Vacating the Sentence -- Grounds for a Rule 35(A) Motion to "Correct" Sentence.

Immigration Law and Crimes § 4:23, Pardons.

Immigration Law and Crimes § 4:25, Minor ("Petty") Offense and Juvenile Exceptions -- the Current "Petty Offense" Exception.

Immigration Law and Crimes § 4:31, Timing of Post-Conviction Relief -- Stay of Deportation.

Immigration Law and Crimes § 4:37, The Transitional Rule for "Pipeline" Cases Restricting Judicial Review of Deportation and Exclusion Orders.

Immigration Law and Crimes § 5:13, Unintended and Innocent Departures (Pre-IIRAIRA Cases).

Immigration Law and Crimes § 5:16, Significance of Pre-IIRAIRA Entry Issue.

Immigration Law and Crimes § 5:22, Defense of Illegal Re-Entry Prosecutions -- Date of Offense -- Before and After September 30, 1996.

Immigration Law and Crimes § 5:26, Federal Sentencing Issues.

Immigration Law and Crimes § 7:14, Criminal Sanctions for Smuggling, Transporting, Harboring, and Related Activity.

Immigration Law and Crimes § 7:19, Criminal Sanctions for Smuggling, Transporting, Harboring, and Related Activity -- Illegal Entry, Aiding Entry, and Related Consequences.

Immigration Law and Crimes § 7:20, Immigration Consequences to Noncitizens Involved in Smuggling, Transporting, or Harboring Noncitizens, and Related Activity.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and Crimes § 7:22, Definition of Aggravated Felony.

Immigration Law and Crimes § 7:23, Definition of Aggravated Felony -- Effective Dates.

Immigration Law and Crimes § 7:24, Definition of Aggravated Felony -- Aggravated Felonies Defined in Terms of Federal Statutes.

Immigration Law and Crimes § 7:25, Definition of Aggravated Felony -- Murder, Rape, and Sexual Abuse of a Minor.

Immigration Law and Crimes § 7:26, Definition of Aggravated Felony -- Drug Trafficking Offenses.

Immigration Law and Crimes § 7:27, Definition of Aggravated Felony -- Firearms Offenses.

Immigration Law and Crimes § 7:28, Definition of Aggravated Felony -- Crimes of Violence.

Immigration Law and Crimes § 7:29, Definition of Aggravated Felony -- Theft, Receiving Stolen Property, and Burglary.

Immigration Law and Crimes § 7:30, Definition of Aggravated Felony -- Fraud or Deceit With Loss Over \$10,000 and Tax Evasion.

Immigration Law and Crimes § 7:31, Definition of Aggravated Felony -- Commercial Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles With Altered Id Numbers.

Immigration Law and Crimes § 7:32, Definition of Aggravated Felony -- Obstruction of Justice, Perjury, Subornation of Perjury, Bribery of a Witness.

Immigration Law and Crimes § 7:33, Definition of Aggravated Felony -- Failure to Appear in Court.

Immigration Law and Crimes § 7:34, Definition of Aggravated Felony -- Conspiracy and Attempt.

Immigration Law and Crimes § 7:35, Definition of Aggravated Felony -- Other Inchoate Offenses: Solicitation, Accessory After the Fact and Aiding and Abetting.

Immigration Law and Crimes § 7:36, Definition of Aggravated Felony -- Other Aggravated Felony Offenses.

Immigration Law and Crimes § 7:37, Definition of Aggravated Felony -- the Effect of Sentence.

Immigration Law and Crimes § 7:40, Aggravated Felony Convictions and Relief -- Voluntary Departure, Good Moral Character, Suspension, Registry, and Naturalization.

Immigration Law and Crimes § 8:23, Early Release from Prison.

Immigration Law and Crimes § 9:17, Political Asylum, Withholding of Deportation, and Withholding of Removal -- "Particularly Serious Crimes" and Discretionary Asylum.

Immigration Law and Crimes § 9:22, Victims of Trafficking in Persons.

Immigration Law and Crimes § 9:27, Statutory Eligibility for Finding Good Moral Character.

8 U.S.C.A. § 1101

Immigration Law and Crimes § 9:28, Discretionary Factors Regarding Good Moral Character.

Immigration Law and Crimes § 9:29, Eligibility Under Residual Category.

Immigration Law and Crimes § 9:31, Citizen or National of U.S.

Immigration Law and Crimes § 10:17, Applicability of § 212(H) Waiver to Grounds of Deportability.

Immigration Law and Crimes § 10:31, Statutory Eligibility Requirements for Former § 212(C) Relief -- Lawful Permanent Resident Status.

Immigration Law and Defense § 3:1, Introduction.

Immigration Law and Defense § 3:2, Summary of Nonimmigrant Categories.

Immigration Law and Defense § 3:4, Diplomats and Other Foreign Government Representatives and Staff (A Visas) -- Ambassadors, Ministers, Consuls, and Other High Officials (A-1).

Immigration Law and Defense § 6:4, Inadmissible at the Time of Entry or Adjustment of Status.

Immigration Law and Defense § 6:9, Drug-Related Offenses, Crimes of Moral Turpitude, Firearms Offenses, and Aggravated Felonies -- Drug Addiction or Conviction of a Drug-Related Offense.

Immigration Law and Defense § 7:3, Investigation, Arrest, Search, and Interrogation: INS Authority and Alien Rights -- Arrests.

Immigration Law and Defense § 9:4, Board of Immigration Appeals -- Appellate Jurisdiction.

Immigration Law and Defense § 11:1, The Citizenship Issue.

Immigration Law and Defense § 11:6, Good Moral Character.

Immigration Law and Defense § 13:3, Overview and History of Asylum Law in the United States -- Refugee Act of 1980.

Immigration Law and Defense § 3:10, Diplomats and Other Foreign Government Representatives and Staff (A Visas) -- a Status and Lawful Permanent Residence.

Immigration Law and Defense § 3:11, Visitors (B Visas).

Immigration Law and Defense § 3:18, Aliens in Transit (C Visas).

Immigration Law and Defense § 3:22, Aliens in Transit (C Visas) -- Transit Visas (C-1).

Immigration Law and Defense § 3:25, Crewmen (D Visas).

Immigration Law and Defense § 3:26, Treaty Traders and Investors (E-1 and E-2 Visas).

Immigration Law and Defense § 3:30, Treaty Traders and Investors (E Visas) -- Treaty Investors -- Factors to be Considered.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and Defense § 3:38, Treaty Traders and Investors (E Visas) -- Intent to Depart.

Immigration Law and Defense § 3:39, Treaty Traders and Investors (E Visas) -- Spouses and Children.

Immigration Law and Defense § 3:44, Australians Employed in Specialty Occupations.

Immigration Law and Defense § 3:45, Students (F and M Visas) -- Eligibility for Student Classification.

Immigration Law and Defense § 3:63, International Organization Aliens (G Visas) -- Employment of Spouses, Sons, and Daughters.

Immigration Law and Defense § 3:66, Temporary Workers (H Visas) -- H-1 Status: Registered Nurses, Workers in Specialty Occupations and Fashion Models.

Immigration Law and Defense § 3:67, Temporary Workers (H Visas) -- H-1 Status: Registered Nurses, Workers in Specialty Occupations and Fashion Models -- Categories Qualifying for H-1 Status.

Immigration Law and Defense § 3:69, Temporary Workers (H Visas) -- H-1 Status: Registered Nurses, Workers in Specialty Occupations and Fashion Models -- What Needs to be Filed and Where?

Immigration Law and Defense § 3:72, Temporary Workers (H Visas) -- H-2 Status: Aliens Coming Temporarily to Perform Temporary Services or Labor.

Immigration Law and Defense § 3:82, Temporary Workers (H Visas) -- H-2 Status: Aliens Coming Temporarily to Perform Temporary Services or Labor -- H-2B: Nonagricultural Temporary Workers -- Temporary Labor Certification.

Immigration Law and Defense § 3:85, Temporary Workers (H Visas) -- H-2 Status: Aliens Coming Temporarily to Perform Temporary Services or Labor -- H-3 Status: Alien Trainees.

Immigration Law and Defense § 3:91, Representatives of Foreign Information Media (I ("Eye") Visas).

Immigration Law and Defense § 3:94, Exchange Visitors (J Visas) -- Eligibility for Exchange Visitor Classification.

Immigration Law and Defense § 4:13, Introduction to the Immigration Act of 1990 -- Family-Sponsored Immigration -- Fourth Preference.

Immigration Law and Defense § 4:28, Persons Eligible for Residence Outside the Preference System -- Special Immigrants.

Immigration Law and Defense § 4:29, Persons Eligible for Residence Outside the Preference System -- Immediate Relatives of United States Citizens.

Immigration Law and Defense § 4:32, Refugees.

Immigration Law and Defense § 4:34, Special Immigrants -- Ministers and Religious Workers, Employees of United States Government Abroad, Employees of International Organizations, and Certain Foreign Medical Graduates.

Immigration Law and Defense § 4:36, Special Immigrants -- Juvenile Dependents.

8 U.S.C.A. § 1101

Immigration Law and Defense § 4:37, Special Immigrants -- Military Aliens.

Immigration Law and Defense § 4:43, Petitions for Immediate Relatives of United States Citizens -- Unmarried Children Under Twenty-One of United States Citizen.

Immigration Law and Defense § 4:45, Petitions for Relatives Within the Preference System -- Family-Sponsored First Preference -- Unmarried Sons and Daughters of United States Citizens.

Immigration Law and Defense § 4:46, Petitions for Relatives Within the Preference System -- Family-Sponsored Second Preference -- Spouses and Unmarried Sons and Daughters (Of Any Age) of Lawful Permanent Residents.

Immigration Law and Defense § 4:48, Petitions for Relatives Within the Preference System -- Family-Sponsored Fourth Preference -- Brothers and Sisters of United States Citizens at Least Twenty-One Years Old.

Immigration Law and Defense § 4:73, Petitions for Preferences Based on Job Skills in Short Supply -- Employment-Based Preference Petitions.

Immigration Law and Defense § 4:76, Petition Revocation -- Revocation on Notice.

Immigration Law and Defense § 5:12, Grounds for Exclusion -- Aliens Previously Removed or Unlawfully Present.

Immigration Law and Defense § 5:26, Procedure at the Border -- Exclusion (Removal) Hearing.

Immigration Law and Defense § 6:10, Drug-Related Offenses, Crimes of Moral Turpitude, Firearms Offenses, and Aggravated Felonies -- Crimes Involving Moral Turpitude.

Immigration Law and Defense § 6:14, Drug-Related Offenses, Crimes of Moral Turpitude, Firearms Offenses, and Aggravated Felonies -- Aggravated Felonies.

Immigration Law and Defense § 7:14, Release on Bond or Personal Recognizance -- Immigration Bonds -- Bond for Maintenance of Status and Departure of Nonimmigrant Alien.

Immigration Law and Defense § 7:46, Procedure at the Hearing.

Immigration Law and Defense § 7:73, Alienage.

Immigration Law and Defense § 7:76, Deportability -- Burden of Proof After the IIRAIRA: Exclusion -- Aliens Seeking Admission.

Immigration Law and Defense § 8:18, Suspension of Deportation (Cancellation of Removal for Certain Nonpermanent Residents) -- Good Moral Character.

Immigration Law and Defense § 8:32, Registry -- Eligibility Requirements -- Good Moral Character.

Immigration Law and Defense § 8:40, Waivers of Deportability -- Return to Unrelinquished Domicile (§ 212(C) Relief).

Immigration Law and Defense § 10:15, Judicial Review of Deportation and Exclusion Orders.

Immigration Law and Defense § 10:22, Other Forms of Federal Review and Relief.

8 U.S.C.A. § 1101

Immigration Law and Defense § 12:52, Anti-Employment Discrimination Provisions of IRCA: INA § 274b -- Types of Discrimination Covered; National Origin -- Discrimination Based on Citizenship Status.

Immigration Law and Defense § 13:29, Statutory and Regulatory Preclusions to Restriction on Removal (Withholding of Deportation) and § 208 Asylum Relief.

Immigration Law and Defense § 13:38, Theories of the Case -- Persecution.

Immigration Law and Defense § 13:52, When and Where to Apply for Asylum -- Applying Pursuant to the "ABC" Settlement -- Salvadorans.

Immigration Law and Defense § 13:92, Termination or Renewal of Asylum Status -- Adjustment of Status.

Immigration Law and Defense § 3:101, Fiancés and Fiancées of U.S. Citizens (K Visas).

Immigration Law and Defense § 3:106, Intracompany Transferees (L Visas).

Immigration Law and Defense § 3:132, Victims of Trafficking (T Visas).

Immigration Law and Defense § 3:133, Humanitarian/Material Witness (U Visas).

Immigration Law and Defense § 3:135, Application Procedure for Nonimmigrant Visas.

Immigration Law and Defense § 4:149, Obtaining Permanent Residence from Outside the United States by Obtaining an Immigrant Visa.

Immigration Law and Health § 3:1, B-1 Status (Elective Clerkship).

Immigration Law and Health § 3:5, E-2 Status (Treaty Investor).

Immigration Law and Health § 3:16, J-1 Status (Exchange Visitors).

Immigration Law and Health § 3:34, O-1 Status (Persons of Extraordinary Ability).

Immigration Law and Health § 3:41, Other Options-Student Status.

Immigration Law and Health § 3:46, Other Options-Trainees.

Immigration Law and Health § 3:50, H-1B Status.

Immigration Law and Health § 4:24, Specific Occupations-Physicians.

Immigration Law and Health § 4:32, Special Immigrant Physicians.

Immigration Law and Health § 10:15, Section 212(C) Waivers.

Immigration Law and Health § 10:42, Lawful Permanent Residents.

Immigration Law and Health § 10:45, Background.

Immigration Law and Health § 10:46, The Health-Impacted Client.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and the Family § 1:3, Other Family Members Entitled to Immigrate.

Immigration Law and the Family § 1:5, Congressional Concern Over Fraud in Family-Based Immigration.

Immigration Law and the Family § 1:6, Developing Areas of Family Law.

Immigration Law and the Family § 2:5, Immediate Relatives -- Child.

Immigration Law and the Family § 3:5, Self-Petitioners.

Immigration Law and the Family § 4:4, Legally Valid Marriage.

Immigration Law and the Family § 5:4, Children of Spouse.

Immigration Law and the Family § 6:1, Introduction.

Immigration Law and the Family § 6:2, Six Categories of "Child".

Immigration Law and the Family § 6:3, Unmarried and Under Twenty-One.

Immigration Law and the Family § 6:4, Unmarried and Under Twenty-One -- "Unmarried".

Immigration Law and the Family § 6:6, Child Born in Wedlock -- Within Valid Marriage.

Immigration Law and the Family § 6:8, Stepchild.

Immigration Law and the Family § 6:9, Stepchild -- Marriage of Parent Before Child Reaches Eighteen.

Immigration Law and the Family § 8:6, Eligibility for Adjustment of Status -- Persons Unaffected by INA § 245(i) -- Special Immigrant Juveniles.

Immigration Law and the Family § 9:5, Petitioner Resides Outside U.S.

Immigration Law and the Family § 1:11, Visa Issuance.

Immigration Law and the Family § 12:6, Stages at Which Grounds of Inadmissibility Apply -- Admission Into the U.S.

Immigration Law and the Family § 12:9, Overview of Grounds of Deportation.

Immigration Law and the Family § 13:1, Introduction.

Immigration Law and the Family § 13:2, Definition of Adopted Child.

Immigration Law and the Family § 13:7, Adoption Before Child Reaches Sixteen Years.

Immigration Law and the Family § 13:8, Two-Year Legal Custody.

Immigration Law and the Family § 13:9, Two-Year Period of Residence.

Immigration Law and the Family § 14:3, Fiancées of U.S. Citizens -- Overview.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and the Family § 14:4, Fiancées of U.S. Citizens -- Proving Eligibility for Fiancé(e) Visa.

Immigration Law and the Family § 15:2, Persons Born in U.S. or Its Territories -- Generally.

Immigration Law and the Family § 15:4, Persons Born in Outlying Possession.

Immigration Law and the Family § 2:11, Quota Exempt.

Immigration Law and the Family § 2:16, V Visas for Spouses and Children of Lawful Permanent Residents.

Immigration Law and the Family § 2:17, K Visas for Spouses and Children of United States Citizens.

Immigration Law and the Family § 2:19, Exemptions from Per Country Quota.

Immigration Law and the Family § 4:13, Proxy Marriages.

Immigration Law and the Family § 4:32, § 204(C) Bar to Petition Approval Due to Prior Marriage Fraud.

Immigration Law and the Family § 4:35, Self-Petitioning for Battered Women and Children -- Eligibility Criteria.

Immigration Law and the Family § 4:43, Self-Petitioning for Battered Women and Children -- Filing Procedure for Self-Petitioners -- Forms and Documentation Required.

Immigration Law and the Family § 4:57, Cancellation of Removal for Battered Women and Children -- Eligibility Requirements for Vawa Suspension/Cancellation -- Qualifying Abusers.

Immigration Law and the Family § 4:60, Cancellation of Removal for Battered Women and Children -- Eligibility Requirements for Vawa Suspension/Cancellation -- Good Moral Character.

Immigration Law and the Family § 4:67, Cancellation of Removal for Battered Women and Children -- Children and Parents.

Immigration Law and the Family § 4:71, Protections for Victims of Trafficking and Certain Crimes -- T Visa for Trafficking Victims.

Immigration Law and the Family § 4:72, Protections for Victims of Trafficking and Certain Crimes -- U Visa for Certain Crime Victims.

Immigration Law and the Family § 6:10, Stepchild -- Illegitimate Children as Stepchildren.

Immigration Law and the Family § 6:13, Stepchild -- Adopted Children as Stepchildren.

Immigration Law and the Family § 6:14, Stepchild -- Stepsons' and Stepdaughters' Petitions for Parents and Other Relatives.

Immigration Law and the Family § 6:15, Legitimated Child.

Immigration Law and the Family § 6:17, Legitimated Child -- Legitimation of Child -- Law Eliminating All Legal Distinctions.

Immigration Law and the Family § 6:20, Legitimated Child -- Legitimation of Child -- Law of Child's or Father's

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Residence or Domicile.

Immigration Law and the Family § 6:21, Legitimated Child -- Legitimation Before Eighteen Years of Age.

Immigration Law and the Family § 6:22, Legitimated Child -- Custody of Legitimizing Parent.

Immigration Law and the Family § 6:24, Child Born Out of Wedlock -- Generally.

Immigration Law and the Family § 6:29, Adopted Child.

Immigration Law and the Family § 6:31, Adopted Child -- Adoption Before the Child Reaches Sixteen Years.

Immigration Law and the Family § 6:32, Adopted Child -- Two-Year Legal Custody.

Immigration Law and the Family § 6:33, Adopted Child -- Two-Year Residence.

Immigration Law and the Family § 6:34, Adopted Child -- Adopted Sons' and Daughters' Petitions for Parents and Other Relatives.

Immigration Law and the Family § 6:35, Orphan.

Immigration Law and the Family § 6:36, Orphan -- Adopted by United States Citizen.

Immigration Law and the Family § 6:37, Orphan -- Under the Age of Sixteen.

Immigration Law and the Family § 6:38, Orphan -- Orphan Due to Disappearance, Desertion, or Inability to Provide Care.

Immigration Law and the Family § 6:39, Orphan -- Adopted Abroad or Coming to the United States for Adoption.

Immigration Law and the Family § 6:40, Orphan -- Proper Care.

Immigration Law and the Family § 6:41, Orphan -- Interaction With Adopted Child Definition.

Immigration Law and the Family § 6:42, Orphan -- Orphans' Petitions for Parents and Other Relatives.

Immigration Law and the Family § 7:16, Proof of U.S. Citizenship -- Primary Evidence.

Immigration Law and the Family § 7:73, Filing for Widow or Widower of U.S. Citizen -- Contents of Petition.

Immigration Law and the Family § 8:10, Deportability and Inadmissibility Under INA § 245(i) -- Reinstatement of Removal and Adjustment of Status.

Immigration Law and the Family § 8:13, Filing Adjustment Application Under INA § 245(i) -- Submission of Supplement a to INS Form I-485.

Immigration Law and the Family § 8:14, Filing Adjustment Application Under Ina § 245(i) -- Application Process Under INA § 245(i).

Immigration Law and the Family § 8:19, Inspected and Admitted or Paroled -- Inspection and Admission.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and the Family § 8:20, Inspected and Admitted or Paroled -- Parole.

Immigration Law and the Family § 8:23, Special Rules Permitting Adjustment -- Special Immigrant Juveniles.

Immigration Law and the Family § 8:27, Unauthorized Employment.

Immigration Law and the Family § 8:30, Persons Specifically Barred from Adjustment -- Fiancé(e) and Spousal "K" Visa Holders.

Immigration Law and the Family § 9:14, Third Country Processing -- "Hardship" Cases -- Procedure for Seeking Third Country U.S. Consulate.

Immigration Law and the Family § 11:22, Children of Immediate Relative Spouses.

Immigration Law and the Family § 11:30, Strategies for Children Born Out of Wedlock.

Immigration Law and the Family § 11:42, V Visas for Spouses and Children of Lawful Permanent Residents.

Immigration Law and the Family § 11:43, K Visas for Spouses and Children of U.S. Citizens.

Immigration Law and the Family § 12:10, Overview of Waivers.

Immigration Law and the Family § 12:13, Certain Grounds that Lack Waivers.

Immigration Law and the Family § 12:15, Other Relief from Removal -- Cancellation of Removal and Adjustment of Status.

Immigration Law and the Family § 12:17, Other Relief from Removal -- Asylum and Withholding of Removal.

Immigration Law and the Family § 12:48, Inadmissibility for Crimes Involving Moral Turpitude and Other Crimes -- Generally -- Evil Intent or Fraud.

Immigration Law and the Family § 12:65, Scope of Cancellation of Removal to Excuse Certain Criminal Activities.

Immigration Law and the Family § 12:72, Strategies for Drug Convictions and Aggravated Felonies.

Immigration Law and the Family § 13:14, Proviso Barring Biological Parent(s) from Receiving Immigration Benefits.

Immigration Law and the Family § 13:15, Definition of Orphan.

Immigration Law and the Family § 13:16, Definition of Orphan -- Adopted by U.S. Citizen.

Immigration Law and the Family § 13:17, Definition of Orphan -- Under Age of Sixteen, or Eighteen If Sibling.

Immigration Law and the Family § 13:18, Definition of Orphan -- Orphan Due to Death, Abandonment, Desertion, Disappearance, Loss or Separation from Both Parents.

Immigration Law and the Family § 13:19, Definition of Orphan -- Orphan Due to Inability of Sole or Surviving Parent to Provide Proper Care.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and the Family § 13:20, Definition of Orphan -- Orphan Due to Inability of Sole or Surviving Parent to Provide Proper Care -- Children Born in and Out of Wedlock.

Immigration Law and the Family § 13:22, Definition of Orphan -- Adopted Abroad or Coming to U.S. for Adoption.

Immigration Law and the Family § 13:23, Proper Care and Home Study.

Immigration Law and the Family § 13:26, Procedures for Processing Orphan Cases -- Filing and Documenting I-600A Advance Processing Applications.

Immigration Law and the Family § 13:28, Procedures for Processing Orphan Cases -- Filing and Documenting I-600 Orphan Petitions.

Immigration Law and the Family § 13:32, Both Adopted Child and Orphan.

Immigration Law and the Family § 14:14, Spouses and Children of U.S. Citizens.

Immigration Law and the Family § 14:15, Spouses and Children of Lawful Permanent Residents.

Immigration Law and the Family § 14:16, Definition of Derivative Beneficiaries.

Immigration Law and the Family § 14:19, Spouse or Child Acquired Before Admission.

Immigration Law and the Family § 14:25, Nonimmigrants.

Immigration Law and the Family § 14:27, Other Derivative Beneficiaries -- Special Immigrants.

Immigration Law and the Family § 14:28, Other Derivative Beneficiaries -- Special Immigrants -- Ministers and Other Religious Workers.

Immigration Law and the Family § 14:29, Other Derivative Beneficiaries -- Special Immigrants -- Certain U.S. Government Employees.

Immigration Law and the Family § 14:30, Other Derivative Beneficiaries -- Special Immigrants -- Certain Employees of U.S. Mission to Hong Kong.

Immigration Law and the Family § 14:31, Other Derivative Beneficiaries -- Special Immigrants -- Certain Panama Canal Employees.

Immigration Law and the Family § 14:32, Other Derivative Beneficiaries -- Special Immigrants -- Certain Medical School Graduates.

Immigration Law and the Family § 14:33, Other Derivative Beneficiaries -- Special Immigrants -- Certain Relatives of Employees of International Organizations Operating in U.S.

Immigration Law and the Family § 14:34, Other Derivative Beneficiaries -- Special Immigrants -- Certain U.S. Military Personnel.

Immigration Law and the Family § 14:35, Other Derivative Beneficiaries -- Special Immigrants -- Certain Juveniles.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law and the Family § 14:36, Other Derivative Beneficiaries -- Special Immigrants -- Certain U.S. International Broadcasting Employees.

Immigration Law and the Family § 14:40, Asylum and Refugee Status.

Immigration Law and the Family § 14:45, Spouses and Children of Asylees -- Preclusions for Spouses and Children of Asylees.

Immigration Law and the Family § 14:46, Spouses and Children of Asylees -- Revocation of Asylum Status.

Immigration Law and the Family § 14:51, Spouses and Children of Refugees -- Preclusions for Spouses and Children of Refugees.

Immigration Law and the Family § 14:56, Humanitarian Parole.

Immigration Law and the Family § 14:72, American Baptist Churches v. Thornburgh.

Immigration Law and the Family § 14:78, Certain Vietnamese Amerasians.

Immigration Law and the Family § 14:79, Overview.

Immigration Law and the Family § 14:80, Eligibility.

Immigration Law and the Family § 14:91, Salvadorans, Guatemalans, and Eastern Europeans -- Eligibility for Salvadorans and Guatemalans.

Immigration Law and the Family § 15:25, Legitimated Persons Born Abroad to U.S. Citizen Fathers -- Relationship Established on or After November 14, 1986.

Immigration Law and the Family § 15:29, Definition of Child for Nationality and Naturalization Purposes.

Immigration Law and the Family § 15:44, Naturalization of Adults -- Good Moral Character.

Immigration Law Service 2d § 1:5, Overview.

Immigration Law Service 2d § 1:6, Overview.

Immigration Law Service 2d § 2:2, Definition of Entry Replaced by Admission and Admitted.

Immigration Law Service 2d § 2:5, Individuals Regarded as Not Arriving -- Lawful Permanent Residents.

Immigration Law Service 2d § 4:1, Definition of Nonimmigrant Status.

Immigration Law Service 2d § 4:2, Presumption of Immigrant Status.

Immigration Law Service 2d § 4:8, Retention of Applications.

Immigration Law Service 2d § 5:2, Criteria and Eligibility for F-1 Student Visa; Generally.

Immigration Law Service 2d § 5:4, Criteria and Eligibility for M-1 Student Visa Generally.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 5:5, Spouse and Children of Academic and Nonacademic Students.

Immigration Law Service 2d § 5:9, F and M Nonimmigrant Border Commuter Students.

Immigration Law Service 2d § 6:2, Basic Criteria and Eligibility.

Immigration Law Service 2d § 6:4, Applicability of Grounds for Denial of Visas and Refusal of Admission for A-1 and A-2 Visas.

Immigration Law Service 2d § 6:7, Immediate Family.

Immigration Law Service 2d § 6:9, Ambassadors, Public Ministers, Government Couriers, and the Like (A-1).

Immigration Law Service 2d § 7:3, Other Family Members.

Immigration Law Service 2d § 7:4, Who May File a Petition for Alien Relative.

Immigration Law Service 2d § 7:5, Test of Validity; Domestic Marriage Governed by State Law.

Immigration Law Service 2d § 7:7, Proxy Marriages.

Immigration Law Service 2d § 8:1, Preference Categories.

Immigration Law Service 2d § 9:1, Overview of Categories of Immigrants Eligible for Lawful Permanent Resident Status.

Immigration Law Service 2d § 9:2, "Immigrant" and "Immigrant Visa" Defined.

Immigration Law Service 2d § 9:4, Who is Entitled to Immigrant Classification.

Immigration Law Service 2d § 9:6, Spouse or Child Accompanying or Following to Join Principal Alien.

Immigration Law Service 2d § 1:15, 1988 Legislation -- Anti-Drug Abuse Act of 1988.

Immigration Law Service 2d § 1:18, Immigration Act of 1990.

Immigration Law Service 2d § 1:31, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 -- Title III: Inspection, Apprehension, Detention and Removal of Aliens.

Immigration Law Service 2d § 1:33, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 -- Title V: Restrictions on Benefits for Aliens.

Immigration Law Service 2d § 1:35, Extension of Stay in the United States for Nurses Act.

Immigration Law Service 2d § 1:36, Religious Workers Act of 1997.

Immigration Law Service 2d § 1:39, Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998.

Immigration Law Service 2d § 1:40, Additional Legislation Passed in 1998.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 1:42, Nursing Relief for Disadvantaged Areas Act of 1999.

Immigration Law Service 2d § 1:43, Amendment to Definition of Adopted Child.

Immigration Law Service 2d § 1:44, Extension of § Visa.

Immigration Law Service 2d § 1:50, Religious Workers Act of 2000.

Immigration Law Service 2d § 1:57, Special Immigrant Status for International Broadcasting Employees.

Immigration Law Service 2d § 1:71, Border Commuter Student Act.

Immigration Law Service 2d § 1:74, Temporary Entry of Business Persons.

Immigration Law Service 2d § 1:79, Trafficking Victims Protection Reauthorization Act of 2003.

Immigration Law Service 2d § 1:85, The Consolidated Appropriations Act for Fiscal Year 2005: L-1 Visa and H-1B Reform Act; Elimination of Cap on Indochinese Parolee Adjustments.

Immigration Law Service 2d § 1:88, Real Id Act of 2005.

Immigration Law Service 2d § 10:1, Overview.

Immigration Law Service 2d § 10:2, Background on Refugee Protection in the United States.

Immigration Law Service 2d § 10:4, Domestic Law.

Immigration Law Service 2d § 10:5, International Law.

Immigration Law Service 2d § 10:6, Who is a Refugee.

Immigration Law Service 2d § 10:7, Who is a Refugee -- Individuals Who Ordered, Incited, Assisted, or Participated in Persecution.

Immigration Law Service 2d § 10:9, Who is a Refugee -- Refugee Determined to be of Special Humanitarian Concern.

Immigration Law Service 2d § 11:2, Classes of Aliens Who May be Employed.

Immigration Law Service 2d § 13:2, Aliens Subject to Removal.

Immigration Law Service 2d § 13:4, Alienage Requirement.

Immigration Law Service 2d § 16:5, Allegiance and Obedience To, and Rights and Protection Under, Laws of United States.

Immigration Law Service 2d § 2:19, Waiver of Documentary Requirements: Immigrant Visas, Form I-551, and Reentry Permits.

Immigration Law Service 2d § 2:35, Immigration Inspection Fee.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 2:41, Diplomats, Trade Representatives, and International Organization Representatives.

Immigration Law Service 2d § 2:45, Transits With Visas.

Immigration Law Service 2d § 2:59, Introduction.

Immigration Law Service 2d § 2:60, Definition of Passport.

Immigration Law Service 2d § 2:66, Reentry Permits -- Ineligibility and Reductions in Periods of Validity.

Immigration Law Service 2d § 2:76, Passport Waiver for Orphans Adopted Abroad.

Immigration Law Service 2d § 2:82, Valid Upon Application for Admission.

Immigration Law Service 2d § 2:95, Vwp Eligibility.

Immigration Law Service 2d § 3:11, Definition of a Conviction.

Immigration Law Service 2d § 3:39, Diplomats or Others Granted Immunity from Prosecution.

Immigration Law Service 2d § 3:61, Definitions: Totalitarianism, Totalitarian Dictatorship and Totalitarian Party.

Immigration Law Service 2d § 3:62, Definitions: Affiliation.

Immigration Law Service 2d § 3:63, Exceptions: Involuntary Membership.

Immigration Law Service 2d § 3:64, Exceptions: Past Membership.

Immigration Law Service 2d § 3:82, Physicians.

Immigration Law Service 2d § 4:11, Where to Apply.

Immigration Law Service 2d § 4:18, Burden of Proof.

Immigration Law Service 2d § 4:19, Passport Requirement.

Immigration Law Service 2d § 4:20, Passport Requirement -- Expired Passports.

Immigration Law Service 2d § 4:28, Issuance Conditioned on Posting of Bond.

Immigration Law Service 2d § 4:31, Nature of Visa.

Immigration Law Service 2d § 4:41, Automatic Extension of Validity at Port of Entry.

Immigration Law Service 2d § 4:47, Grounds.

Immigration Law Service 2d § 4:64, Aliens Not Eligible for Extension.

Immigration Law Service 2d § 4:65, Eligibility of Particular Aliens: Foreign Governmental Officials and International Organization Representatives.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 4:78, Requirement of Maintenance of Status as Lawfully Admitted Nonimmigrant.

Immigration Law Service 2d § 4:79, Change to § Classification at Request of Law Enforcement Agency.

Immigration Law Service 2d § 4:88, Grounds.

Immigration Law Service 2d § 4:91, Aliens Not Subject to Special Registration.

Immigration Law Service 2d § 4:94, Departure from the United States.

Immigration Law Service 2d § 4:97, Children of Nonimmigrant Visa Holders.

Immigration Law Service 2d § 5:11, Evidence to Submit in Support of Application.

Immigration Law Service 2d § 5:17, Full Course of Study, Generally -- Full Course of Study for F-1 Nonimmigrants.

Immigration Law Service 2d § 5:18, Full Course of Study, Generally -- Full Course of Study for M-1 Nonimmigrants.

Immigration Law Service 2d § 5:20, Restrictions on Receipt of Public Education.

Immigration Law Service 2d § 5:28, Spouses and Children of F-1 and M-1 Nonimmigrants.

Immigration Law Service 2d § 5:31, Automatic Extension of Visa.

Immigration Law Service 2d § 5:42, Application Procedures.

Immigration Law Service 2d § 5:45, Restrictions on Ability to Apply for Change of Status.

Immigration Law Service 2d § 5:46, Change of Status for Spouses and Children.

Immigration Law Service 2d § 5:73, Exemption from Social Security Taxes.

Immigration Law Service 2d § 5:76, Unauthorized Transfers.

Immigration Law Service 2d § 5:81, Criteria and Eligibility for J-1 Student Visa.

Immigration Law Service 2d § 5:82, Agencies Administering Programs.

Immigration Law Service 2d § 5:85, Spouse and Children of J Visa Holders.

Immigration Law Service 2d § 5:86, Exchange Student Programs.

Immigration Law Service 2d § 5:88, Q Visa, Generally.

Immigration Law Service 2d § 5:90, Supporting Evidence for J-1 Visa Application.

Immigration Law Service 2d § 5:92, Residence Abroad.

Immigration Law Service 2d § 5:93, Two-Year Foreign Residence Requirement.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 5:97, Automatic Extension of Visa.

Immigration Law Service 2d § 6:10, Other Officials or Employees (A-2).

Immigration Law Service 2d § 6:12, Attendants, Servants, or Personal Employees (A-3).

Immigration Law Service 2d § 6:18, Change of Status.

Immigration Law Service 2d § 6:22, Taipei Economic and Cultural Representative Office (TECRO) -- E-1 Classification for Dependents Over 21.

Immigration Law Service 2d § 6:27, Foreign Government Official, Members of Immediate Family, and the Like (C-3).

Immigration Law Service 2d § 6:31, "International Organization" Defined; Revocation of Designation.

Immigration Law Service 2d § 6:37, Taipei Economic and Cultural Representative Office (TECRO): Employees Unable to Receive G Visas -- E-1 Classification for Dependents Over 21.

Immigration Law Service 2d § 6:42, Description of G Classification.

Immigration Law Service 2d § 6:43, Derivative Classification of Immediate Family Members.

Immigration Law Service 2d § 6:54, G-4 Visas -- Employee of Successor or Separated Entity of Intelsat.

Immigration Law Service 2d § 6:56, G-5 Visas.

Immigration Law Service 2d § 6:87, Description of Category.

Immigration Law Service 2d § 6:96, N-8 or N-9 Visas.

Immigration Law Service 2d § 6:98, From G Nonimmigrant to Another Nonimmigrant Classification.

Immigration Law Service 2d § 6:99, From Other Nonimmigrant Classification to N Status.

Immigration Law Service 2d § 7:13, Domestic Recognition of Foreign Marriages -- Customary Marriage.

Immigration Law Service 2d § 7:19, When is Alien "Unmarried" for Preference Purposes.

Immigration Law Service 2d § 7:25, Overview.

Immigration Law Service 2d § 7:27, Derivative Definition of Son or Daughter.

Immigration Law Service 2d § 7:28, Recognition of Stepparent-Stepchild Relationship.

Immigration Law Service 2d § 7:30, Status of Marriage Creating Step-Relationship -- Sham Marriage.

Immigration Law Service 2d § 7:32, Effect of Birth Out of Wedlock.

Immigration Law Service 2d § 7:34, Child Born in Wedlock.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 7:35, Child Born Out of Wedlock.

Immigration Law Service 2d § 7:36, Legitimated Child.

Immigration Law Service 2d § 7:38, Domestic Legitimation Under State Law.

Immigration Law Service 2d § 7:39, Legitimation in Foreign Country.

Immigration Law Service 2d § 7:45, Child Born Out of Wedlock Seeking Status Through Natural Parent.

Immigration Law Service 2d § 7:46, Basic Requirements for Recognized Adoption.

Immigration Law Service 2d § 7:47, Strict Age Limit.

Immigration Law Service 2d § 7:48, Two-Year Period of Residence and Legal Custody.

Immigration Law Service 2d § 7:49, Two-Year Period of Residence and Legal Custody -- When Does Child "Reside" With Adoptive Parents.

Immigration Law Service 2d § 7:50, Deprivation of Rights of Natural or Prior Adoptive Parents and Siblings.

Immigration Law Service 2d § 7:51, Adoption in Foreign Country.

Immigration Law Service 2d § 7:55, Processing Immigrant Visas for Adopted Children.

Immigration Law Service 2d § 7:56, Adoptive Stepchildren.

Immigration Law Service 2d § 7:57, Relating Ina § 101(B)(1)(E) to Adult or Married Sons or Daughters.

Immigration Law Service 2d § 7:58, Eligibility as Dependent on Approved Visa Petition.

Immigration Law Service 2d § 7:59, Orphan Child Defined.

Immigration Law Service 2d § 7:61, Exemption from Numerical Quotas.

Immigration Law Service 2d § 7:63, Immediate Relative Defined -- Under Child Status Protection Act.

Immigration Law Service 2d § 7:69, Rules for Determining Whether Certain Aliens Are Children.

Immigration Law Service 2d § 7:72, Preference for Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens: Second Preference Category.

Immigration Law Service 2d § 7:73, Who is Permanent Resident Alien Entitled to Sponsor Immigrant.

Immigration Law Service 2d § 7:80, Married Sons or Daughters of Citizens.

Immigration Law Service 2d § 7:82, Brothers and Sisters of Adult Citizens.

Immigration Law Service 2d § 7:83, Siblings Required to be Children of Common Parents.

Immigration Law Service 2d § 7:84, Siblings of Whole or Half Blood; Need for Legitimation.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 7:85, Stepsiblings.

Immigration Law Service 2d § 7:87, Siblings by Means of Adoption.

Immigration Law Service 2d § 7:93, When Spouse or Child is Accompanying or Following to Join Principal Alien.

Immigration Law Service 2d § 7:95, When Spouse or Child is Accompanying or Following to Join Principal Alien -- Spouse or Child Acquired Prior to Admission.

Immigration Law Service 2d § 8:12, Definitions: Executive Capacity.

Immigration Law Service 2d § 8:13, Definitions: Managerial Capacity.

Immigration Law Service 2d § 8:16, Definitions: Affiliate.

Immigration Law Service 2d § 8:18, Determining Executive or Managerial Capacity.

Immigration Law Service 2d § 8:19, Determining Executive or Managerial Capacity -- Considerations When Staffing Levels Used as Factor.

Immigration Law Service 2d § 8:23, What Constitutes "Profession".

Immigration Law Service 2d § 8:24, What Constitutes "Profession" -- Baccalaureate Degree Requirement.

Immigration Law Service 2d § 8:28, What Constitutes "Profession" -- Occupations Accepted as Professions.

Immigration Law Service 2d § 8:38, Labor Certification and Related Requirements -- National Interest Waiver -- Alien Physicians.

Immigration Law Service 2d § 8:54, Statutory List of Professionals and Representative Occupations.

Immigration Law Service 2d § 8:56, Baccalaureate Degree Requirement.

Immigration Law Service 2d § 8:62, Ministers and Religious Workers.

Immigration Law Service 2d § 8:64, United States Government Employees Abroad.

Immigration Law Service 2d § 8:68, United States Government Employees Abroad -- Individuals Honorably Retired After Faithful Service.

Immigration Law Service 2d § 8:69, United States Government Employees Abroad -- Certain Aliens Employed at U.S. Mission in Hong Kong Who Filed Prior to January 1, 2002.

Immigration Law Service 2d § 8:70, Former Employees in Panama Canal Zone.

Immigration Law Service 2d § 8:71, Foreign Medical Graduates.

Immigration Law Service 2d § 8:72, International Organizations Officers and Employees, and Immediate Family Members Who Filed for Adjustment of Status Prior to Certain Dates.

Immigration Law Service 2d § 8:73, Minor Aliens Declared Dependent on Juvenile Court.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 8:74, Minor Aliens Declared Dependent on Juvenile Court -- Petition.

Immigration Law Service 2d § 8:75, Armed Forces Foreign Enlistees With Honorable Active Duty Records.

Immigration Law Service 2d § 8:76, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- Filing of Petition.

Immigration Law Service 2d § 8:77, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- Supporting Documentation.

Immigration Law Service 2d § 8:78, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- Derivative Beneficiaries.

Immigration Law Service 2d § 8:80, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- Revocation of Classification.

Immigration Law Service 2d § 8:81, Armed Forces Foreign Enlistees With Honorable Active Duty Records -- NATO Civilian Employees.

Immigration Law Service 2d § 8:82, International Broadcasting Employees.

Immigration Law Service 2d § 8:84, Certain Aliens Whose Petition was Filed on or Before September 11, 2001.

Immigration Law Service 2d § 8:88, General Requirements.

Immigration Law Service 2d § 9:10, Categories Enumerated.

Immigration Law Service 2d § 9:12, Treatment of Family Members.

Immigration Law Service 2d § 9:21, Immediate Relatives of United States Citizens.

Immigration Law Service 2d § 9:22, Permanent Residents Returning from Temporary Stay Abroad.

Immigration Law Service 2d § 9:24, Permanent Residents Returning from Temporary Stay Abroad -- Determination of Intent to Return to United States.

Immigration Law Service 2d § 9:26, Permanent Residents Returning from Temporary Stay Abroad -- Aliens Prima Facie Entitled to Returning Permanent Resident Status.

Immigration Law Service 2d § 9:28, Commuters.

Immigration Law Service 2d § 9:31, Certain Former United States Citizens.

Immigration Law Service 2d § 9:36, Basic Rules.

Immigration Law Service 2d § 9:40, Allocation When Quota is Exceeded.

Immigration Law Service 2d § 9:48, Alien Born in Foreign State Not of Parents' Birth or Residence.

Immigration Law Service 2d § 9:58, Who May File Petition.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 9:59, Filing of Certain Petitions With Secretary of State.

Immigration Law Service 2d § 9:62, Petition Validity for Certain Special Immigrants; Extension.

Immigration Law Service 2d § 9:70, Consular Office in District of Alien's Residence.

Immigration Law Service 2d § 9:76, Basic Rules.

Immigration Law Service 2d § 9:84, Documents Establishing Relationship to Family Members.

Immigration Law Service 2d § 9:88, Other Records -- Court Orders and Findings Pertaining to Special Immigrant Juveniles.

Immigration Law Service 2d § 9:91, Passport.

Immigration Law Service 2d § 1:122, Powers and Duties of Secretary of Homeland Security.

Immigration Law Service 2d § 1:144, Jurisdiction and Powers.

Immigration Law Service 2d § 1:209, DoI Role Under the INA and Regulations.

Immigration Law Service 2d § 1:217, Powers and Duties of Secretary of State -- Visa Issuance.

Immigration Law Service 2d § 10:12, Who is a Refugee -- Stateless Persons.

Immigration Law Service 2d § 10:14, Derivative Status for Spouse or Child Accompanying or Following to Join Refugee Qualified for Admission.

Immigration Law Service 2d § 10:15, Derivative Status for Spouse or Child Accompanying or Following to Join Refugee Qualified for Admission -- INA §§ 207 and 208 and Regulations Thereunder Compared.

Immigration Law Service 2d § 10:17, Annual Limitation Fixed by President.

Immigration Law Service 2d § 10:23, Where to File: USCIS Office.

Immigration Law Service 2d § 10:27, Where to File: Consular Office -- Referrals at Consular Posts Not Designated to Process Refugee Applicants.

Immigration Law Service 2d § 10:36, Personal Interview With USCIS Officer.

Immigration Law Service 2d § 10:43, Authorization for Spouse or Children Following to Join Principal Refugee.

Immigration Law Service 2d § 10:62, Decision; Effect of Termination.

Immigration Law Service 2d § 10:80, "On Account Of" or the Nexus Requirement.

Immigration Law Service 2d § 10:82, Proving Subjective Component of Fear.

Immigration Law Service 2d § 10:87, Persecution Must be Directed Against Alien as Individual.

Immigration Law Service 2d § 11:12, Employment Authorization for E and L Nonimmigrant Spouses.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 11:14, Dependents of Foreign Government Officials.

Immigration Law Service 2d § 11:34, Armed Forces -- Coast Guard.

Immigration Law Service 2d § 12:71, Civil Penalties -- Hiring, Recruiting, or Referring Unauthorized Aliens.

Immigration Law Service 2d § 13:15, Particular Circumstances.

Immigration Law Service 2d § 13:16, Cases Necessitating Secretary of State's Approval: Diplomats, Ambassadors and Others.

Immigration Law Service 2d § 13:20, Definition of Conviction for Immigration Purposes.

Immigration Law Service 2d § 13:21, Admission to the Commission of Certain Crimes or Criminal Activity.

Immigration Law Service 2d § 13:25, Ten-Year Period Applicable to Ina § 101(A)(15)(S) Nonimmigrants.

Immigration Law Service 2d § 13:34, Introduction.

Immigration Law Service 2d § 13:35, Definition Under IIRIRA.

Immigration Law Service 2d § 13:36, Definitions Construed.

Immigration Law Service 2d § 13:38, Drug-Related Crimes.

Immigration Law Service 2d § 13:39, Drug-Related Crimes -- Third Circuit Interpretation of 18 U.S.C.A. § 924(C)(2).

Immigration Law Service 2d § 13:40, Sex Offenses.

Immigration Law Service 2d § 13:41, Sex Offenses -- Illustrative Cases.

Immigration Law Service 2d § 13:43, Crimes Against Minors.

Immigration Law Service 2d § 13:46, Criminal Trespass.

Immigration Law Service 2d § 13:50, Drunk Driving Offenses -- Driving Under the Influence (Dui).

Immigration Law Service 2d § 13:52, Involuntary Manslaughter.

Immigration Law Service 2d § 13:54, Attempted Assault.

Immigration Law Service 2d § 13:55, Criminal Contempt.

Immigration Law Service 2d § 13:56, Fraud and Deceit; Embezzlement.

Immigration Law Service 2d § 13:57, Forgery.

Immigration Law Service 2d § 13:58, Theft Offenses.

Immigration Law Service 2d § 13:59, Theft Offenses -- Vehicle Burglary.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 13:75, Effect of Expungement, Unconditional Pardon, Etc. -- Illustrative Cases.

Immigration Law Service 2d § 13:83, Overview.

Immigration Law Service 2d § 14:10, Who is "Ineligible to Citizenship".

Immigration Law Service 2d § 14:11, Who is a "Child," "Parent," "Father," or "Mother".

Immigration Law Service 2d § 14:12, What is a "Residence".

Immigration Law Service 2d § 14:13, What is Included in the "United States" and Its "Outlying Possessions".

Immigration Law Service 2d § 14:21, Persons Born in Canal Zone or Republic of Panama -- Children Born Out of Wedlock.

Immigration Law Service 2d § 14:30, Status of Posthumous Children.

Immigration Law Service 2d § 14:38, Circumstances Under Which Citizenship Granted.

Immigration Law Service 2d § 14:51, Birth on or After December 24, 1952.

Immigration Law Service 2d § 14:52, What Constitutes "Legitimation".

Immigration Law Service 2d § 14:54, Effect of Legitimation or Adjudication of Paternity -- Birth on or After January 13, 1941, But Before December 24, 1952.

Immigration Law Service 2d § 14:55, Effect of Legitimation or Adjudication of Paternity -- Birth on or After December 24, 1952.

Immigration Law Service 2d § 14:57, Definition of "National".

Immigration Law Service 2d § 15:10, Final Orders of Removal.

Immigration Law Service 2d § 16:20, Under Federal Law.

Immigration Law Service 2d § 16:70, Legal Services.

Immigration Law Service 2d § 16:99, Exceptions.

Immigration Law Service 2d § 2:108, Canadian and Bahamian Nationals.

Immigration Law Service 2d § 2:113, Certain Caribbean Residents -- British Virgin Islands Nationals Who Reside Therein.

Immigration Law Service 2d § 2:120, Mexican Nationals -- Bearers of Mexican Diplomatic or Official Passports.

Immigration Law Service 2d § 2:125, Aliens Entering from Guam, Puerto Rico, or Virgin Islands; Guam Visa Waiver Program.

Immigration Law Service 2d § 2:202, Use and Scope of Advance Parole.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 2:220, Termination of Parole.

Immigration Law Service 2d § 2:231, Claim to Lpr, Refugee or Asylee Status, or U.S. Citizenship -- Verified Lawful Permanent Residents.

Immigration Law Service 2d § 3:105, Student Visa Abusers.

Immigration Law Service 2d § 3:106, Immigrants.

Immigration Law Service 2d § 3:119, International Child Abductors.

Immigration Law Service 2d § 3:142, Waiver of Communist Membership -- Exception for Close Family Members.

Immigration Law Service 2d § 3:197, Form and Filing.

Immigration Law Service 2d § 3:215, Application Procedures -- Procedures and Factors Considered for Documenting Five Grounds of Eligibility -- Request by a Designated State Department of Health, or Its Equivalent.

Immigration Law Service 2d § 3:219, Application Procedures -- Procedures and Factors Considered for Documenting Five Grounds of Eligibility -- Requests to USCIS in Exceptional Hardship or Persecution Cases -- Evidence of...

Immigration Law Service 2d § 4:101, Types of Visas: Diplomatic.

Immigration Law Service 2d § 4:102, Types of Visas: Official.

Immigration Law Service 2d § 4:104, Definitions.

Immigration Law Service 2d § 4:120, Aliens Otherwise Classifiable as H-1s or H-3s: Aliens Installing, Servicing, or Repairing Heavy Machinery Purchased Abroad.

Immigration Law Service 2d § 4:138, Ineligible Aliens -- Construction Workers.

Immigration Law Service 2d § 4:155, Eligibility for E Classification.

Immigration Law Service 2d § 4:157, Alternative Business-Related Visas for Aliens Not Eligible for Treaty Trader or Investor Visas.

Immigration Law Service 2d § 4:162, Treaty Trader Countries.

Immigration Law Service 2d § 4:163, Alien or Firm Must be National of Country Having Treaty With the U.S.

Immigration Law Service 2d § 4:167, Activities Must Constitute Trade -- Trade Must be Principally Between the United States and Treaty Country.

Immigration Law Service 2d § 4:168, Activities Must Constitute Trade -- Trade Must be "Substantial".

Immigration Law Service 2d § 4:172, Treaty Investor Countries.

Immigration Law Service 2d § 4:173, Alien or Enterprise Must be National of Country Having Treaty With United States.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 4:176, Investment Requirement.

Immigration Law Service 2d § 4:177, Investment Requirement -- Investment Must be Substantial.

Immigration Law Service 2d § 4:181, Investment Requirement -- Investor to Develop, Direct, and Control Interest.

Immigration Law Service 2d § 4:185, Application With Consular Office Abroad.

Immigration Law Service 2d § 4:196, Adjustment from E Nonimmigrant Status to Permanent Resident Status.

Immigration Law Service 2d § 4:197, Adjustment from E Nonimmigrant Status to Permanent Resident Status -- Effect of Private Bill.

Immigration Law Service 2d § 4:198, Adjustment from Permanent Resident Status to E Nonimmigrant Status.

Immigration Law Service 2d § 4:200, Categories of H Visas.

Immigration Law Service 2d § 4:213, Period of Admission.

Immigration Law Service 2d § 4:215, Period of Admission -- Readmission.

Immigration Law Service 2d § 4:217, Restrictions on Length of Stay.

Immigration Law Service 2d § 4:219, Change of Status from H-1B Status.

Immigration Law Service 2d § 4:222, Family Members.

Immigration Law Service 2d § 4:310, Specialty Occupations -- Examples of Specialty Occupations.

Immigration Law Service 2d § 4:312, Foreign Medical Graduates -- Early Termination of Employment Excused Due to Extenuating Circumstances.

Immigration Law Service 2d § 4:318, Defense Department Visas for Cooperative Research, Development and Coproduction -- Ten Year Maximum Period of Stay.

Immigration Law Service 2d § 4:319, Eligibility.

Immigration Law Service 2d § 4:321, Period of Admission; Restrictions on Length of Stay.

Immigration Law Service 2d § 4:322, Effect of Labor Disputes.

Immigration Law Service 2d § 4:323, Employer's Responsibility.

Immigration Law Service 2d § 4:327, Responsibilities of Secretaries of Labor, State, and Homeland Security.

Immigration Law Service 2d § 4:331, Fees.

Immigration Law Service 2d § 4:348, H-1B Classification.

Immigration Law Service 2d § 4:351, J Exchange Visitor.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 4:353, O Alien of Extraordinary Ability.

Immigration Law Service 2d § 4:361, H-1A Regulations -- DOL's Attestation Review Authority.

Immigration Law Service 2d § 4:368, Attestation Requirements.

Immigration Law Service 2d § 4:379, Duties and Obligations of Secretary of Labor.

Immigration Law Service 2d § 4:451, Availability.

Immigration Law Service 2d § 4:464, Determining Prevailing Wage, Conditions and Availability of U.S. Workers.

Immigration Law Service 2d § 4:470, Limitations.

Immigration Law Service 2d § 4:475, Eligibility.

Immigration Law Service 2d § 4:477, Admission and Extension of Stay.

Immigration Law Service 2d § 4:480, Foreign Press, Radio, Film, or Other Foreign Information Media.

Immigration Law Service 2d § 4:481, Purpose of L Classification.

Immigration Law Service 2d § 4:482, Who is Eligible?

Immigration Law Service 2d § 4:485, Spouses and Children of L Visa Holders.

Immigration Law Service 2d § 4:487, Spouses and Children of L Visa Holders -- Employment Authorization for L-2 Spouses.

Immigration Law Service 2d § 4:488, One Year Continuous Employment Requirement.

Immigration Law Service 2d § 4:489, Employment Must Have Taken Place Abroad.

Immigration Law Service 2d § 4:493, Basic Requirements for Managerial Capacity.

Immigration Law Service 2d § 4:494, Basic Requirements for Managerial Capacity -- "Managerial Capacity" Defined.

Immigration Law Service 2d § 4:495, Basic Requirements for Managerial Capacity -- Use of Staffing Levels to Determine Managerial Capacity.

Immigration Law Service 2d § 4:497, Basic Requirements for Executive Capacity.

Immigration Law Service 2d § 4:498, Basic Requirements for Executive Capacity -- "Executive Capacity" Defined.

Immigration Law Service 2d § 4:499, Basic Requirements for Executive Capacity -- Use of Staffing Levels to Determine Executive Capacity.

Immigration Law Service 2d § 4:501, Basic Requirements for Specialized Knowledge.

Immigration Law Service 2d § 4:503, Basic Requirements for Specialized Knowledge -- Capacity of Specialized

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Knowledge Professional.

Immigration Law Service 2d § 4:505, Duration of Work Status, Temporary Intent and Immigrant Intent.

Immigration Law Service 2d § 4:508, Work for Same or Related Entity -- Full-Time Service Required, But Need Not be Entirely in United States.

Immigration Law Service 2d § 4:510, Qualifying Organization: Employer Must be Firm, Corporation, or Other Legal Entity.

Immigration Law Service 2d § 4:515, Employer May be Parent or Branch of Primary Employer.

Immigration Law Service 2d § 4:516, Employer May be Affiliate or Subsidiary of Primary Employer.

Immigration Law Service 2d § 4:518, Employer May be Affiliate or Subsidiary of Primary Employer -- Affiliate -- Subsidiary as Affiliate.

Immigration Law Service 2d § 4:521, Transfer to U.S. of Employees Unattached to Foreign Entity.

Immigration Law Service 2d § 4:529, Application Procedures for Blanket Petitions.

Immigration Law Service 2d § 4:535, Decision on Petition.

Immigration Law Service 2d § 4:542, Validity of Approved Petition -- Extension of Visa Petition Validity.

Immigration Law Service 2d § 4:546, Notice of Intent to Revoke Petition.

Immigration Law Service 2d § 4:547, Requisite Preapplication Documentation for L-1 Visa.

Immigration Law Service 2d § 4:558, Duration of Stay.

Immigration Law Service 2d § 4:569, Introduction.

Immigration Law Service 2d § 4:589, Overview.

Immigration Law Service 2d § 4:600, Period of Validity of Petition.

Immigration Law Service 2d § 4:603, Revocation of Approval of Petition.

Immigration Law Service 2d § 4:610, Extension of Visa Petition Validity.

Immigration Law Service 2d § 4:613, Eligibility for P Nonimmigrant Status.

Immigration Law Service 2d § 4:614, Eligibility for P Nonimmigrant Status -- Spouse and Children of P Nonimmigrants.

Immigration Law Service 2d § 4:625, Effect of Changes in Terms and Conditions of Employment.

Immigration Law Service 2d § 4:646, Approval of Petition -- Period of Validity.

Immigration Law Service 2d § 4:647, Approval of Petition -- Period of Validity -- Extension of Petition Validity.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 4:649, Revocation of Approval of Petition.

Immigration Law Service 2d § 4:653, Consular Officers Responsible for Determining Qualifications of Group Members.

Immigration Law Service 2d § 4:662, Background and Eligibility.

Immigration Law Service 2d § 4:663, Spouses and Children.

Immigration Law Service 2d § 4:665, Minister -- Particular Persons as Ministers.

Immigration Law Service 2d § 4:669, Working in Professional Capacity.

Immigration Law Service 2d § 4:674, Organization's Nonprofit Status.

Immigration Law Service 2d § 4:679, Limitation on Readmission.

Immigration Law Service 2d § 4:681, Eligibility.

Immigration Law Service 2d § 5:116, Change from Exchange Visitor to Other Nonimmigrant Status.

Immigration Law Service 2d § 5:125, Foreign Residence Requirement for Spouse and Children.

Immigration Law Service 2d § 5:137, Review of Sponsors and Record Keeping and Reporting Requirements.

Immigration Law Service 2d § 5:141, Duties of Responsible Officer -- Monitoring and Verification of Exchange Visitor Participants.

Immigration Law Service 2d § 5:142, Duties of Responsible Officer -- Information to be Collected.

Immigration Law Service 2d § 5:143, Fees for Participants in Exchange Visitor Program.

Immigration Law Service 2d § 5:156, Who Are Exchange Visitors.

Immigration Law Service 2d § 5:187, Exchange Programs for Foreign Medical Graduates.

Immigration Law Service 2d § 5:208, Qualified Employers.

Immigration Law Service 2d § 5:212, Q-1 Status and Visa Issuance.

Immigration Law Service 2d § 5:215, The Irish Peace Process Cultural and Training Program Act of 1998 (IPPCTP).

Immigration Law Service 2d § 5:219, Derivative Status for Spouses and Children of Q-2 Nonimmigrants.

Immigration Law Service 2d § 5:222, Visa Processing for IPPCTP Participants and Family Members.

Immigration Law Service 2d § 5:225, Inspection and Admission of Q-2 and Q-3 Nonimmigrants.

Immigration Law Service 2d § 5:226, Employment by Principal and Accompanying Family Members.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 5:232, What Educational Institutions May Apply to Have Foreign Students Attend.

Immigration Law Service 2d § 5:245, Record Keeping and Reporting Requirements.

Immigration Law Service 2d § 5:246, Review of Approved Schools.

Immigration Law Service 2d § 6:100, From Other Nonimmigrant Status to G Status.

Immigration Law Service 2d § 6:144, Nonimmigrant Aliens Employed on United States-Based Fishing Vessels Not Entitled to Classification.

Immigration Law Service 2d § 6:146, Who is "Crew Member" for D Nonimmigrant Purposes.

Immigration Law Service 2d § 6:147, Who is "Crew Member" for D Nonimmigrant Purposes -- Particular Persons as Crew Members.

Immigration Law Service 2d § 6:153, Application.

Immigration Law Service 2d § 6:259, Classification as Temporary Worker.

Immigration Law Service 2d § 6:260, Introduction.

Immigration Law Service 2d § 6:263, Basic List of Eligible Aliens.

Immigration Law Service 2d § 6:279, Introduction.

Immigration Law Service 2d § 6:280, Basic Criteria.

Immigration Law Service 2d § 6:282, Foreign Government Official, Members of Immediate Family, and the Like (C-3).

Immigration Law Service 2d § 6:283, Classification as a K Visa Nonimmigrant.

Immigration Law Service 2d § 6:293, Eligibility.

Immigration Law Service 2d § 6:314, Introduction.

Immigration Law Service 2d § 6:315, Basic Criteria and Eligibility.

Immigration Law Service 2d § 6:321, Request for Classification -- Filing Request.

Immigration Law Service 2d § 6:333, Effect of Failure to Maintain Status.

Immigration Law Service 2d § 6:334, Change of Classification.

Immigration Law Service 2d § 6:336, Basic Criteria and Eligibility.

Immigration Law Service 2d § 6:338, Waiver of Certain Grounds of Inadmissibility.

Immigration Law Service 2d § 6:339, Waiver of Certain Grounds of Inadmissibility -- Application for Waiver.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 6:355, Physical Presence on Account of Trafficking in Persons.

Immigration Law Service 2d § 6:357, Physical Presence on Account of Trafficking in Persons -- Departure from the United States.

Immigration Law Service 2d § 6:367, Admission of Immediate Family Members -- Aliens Outside United States.

Immigration Law Service 2d § 6:370, Referral to Support Organization.

Immigration Law Service 2d § 6:371, Employment Authorization.

Immigration Law Service 2d § 6:373, Duration of Status.

Immigration Law Service 2d § 6:375, Revocation of Approved Status.

Immigration Law Service 2d § 6:376, Removal.

Immigration Law Service 2d § 6:380, Basic Criteria and Eligibility.

Immigration Law Service 2d § 6:382, Waiver of Certain Grounds of Inadmissibility.

Immigration Law Service 2d § 6:385, Introduction.

Immigration Law Service 2d § 6:386, Basic Criteria and Eligibility.

Immigration Law Service 2d § 6:390, Eligibility.

Immigration Law Service 2d § 6:391, Immigrant Eligibility Required.

Immigration Law Service 2d § 7:138, Derivative Beneficiaries.

Immigration Law Service 2d § 7:142, Evidence of Parent-Child Relationship -- Primary Evidence for Legitimated Child or Son or Daughter.

Immigration Law Service 2d § 7:144, Evidence of Parent-Child Relationship -- Primary Evidence for Stepchild.

Immigration Law Service 2d § 7:145, Evidence of Parent-Child Relationship -- Primary Evidence for Adopted Child or Son or Daughter.

Immigration Law Service 2d § 7:168, Good Moral Character.

Immigration Law Service 2d § 7:174, Derivative Beneficiaries.

Immigration Law Service 2d § 7:177, Alternative Remedy: Special Immigrant Juvenile Status.

Immigration Law Service 2d § 7:178, Parent-Child Relationship.

Immigration Law Service 2d § 7:211, Who Becomes a Conditional Resident? Children.

Immigration Law Service 2d § 7:215, Conditional Resident's Affirmative Petition to Remove the Conditions.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 7:244, Eligibility for Adoption.

Immigration Law Service 2d § 7:245, Eligibility for Adoption -- Child Already in United States.

Immigration Law Service 2d § 7:246, Who May File Petition.

Immigration Law Service 2d § 7:255, Orphan Petition: Advanced Processing Application Approved.

Immigration Law Service 2d § 7:263, Required Documentation.

Immigration Law Service 2d § 7:268, Petition Filed After Approval of Advanced Processing Application.

Immigration Law Service 2d § 7:294, Special Circumstances.

Immigration Law Service 2d § 7:297, Purpose and Nature of Investigation.

Immigration Law Service 2d § 7:317, Authority of Consular Officers to Approve Petition.

Immigration Law Service 2d § 7:334, One- and Two-Stage Processing.

Immigration Law Service 2d § 8:144, Where to File.

Immigration Law Service 2d § 8:147, Alien.

Immigration Law Service 2d § 8:148, Alien or Any Person on Behalf of Alien.

Immigration Law Service 2d § 8:193, Burden of Proof.

Immigration Law Service 2d § 8:200, Number of Visas Available.

Immigration Law Service 2d § 8:202, Spouses and Children.

Immigration Law Service 2d § 9:114, Personal Appearance.

Immigration Law Service 2d § 9:133, Who May Issue Visas.

Immigration Law Service 2d § 9:135, Order of Issuance.

Immigration Law Service 2d § 9:140, Period of Validity -- Visa Issued to Religious Worker.

Immigration Law Service 2d § 9:157, New Visa Issued to Nonquota Immigrant.

Immigration Law Service 2d § 9:164, Nature of Relief.

Immigration Law Service 2d § 9:165, Lawful Immigration Status When Adjustment Application Filed.

Immigration Law Service 2d § 9:166, Continuous Lawful Status Since Entry Into United States.

Immigration Law Service 2d § 9:170, Who is an Eligible Parolee.

Immigration Law Service 2d § 9:171, Adjustment of Status for Certain Soviet and Indo-Chinese Parolees.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 9:173, Waivers of Inadmissibility Under INA § 212(A)(4), (5)(A), (7)(A) for INA § 101(A)(27)(J) Alien.

Immigration Law Service 2d § 9:179, General Rule.

Immigration Law Service 2d § 9:182, Effect of A-1 or A-2 Aliens Engaging in Unauthorized Employment.

Immigration Law Service 2d § 9:199, Ina Provisions.

Immigration Law Service 2d § 9:200, USCIS Regulations: Eligibility.

Immigration Law Service 2d § 9:201, USCIS Regulations: Family Members.

Immigration Law Service 2d § 9:202, USCIS Regulations: Waivers of Inadmissibility.

Immigration Law Service 2d § 9:203, Crewmembers.

Immigration Law Service 2d § 9:206, Exchange Visitors.

Immigration Law Service 2d § 9:208, Armed Forces Foreign Enlistees With Honorable Active Duty Records.

Immigration Law Service 2d § 9:209, Special Immigrant Juveniles.

Immigration Law Service 2d § 9:212, Employment-Based First, Second, and Third Preference Immigrants and Special Immigrant Religious Workers.

Immigration Law Service 2d § 9:213, Certain Victims of Trafficking in Persons (T Nonimmigrants).

Immigration Law Service 2d § 9:225, Factors Considered in Exercise of Discretion: Applicant's Moral Character.

Immigration Law Service 2d § 9:246, Who Must be Examined.

Immigration Law Service 2d § 9:259, Application.

Immigration Law Service 2d § 9:260, Visa Number Limitation.

Immigration Law Service 2d § 9:261, Filing and Decision.

Immigration Law Service 2d § 9:269, Who is Eligible?.

Immigration Law Service 2d § 9:280, Who is Eligible for Relief: Applicant Must Have Entered U.S. Prior to January 1, 1972, and Have Maintained Continuous U.S. Residence.

Immigration Law Service 2d § 9:281, Who is Eligible for Relief: Applicant Must be of Good Moral Character.

Immigration Law Service 2d § 9:282, Who is Eligible for Relief: Applicant Must Not be Ineligible for Citizenship.

Immigration Law Service 2d § 9:380, Continuous Residence in Unlawful Status Since Prior to January 1, 1982, Through May 4, 1988 -- Unlawful Status.

Immigration Law Service 2d App 1-1, Immigration Statutes.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 10:102, Present or Future Persecution.

Immigration Law Service 2d § 10:110, Changed Conditions in Country of Nationality or Last Habitual Residence -- State Department Reports.

Immigration Law Service 2d § 10:113, Subjective Intent to Harm or Punish.

Immigration Law Service 2d § 10:118, Fear of Forced Abortion or Coerced Sterilization.

Immigration Law Service 2d § 10:119, Fear of Forced Abortion or Coerced Sterilization -- Ninth Circuit Ruling.

Immigration Law Service 2d § 10:120, Fear of Forced Abortion or Coerced Sterilization -- Degree of Resistance Required.

Immigration Law Service 2d § 10:129, Political Opinion Imputed to Alien by Persecutor -- Illustrative Cases.

Immigration Law Service 2d § 10:131, Political Neutrality.

Immigration Law Service 2d § 10:142, Recruitment by Antigovernment Guerrillas.

Immigration Law Service 2d § 10:144, Recruitment by Antigovernment Guerrillas -- Ninth Circuit Decisions.

Immigration Law Service 2d § 10:147, Fear of Harm Because of Guerrilla or Military Associations -- Former Soldier's Fear of Guerrilla Reprisals.

Immigration Law Service 2d § 10:148, Fear of Dangers Faced by Members of National Police Force.

Immigration Law Service 2d § 10:149, Belonging to Minority Population.

Immigration Law Service 2d § 10:156, Standard of Proof.

Immigration Law Service 2d § 10:159, Members of Religious Group Subjected to Selective Application of Population Control Policy.

Immigration Law Service 2d § 10:172, Government Employees.

Immigration Law Service 2d § 10:175, Former Members of Military Establishment.

Immigration Law Service 2d § 10:182, Gender-Based Asylum Claims -- Female Genital Mutilation.

Immigration Law Service 2d § 10:193, Alien Must be Refugee.

Immigration Law Service 2d § 10:196, Grant of Asylum Discretionary.

Immigration Law Service 2d § 10:237, Burden of Proof.

Immigration Law Service 2d § 10:250, Grant of Asylum -- Authority of Asylum Officer.

Immigration Law Service 2d § 10:254, Denial -- Denial as Matter of Discretion.

Immigration Law Service 2d § 10:261, Deferral of Removal Under Convention Against Torture.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 10:269, Administrative Appeal.

Immigration Law Service 2d § 10:295, Eligibility.

Immigration Law Service 2d § 10:301, Burden of Proof.

Immigration Law Service 2d § 10:320, Eligibility for Adjustment for Asylees.

Immigration Law Service 2d § 10:323, Waiver of Certain Grounds of Inadmissibility.

Immigration Law Service 2d § 10:330, Proceedings Upon Denial of Application.

Immigration Law Service 2d § 10:332, Eligibility.

Immigration Law Service 2d § 10:337, Record of Admission for Permanent Residence.

Immigration Law Service 2d § 10:344, Qualified Family Member Who is Not PRC National.

Immigration Law Service 2d § 13:128, Transition Period Custody Rules.

Immigration Law Service 2d § 13:150, Alien's Rights in Proceedings -- Assistance of Counsel -- Ineffective Assistance Must Result in Prejudice.

Immigration Law Service 2d § 13:165, Burden of Proof on the Government.

Immigration Law Service 2d § 13:178, Certain Permanent Residents.

Immigration Law Service 2d § 13:185, Good Moral Character.

Immigration Law Service 2d § 13:186, No Due Process Right to be Eligible for Discretionary Relief from Removal.

Immigration Law Service 2d § 13:188, Aliens Ineligible for Relief.

Immigration Law Service 2d § 13:197, Eligibility.

Immigration Law Service 2d § 13:230, Eligibility.

Immigration Law Service 2d § 13:241, Grant by Immigration Judge.

Immigration Law Service 2d § 13:262, Exception for Removal of Nonviolent Offenders Prior to Completion of Prison Sentence.

Immigration Law Service 2d § 13:267, Application of Zadvydas to Excludable Aliens.

Immigration Law Service 2d § 13:393, Notice of Intent.

Immigration Law Service 2d § 13:400, Judicial Review.

Immigration Law Service 2d § 13:450, Transition for Aliens in Proceedings -- Transitional Changes in Judicial Review -- IIRIRA § 309(C)(4)(E) Cases.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 13:453, Transition for Aliens in Proceedings -- Transitional Rule With Regard to Suspension of Deportation -- Special Rule for Certain Nationals of El Salvador, Guatemala, and Former Soviet Union.

Immigration Law Service 2d § 14:100, Naturalization Defined; Congressional Authority.

Immigration Law Service 2d § 14:102, Overview of Eligibility Requirements.

Immigration Law Service 2d § 14:106, Burden of Establishing Eligibility.

Immigration Law Service 2d § 14:108, Presumption of Lawful Admission for Permanent Residence; Birth in U.S. to Foreign Diplomat.

Immigration Law Service 2d § 14:112, Normal Residence and Physical Presence Requirements.

Immigration Law Service 2d § 14:113, Meaning of "Residence".

Immigration Law Service 2d § 14:123, Absence of One Year or More.

Immigration Law Service 2d § 14:143, Basic Requirement.

Immigration Law Service 2d § 14:146, Requirements.

Immigration Law Service 2d § 14:147, Effect of Pardon.

Immigration Law Service 2d § 14:150, What Constitutes False Testimony to Obtain Benefit Under INA

Immigration Law Service 2d § 14:151, What Constitutes False Testimony to Obtain Benefit Under INA -- Testimony Need Not be Material; Intent to Deceive Required.

Immigration Law Service 2d § 14:154, Conviction of Aggravated Felony.

Immigration Law Service 2d § 14:155, Requirements.

Immigration Law Service 2d § 14:164, Particular Acts -- Involvement in or Support of Communist or Subversive Organization.

Immigration Law Service 2d § 14:181, Alternate Oaths -- Form.

Immigration Law Service 2d § 14:207, "Parent," "Father," "Mother," and "Child" Defined.

Immigration Law Service 2d § 14:208, Permanent Residence and Legal Custody Requirements.

Immigration Law Service 2d § 14:210, One Parent Must be Citizen at Child's Birth -- Application to Adopted Child.

Immigration Law Service 2d § 14:214, Eligibility.

Immigration Law Service 2d § 14:216, Eligibility -- Necessity of Being "Child".

Immigration Law Service 2d § 14:220, Application to Adopted Child.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d § 14:225, Application Procedures and Interview.

Immigration Law Service 2d § 14:242, Benefits and Advantages of Filing Under INA § 328.

Immigration Law Service 2d § 14:261, When Permanent Resident Status Not Required -- Induction, Enlistment, or Recall to Temporary Active Duty in Qualifying Area.

Immigration Law Service 2d § 14:266, Proof of Good Moral Character, Attachment, and Favorable Disposition.

Immigration Law Service 2d § 14:271, Persons Ineligible for Naturalization.

Immigration Law Service 2d § 14:305, Aliens Who Have Made Extraordinary Contribution to U.S. Security or Intelligence -- Spouses and Children of Murdered Aliens.

Immigration Law Service 2d § 14:319, Documentation.

Immigration Law Service 2d § 14:323, Application on Behalf of Child.

Immigration Law Service 2d § 14:389, Materiality.

Immigration Law Service 2d § 14:399, Naturalization Illegally Procured.

Immigration Law Service 2d § 16:102, Who Are Aliens Permanently Residing in United States Under Color of Law Entitled to Compensation -- Department of Labor Opinion Letters.

Immigration Law Service 2d § 16:106, Who Are Aliens Permanently Residing in United States Under Color of Law Entitled to Compensation -- Undocumented Aliens' Ineligibility for Benefits -- Certain Benefits Under Social Security...

Immigration Law Service 2d § 16:108, Railroad Unemployment Insurance Act.

Immigration Law Service 2d § 16:119, General Rule.

Immigration Law Service 2d PSD FAM 1203, Definitions.

Immigration Law Service 2d PSD INA § 101, Definitions.

Immigration Law Service 2d PSD INA § 102, Applicability of Title II to Certain Nonimmigrants.

Immigration Law Service 2d PSD INA § 201, Worldwide Level of Immigration.

Immigration Law Service 2d PSD INA § 202, Numerical Limitation to Any Single Foreign State.

Immigration Law Service 2d PSD INA § 203, Allocation of Immigrant Visas.

Immigration Law Service 2d PSD INA § 204, Procedure for Granting Immigrant Status.

Immigration Law Service 2d PSD INA § 207, Annual Admission of Refugees and Admission of Emergency Situation Refugees.

Immigration Law Service 2d PSD INA § 208, Asylum.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d PSD INA § 209, Adjustment of Status of Refugees.

Immigration Law Service 2d PSD INA § 210, Special Agricultural Workers.

Immigration Law Service 2d PSD INA § 211, Documentary Requirements.

Immigration Law Service 2d PSD INA § 212, General Classes of Aliens Ineligible to Receive Visas and Ineligible for Admission; Waivers of Inadmissibility.

Immigration Law Service 2d PSD INA § 214, Admission of Nonimmigrants.

Immigration Law Service 2d PSD INA § 217, Visa Waiver Program for Certain Visitors.

Immigration Law Service 2d PSD INA § 218, Admission of Temporary H-2A Workers.

Immigration Law Service 2d PSD INA § 221, Issuance of Visas.

Immigration Law Service 2d PSD INA § 222, Application for Visas.

Immigration Law Service 2d PSD INA § 237, General Classes of Deportable Aliens.

Immigration Law Service 2d PSD INA § 241, Detention and Removal of Aliens Ordered Removed.

Immigration Law Service 2d PSD INA § 244, Temporary Protected Status.

Immigration Law Service 2d PSD INA § 245, Adjustment of Status of Nonimmigrant to that of Person Admitted for Permanent Residence.

Immigration Law Service 2d PSD INA § 247, Adjustment of Status of Certain Resident Aliens to Nonimmigrant Status.

Immigration Law Service 2d PSD INA § 248, Change of Nonimmigrant Classification.

Immigration Law Service 2d PSD INA § 251, Lists of Alien Crewmen; Reports of Illegal Landings.

Immigration Law Service 2d PSD INA § 252, Conditional Permits to Land Temporarily.

Immigration Law Service 2d PSD INA § 258, Limitations on Performance of Longshore Work by Alien Crewmen.

Immigration Law Service 2d PSD INA § 263, Provisions Governing Registration of Special Groups.

Immigration Law Service 2d PSD INA § 286, Disposition of Moneys Collected Under the Provisions of This Title.

Immigration Law Service 2d PSD INA § 309, Children Born Out of Wedlock.

Immigration Law Service 2d PSD INA § 313, Prohibition Upon the Naturalization of Persons Opposed to Government or Law, or Who Favor Totalitarian Forms of Government.

Immigration Law Service 2d PSD INA § 315, Alien Relieved from Training and Service in the Armed Forces of the United States Because of Alien-Age Barred from Citizenship.

8 U.S.C.A. § 1101

Immigration Law Service 2d PSD INA § 318, Prerequisite to Naturalization; Burden of Proof.

Immigration Law Service 2d BALKA DB CH 27, Special Handling Cases.

Immigration Law Service 2d PSD INA § 240A, Cancellation of Removal; Adjustment of Status.

Immigration Law Service 2d PSD INA § 245A, Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence.

Immigration Law Service 2d PSD SEL DHS 250, Orphan First Processing Information for Prospective Adoptive Parents (Jun. 4, 2003).

Immigration Law Service 2d PSD SEL DHS 310, Guidelines for Children's Asylum Claims (Dec. 10, 1998).

Immigration Law Service 2d PSD FAM 1311.1-4, Fam 1311.1-4. Definitions.

Immigration Law Service 2d PSD SEL DHS 1220, Special Immigrant Status for Certain NATO Civilian Employees (Feb. 8, 1999).

Immigration Law Service 2d PSD 22 CFR § 62.1, Purpose.

Immigration Law Service 2d PSD 22 CFR § 62.2, Definitions.

Immigration Law Service 2d PSD 8 CFR § 264.1, Registration and Fingerprinting.

Immigration Law Service 2d PSD INS OI § 214.2, Special Requirements for Admission, Extension, and Maintenance of Status.

Immigration Law Service 2d PSD 20 CFR § 656.2, Description of the Act.

Immigration Law Service 2d PSD 20 CFR § 656.3, Definitions, for Purposes of This Part, of Terms Used in This Part.

Immigration Law Service 2d PSD 22 CFR § 62.20, Professors and Research Scholars.

Immigration Law Service 2d PSD 28 CFR § 65.80, General.

Immigration Law Service 2d PSD 8 CFR § 208.21, Admission of the Asylee's Spouse and Children.

Immigration Law Service 2d PSD 28 CFR § 105.10, Definitions, Purpose, and Scope.

Immigration Law Service 2d PSD 8 CFR § 1208.21, Admission of the Asylee's Spouse and Children.

Immigration Law Service 2d PSD 20 CFR § 655.100, Overview of This Subpart and Definition of Terms.

Immigration Law Service 2d PSD 20 CFR § 655.1102, What Are the Definitions of Terms that Are Used in These Regulations?

Immigration Law Service 2d PSD 20 CFR § 655.302, Definitions.

Immigration Law Service 2d PSD 20 CFR § 655.502, Definitions.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration Law Service 2d PSD 20 CFR § 655.700, What Statutory Provisions Govern the Employment of H-1B and H-1B1 Nonimmigrants and How Do Employers Apply for an H-1B or H-1B1 Visa?

Immigration Law Service 2d PSD 20 CFR § 655.715, Definitions.

Immigration Law Service 2d PSD 20 CFR § 655.900, Purpose, Procedure and Applicability of Subparts J, and K of This Part.

Immigration Law Service 2d PSD 20 CFR § 655.920, Definitions.

Immigration Law Service 2d PSD 28 CFR § 1100.25, Definitions.

Immigration Legislation Handbook § 2:5, Other Legislation.

Labor Certification Handbook § 8:1, Perm Regulations.

Labor Certification Handbook § 9:13, Permanent Full-Time Employment: Crawford.

Mertens: Law of Federal Income Taxation § 47B:29, Rates of Withholding and Estimated Taxes.

Mertens: Law of Federal Income Taxation § 47B:39, Exchange or Training Programs.

Newberg on Class Actions § 23:11, Rule 23(B)(2) Class Actions.

Restatement (Second) of Foreign Relation § 26, Nationality of Individuals.

Restatement (Third) of Foreign Relations § 212, Nationality and Citizenship of Individuals: Law of the United States.

Restatement (Third) of Foreign Relations § 711, State Responsibility for Injury to Nationals of Other States.

U.S. Citizenship and Naturalization Handbook § 2:5, Applicability to U.S. Territories; Under Constitution -- Under Statutes.

U.S. Citizenship and Naturalization Handbook § 3:1, Noncitizen Nationality.

U.S. Citizenship and Naturalization Handbook § 3:2, Current Possessions.

U.S. Citizenship and Naturalization Handbook § 5:4, Children Born Out-of-Wedlock and Adopted Children.

U.S. Citizenship and Naturalization Handbook § 5:5, Marital Status of Child.

U.S. Citizenship and Naturalization Handbook § 5:9, Last Qualifying Event Before May 24, 1934.

U.S. Citizenship and Naturalization Handbook § 6:1, Naturalization and Citizenship.

U.S. Citizenship and Naturalization Handbook § 6:6, Potential Adverse Consequences: Deportation.

U.S. Citizenship and Naturalization Handbook § 7:4, Meaning of Residence.

U.S. Citizenship and Naturalization Handbook § 8:3, General Rules -- Definition of Conviction.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

U.S. Citizenship and Naturalization Handbook § 8:5, General Rules -- Term of Imprisonment or Sentence.

U.S. Citizenship and Naturalization Handbook § 12:4, Under Nationality Act of 1940.

U.S. Citizenship and Naturalization Handbook § 12:6, General Provision for Service in Time of War.

U.S. Citizenship and Naturalization Handbook § 2:14, Citizenship by Birth in Hawaii.

U.S. Citizenship and Naturalization Handbook § 2:16, Puerto Rico.

U.S. Citizenship and Naturalization Handbook § 2:17, Virgin Islands.

U.S. Citizenship and Naturalization Handbook § 2:18, Panama Canal Zone.

U.S. Citizenship and Naturalization Handbook § 2:19, Guam.

U.S. Citizenship and Naturalization Handbook § 2:20, American Samoa and Swains Island.

U.S. Citizenship and Naturalization Handbook § 3:13, Other Individuals Owing Permanent Allegiance to the United States.

U.S. Citizenship and Naturalization Handbook § 4:61, Residence and Physical Presence Under INA

U.S. Citizenship and Naturalization Handbook § 4:64, Children Born Out of Wedlock.

U.S. Citizenship and Naturalization Handbook § 5:11, Last Qualifying Event Between January 13, 1941 and December 23, 1952.

U.S. Citizenship and Naturalization Handbook § 5:12, Last Qualifying Event Between December 24, 1952 and February 26, 2001.

U.S. Citizenship and Naturalization Handbook § 5:13, Last Qualifying Event on or After February 27, 2001 [Or Under 18 Years of Age on 2/27/01].

U.S. Citizenship and Naturalization Handbook § 7:11, Residence Must be Pursuant to Lawful Admission to Permanent Residence.

U.S. Citizenship and Naturalization Handbook § 7:13, Continuity of Lawful Permanent Residence.

U.S. Citizenship and Naturalization Handbook § 7:20, Habitual Drunkard.

U.S. Citizenship and Naturalization Handbook § 7:21, Subject-Specific Grounds of Inadmissibility; Generally.

U.S. Citizenship and Naturalization Handbook § 7:22, Subject-Specific Grounds of Inadmissibility; Generally -- Convictions and Admissions of Crimes.

U.S. Citizenship and Naturalization Handbook § 7:26, Subject-Specific Grounds of Inadmissibility; Generally -- Crimes of Moral Turpitude; Generally -- Exemptions.

U.S. Citizenship and Naturalization Handbook § 7:27, Subject-Specific Grounds of Inadmissibility; Generally -- Multiple Criminal Convictions With Five Year Sentence.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

U.S. Citizenship and Naturalization Handbook § 7:28, Subject-Specific Grounds of Inadmissibility; Generally -- Controlled Substance Violations; Generally.

U.S. Citizenship and Naturalization Handbook § 7:32, Subject-Specific Grounds of Inadmissibility; Generally -- Smugglers and Encouragers of Unlawful Entry.

U.S. Citizenship and Naturalization Handbook § 7:34, Income Derives Principally from Illegal Gambling Activities.

U.S. Citizenship and Naturalization Handbook § 7:35, Convicted of Two or More Gambling Offenses.

U.S. Citizenship and Naturalization Handbook § 7:36, Giving False Testimony for Purpose of Obtaining a Benefit Under INA

U.S. Citizenship and Naturalization Handbook § 7:37, Confined to Penal Institution for 180 Days or More as Result of Conviction.

U.S. Citizenship and Naturalization Handbook § 7:38, Has Ever Been Convicted of Aggravated Felony -- Date of Conviction and Applicability of Bar.

U.S. Citizenship and Naturalization Handbook § 7:53, Statutory and Regulatory Definitions -- Generally.

U.S. Citizenship and Naturalization Handbook § 7:54, Statutory and Regulatory Definitions -- Prohibited Behavior -- to Advocate.

U.S. Citizenship and Naturalization Handbook § 7:57, Statutory and Regulatory Definitions -- Prohibited Behavior -- Affiliation.

U.S. Citizenship and Naturalization Handbook § 7:59, Statutory and Regulatory Definitions -- Objects of Prohibition -- Doctrine.

U.S. Citizenship and Naturalization Handbook § 7:60, Statutory and Regulatory Definitions -- Objects of Prohibition -- Organization.

U.S. Citizenship and Naturalization Handbook § 7:61, Statutory and Regulatory Definitions -- Objects of Prohibition -- Totalitarian Party.

U.S. Citizenship and Naturalization Handbook § 7:63, Statutory and Regulatory Definitions -- Objects of Prohibition -- World Communism.

U.S. Citizenship and Naturalization Handbook § 7:65, Statutory and Regulatory Definitions -- Objects of Prohibition -- Advocating Doctrines of World Communism.

U.S. Citizenship and Naturalization Handbook § 7:69, Persons Barred from Naturalizing -- Totalitarian Parties.

U.S. Citizenship and Naturalization Handbook § 8:12, Aggravated Felonies -- Current Statutory Definition.

U.S. Citizenship and Naturalization Handbook § 8:13, Aggravated Felonies -- Applicability of Definition.

U.S. Citizenship and Naturalization Handbook § 8:14, Aggravated Felonies -- Drug Convictions that Are Aggravated Felonies.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

U.S. Citizenship and Naturalization Handbook § 8:15, Aggravated Felonies -- Crimes of Violence.

U.S. Citizenship and Naturalization Handbook § 8:16, Aggravated Felonies -- Other Commonly Encountered Aggravated Felonies.

U.S. Citizenship and Naturalization Handbook § 8:17, Firearms Offenses.

U.S. Citizenship and Naturalization Handbook § 8:23, Abandonment of Lawful Permanent Residence.

U.S. Citizenship and Naturalization Handbook § 9:31, Part 10: Ineligibility Factors; Generally -- General Questions.

U.S. Citizenship and Naturalization Handbook § 11:20, Requirements -- Age Requirement.

U.S. Citizenship and Naturalization Handbook § 11:21, Requirements -- Residence and Physical Presence Requirements.

U.S. Citizenship and Naturalization Handbook § 11:22, Requirements -- Physical and Legal Custody Requirements.

U.S. Citizenship and Naturalization Handbook § 11:23, Requirements -- Special Requirements for Adopted Children.

U.S. Citizenship and Naturalization Handbook § 14:32, Removal Proceedings.

U.S. Citizenship and Naturalization Handbook App 5-2, Child Citizenship Act of 2000, Public Law 106-395, 114 Stat. 1631 (Oct. 30, 2000).

U.S. Citizenship and Naturalization Handbook App 4-24, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. 104-208, §§ 643, 671(B), 110 Stat. 3009 (Sept. 30, 1996).

Wright & Miller: Federal Prac. & Proc. § 2763, Public Law.

Wright & Miller: Federal Prac. & Proc. § 4469, Res Judicata Between State and Federal Courts-In General.

NOTES OF DECISIONS

I. GENERALLY 1-110

II. REFUGEE 111-230

I. GENERALLY

<Subdivision Index>

Adjustment of status, immigrant or nonimmigrant status 60

Admission 10

Adopted child of citizen, immigrant or nonimmigrant status 61

Adoption, child 37

Affiliation 11

Aggravated felony 7, 12-34

Aggravated felony - Generally 12

Aggravated felony - Alien smuggling 13

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Aggravated felony - Attempt 14

- Aggravated felony - Burglary 15
- Aggravated felony - Conspiracy 16
- Aggravated felony - Controlled substances 17
- Aggravated felony - Counterfeiting 18
- Aggravated felony - Crime of violence 19
- Aggravated felony - Drunk driving 20
- Aggravated felony - Firearms 21
- Aggravated felony - Forgery 22
- Aggravated felony - Fraud or deceit 23
- Aggravated felony - Homicide 24
- Aggravated felony - Kidnapping 25
- Aggravated felony - Miscellaneous offenses 34
- Aggravated felony - Obstruction of justice 26
- Aggravated felony - Retroactive effect 7
- Aggravated felony - Sentence 31
- Aggravated felony - Sentencing guidelines 32
- Aggravated felony - Sex offenses 27
- Aggravated felony - Sexual abuse of a minor 28
- Aggravated felony - State law 33
- Aggravated felony - Tax offenses 29

Aggravated felony - Theft offenses 30

- Alien 35**
- Alien commuters, immigrant or nonimmigrant status 63
- Alien smuggling, aggravated felony 13
- Aliens in transit, immigrant or nonimmigrant status 62
- Amendments 5
- Attempt, aggravated felony 14
- Burglary, aggravated felony 15
- Child 36-38
 - Child - Generally 36
 - Child - Adoption 37
 - Child - Illegitimacy 38
- Conspiracy, aggravated felony 16
- Construction 1
- Controlled substances, aggravated felony 17
- Conviction 39
- Convictions, good moral character 52
- Counterfeiting, aggravated felony 18
- Crewmen 40
- Crewmen, entry 45
- Crewmen, immigrant or nonimmigrant status 64
- Crime of violence, aggravated felony 19
- Declaratory judgment 9
- Departure 41
- Deportation 42
- Diplomatic visa 43
- Distinguished merit and ability, immigrant or nonimmigrant status 65

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

- Drug offenses, aggravated felony 17**
- Drunk driving, aggravated felony 20**
- Dual nationality 82**
- Enemy alien, immigrant or nonimmigrant status 66**
- Entry 44-49**
 - Entry - Generally 44
 - Entry - Crewmen 45
 - Entry - Extradition as entry 46
 - Entry - Official restraint 47
 - Entry - Original entry 48
 - Entry - Reentry as entry 49
- Expatriated citizen, immigrant or nonimmigrant status 67**
- Extradition as entry 46**
- False testimony, good moral character 57**
- Fiancé, immigrant or nonimmigrant status 68**

- Firearms, aggravated felony 21**
- Foreign officials, immigrant or nonimmigrant status 69**
- Foreign state 50**
- Forgery, aggravated felony 22**
- Fraud or deceit, aggravated felony 23**
- Good moral character 51-58**
 - Good moral character - Generally 51
 - Good moral character - Convictions 52
 - Good moral character - False testimony 57
 - Good moral character - Homosexuality 58
 - Good moral character - Murder 53
 - Good moral character - Pleas 55
 - Good moral character - Theft 54
 - Good moral character - Vacation of conviction 56
- Homicide, aggravated felony 24**
- Homosexuality, good moral character 58**
- Illegitimacy, child 38**
- Immigrant or nonimmigrant status 59-77**
 - Immigrant or nonimmigrant status - Generally 59
 - Immigrant or nonimmigrant status - Adjustment of status 60
 - Immigrant or nonimmigrant status - Adopted child of citizen 61

 - Immigrant or nonimmigrant status - Alien commuters 63
 - Immigrant or nonimmigrant status - Aliens in transit 62
 - Immigrant or nonimmigrant status - Crewmen 64
 - Immigrant or nonimmigrant status - Distinguished merit and ability 65
 - Immigrant or nonimmigrant status - Enemy alien 66
 - Immigrant or nonimmigrant status - Expatriated citizen 67
 - Immigrant or nonimmigrant status - Fiancé 68
 - Immigrant or nonimmigrant status - Foreign officials 69
 - Immigrant or nonimmigrant status - Investors 77
 - Immigrant or nonimmigrant status - Lawfully admitted for permanent residence 73
 - Immigrant or nonimmigrant status - Specialized knowledge 74
 - Immigrant or nonimmigrant status - Specialty occupation 75
 - Immigrant or nonimmigrant status - Spouse of citizen 70

8 U.S.C.A. § 1101

- Immigrant or nonimmigrant status - Student 71
- Immigrant or nonimmigrant status - Temporary United States visitors 72
- Immigrant or nonimmigrant status - Treaty traders 76
- Immigration laws 78, 79
 - Immigration laws - Generally 78
 - Immigration laws - Laborers 79
- Investors, immigrant or nonimmigrant status 77
- Juvenile, special immigrant 90
- Kidnapping, aggravated felony 25
- Laborers, immigration laws 79
- Law governing 4
- Lawfully admitted for permanent residence, immigrant or nonimmigrant status 73
- Legitimacy, child 38
- Managerial capacity 80
- Miscellaneous offenses, aggravated felony 34
- Murder, good moral character 53
- Nationality 81-83
 - Nationality - Generally 81
 - Nationality - Dual nationality 82
 - Nationality - United States 83
- Naturalization 84
- Obstruction of justice, aggravated felony 26
- Officer 85
- Official restraint, entry 47
- Original entry 48
- Other laws 2
- Pleas, good moral character 55
- Profession 86
- Reentry as entry 49
- Residence 87
- Retroactive effect 6, 7
 - Retroactive effect - Generally 6
 - Retroactive effect - Aggravated felony 7
- Returning resident, special immigrant 89
- Sentence, aggravated felony 31
- Sentencing guidelines, aggravated felony 32
- Sex offenses, aggravated felony 27
- Sexual abuse of a minor, aggravated felony 28
- Special immigrant 88-90
 - Special immigrant - Generally 88
 - Special immigrant - Juvenile 90
 - Special immigrant - Returning resident 89
- Specialized knowledge, immigrant or nonimmigrant status 74
- Specialty occupation, immigrant or nonimmigrant status 75
- Spouse of citizen, immigrant or nonimmigrant status 70
- State law, aggravated felony 33
- State regulation or control 8a
- Student, immigrant or nonimmigrant status 71

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Tax offenses, aggravated felony 29
Temporary United States visitors, immigrant or nonimmigrant status 72
Theft, good moral character 54
Theft offenses, aggravated felony 30
Transition provisions 8
Treaties 3
Treaty traders, immigrant or nonimmigrant status 76
United States, nationality 83
Vacation of conviction, good moral character 56

1. Construction

Finding that Mexican alien had failed to establish ten years of continuous physical presence, as needed to avoid removal, was supported by evidence that she had returned to Mexico for approximately eight months during relevant period. *Vargas v. Gonzales*, C.A.9 2005, 150 Fed.Appx. 732, 2005 WL 2662739, Unreported. Aliens ↪ 54.1(4.1)

Statutory requirement that alien applying for naturalization must be of good moral character, precluding naturalization for an applicant who had been convicted of felony, applied to applicants for naturalization under statute governing naturalization of veterans. *Boatswain v. Gonzales*, C.A.2 (N.Y.) 2005, 414 F.3d 413, certiorari denied 126 S.Ct. 445, 163 L.Ed.2d 338. Aliens ↪ 62(5)

Immigration and Nationality Act does not include a judicially enforceable duty to proceed within a reasonable time, as is the case under Administrative Procedure Act (APA). *Kowalczyk v. I.N.S.*, C.A.10 2001, 245 F.3d 1143 . Aliens ↪ 54(1)

Fruit growers remained bound by voluntary and unconditional promise to pay foreign agricultural workers higher piece rate for 1985 harvest, as determined by district court's prior interpretation of regulation, even if district court decision was wrong and growers were entitled to relitigate meaning of regulation. *Frederick County Fruit Growers Ass'n, Inc. v. Martin*, C.A.D.C.1992, 968 F.2d 1265, 296 U.S.App.D.C. 394. Labor And Employment ↪ 2700

This chapter must be construed in favor of an alien, and the court of appeals will not assume that Congress meant to trench on an alien's freedom beyond that which is required by the narrowest of several possible meanings of the words used. *Marino v. Immigration and Naturalization Service*, U. S. Dept. of Justice, C.A.2 1976, 537 F.2d 686. Aliens ↪ 40

The Immigration and Naturalization Service is an "agency" within the terms of the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, and thus is subject to the requirements thereof in withdrawing approval, in the nature of a license, granted to institution of learning as place of study for nonimmigrant alien students. *Blackwell College of Business v. Attorney General*, C.A.D.C.1971, 454 F.2d 928, 147 U.S.App.D.C. 85. Administrative Law And Procedure ↪ 5; Aliens ↪ 44

The words of former chapter 11 of this title [now covered by this chapter] were plain and had to be accorded their usual significance and taken and understood in their plain, ordinary and popular sense. In re *Shaver*, C.C.A.7 (Ill.) 1944, 140 F.2d 180. Aliens ↪ 60.1

In determining whether prior conviction for third degree assault, in violation of Colorado law, was a felony, as would warrant imposition of 10-year maximum statutory sentence for defendant convicted of illegal reentry after deportation, sentencing court would not consider Colorado's characterization of the assault offense as a misdemeanor, but would only consider whether the offense was a felony under federal law. *U.S. v. Cordova-Arevalo*, D.N.M.2004, 373 F.Supp.2d 1220. Sentencing And Punishment ↪ 1276

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Nothing in language of Refugee Act of 1980 indicated congressional intent to extend asylum protection beyond listed categories to applications based solely on restrictive family planning policies carried out for neutral purposes of general population control. *Chen v. Slattery*, E.D.N.Y.1994, 862 F.Supp. 814. Aliens ↪ 53.10(3)

It is not within province of either the naturalization examiner or the court to enlarge, by interpretation, the intent of Congress either by reading into statute concerning requirements for naturalization provisions which Congress had seen fit to omit therefrom or by granting citizenship to petitioner who lacked one of the clearly stated requirements of the statute. In re C-C-J-P, N.D.Ill.1969, 299 F.Supp. 767. Aliens ↪ 62(1)

This chapter should be construed so as to effectuate the purposes intended by the Legislature and to avoid consequences which would completely frustrate that intention. *U. S. ex rel. Wong Kan Wong v. Esperdy*, S.D.N.Y.1961, 197 F.Supp. 914. Aliens ↪ 40

This chapter is not to be construed so as to make a provision meaningless. In re Oddo, D.C.N.Y.1953, 117 F.Supp. 323, reversed on other grounds 219 F.2d 137, certiorari granted 75 S.Ct. 774, 349 U.S. 927, 99 L.Ed. 1258, reversed on other grounds 76 S.Ct. 281, 350 U.S. 179, 100 L.Ed. 185. Aliens ↪ 40; Aliens ↪ 60.1

Substantial evidence supported immigration judge's adverse credibility finding with respect to alien's application for asylum, alleging he was persecuted not as the partner of a woman forced to have an abortion, but instead as a person who himself resisted China's coercive family planning policies. *Chen v. Gonzales*, C.A.7 2005, 152 Fed.Appx. 528, 2005 WL 2709346, Unreported. Aliens ↪ 54.1(4.1)

2. Other laws

The proper definition of "immigration laws," for purposes of Sentencing Guideline providing that sentence for being illegal alien found in United States following conviction and deportation may be enhanced if the prior conviction was not a felony involving violation of the immigration laws, is definition of such term found in definitions section of Immigration and Naturalization Act (INA), and, under such definition, immigration laws are those that criminalize conduct necessarily committed in connection with admission or exclusion of aliens. *U.S. v. Pineda-Garcia*, C.A.9 (Cal.) 1999, 164 F.3d 1233, certiorari denied 119 S.Ct. 1485, 526 U.S. 1079, 143 L.Ed.2d 567. Aliens ↪ 59

Although this chapter allocates limited role to Department of Labor, it vests primary responsibility for implementation with the Service. *Madany v. Smith*, C.A.D.C.1983, 696 F.2d 1008, 225 U.S.App.D.C. 53. Aliens ↪ 44

This section describing nonimmigrant alien as one temporarily coming to United States to perform temporary services of labor, if unemployed persons capable of performing such service or labor cannot be found within United States, and section 1182 of this title making such class of aliens ineligible to receive visas and excluding them from admission into United States did not authorize, impliedly or otherwise, private cause of action against persons employing such aliens by domestic farm workers and workers employed in agriculturally-related industries who complained that they were being deprived of employment by defendants' employment of "illegal entrants" into United States. *Chavez v. Freshpict Foods, Inc.*, D.C.Colo.1971, 322 F.Supp. 146, affirmed 456 F.2d 890, certiorari denied 93 S.Ct. 535, 409 U.S. 1042, 34 L.Ed.2d 492. Aliens ↪ 54.4

This chapter comprehensively revamping and codifying did not repeal or modify either the Declaratory Judgment Act, §§ 2201, 2202 of Title 28, or the Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, in respect to rights afforded for review of action of any governmental agency declining to recognize a claim to citizenship. *Tom Mung Ngow v. Dulles*, D.C.D.C.1954, 122 F.Supp. 709. Citizens ↪ 9.2; Citizens ↪ 9.2

3. Treaties

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Under the substantial evidence standard, reversal of the immigration judge (IJ) is improper unless Court of Appeals decides not only that the evidence supports a contrary conclusion, but also that the evidence compels it, and alien bears the burden of proving the requisite compelling nature of the evidence. *Majd v. Gonzales*, C.A.5 2006, 446 F.3d 590. Aliens, Immigration, And Citizenship ↻ 54.3(4)

The 1967 United Nations Protocol Relating to the Status of Refugees was not self-executing, and did not confer any rights beyond those granted by implementing domestic legislation. *Majd v. Gonzales*, C.A.5 2006, 446 F.3d 590. Treaties ↻ 13

International Covenant on Civil and Political Rights did not override nor supercede federal statutory immigration law because Congress never enacted implementing legislation for that treaty. *Chen v. Ashcroft*, C.A.10 (N.M.) 2004, 85 Fed.Appx. 700, 2004 WL 56365, Unreported. Aliens ↻ 40; Treaties ↻ 11

4. Law governing

State court's jurisdiction to determine that juvenile in custody of Immigration and Naturalization Service (INS) was dependent was not preempted by federal law, inasmuch as Congress had made no express command depriving juvenile courts of jurisdiction over immigrants in INS custody, such jurisdiction did not actually conflict with Immigration and Nationality Act (INA), and INA did not occupy the field so as to preclude jurisdiction. *Gao v. Jenifer*, C.A.6 (Mich.) 1999, 185 F.3d 548. Infants ↻ 132; States ↻ 18.28

Under provision of Immigration and Nationality Act governing legitimization of child, child may seek legitimization under law of child's residence or domicile, not only under law of father's residence or domicile. *Burgess v. Meese*, C.A.9 (Wash.) 1986, 802 F.2d 338.

California law was applicable in determining whether illegitimate son of California resident was entitled to a preferential immigrant visa even though neither father nor son had any contact with California before son's 18th birthday and, as father raised son during first seven years of his life and later established his domicile in California, father legitimated his son under California law. *Kaliski v. District Director of Immigration and Naturalization Service*, C.A.9 (Cal.) 1980, 620 F.2d 214.

A state law which recognizes legitimating acts which occur before father and child have any contact with the state is applicable in immigration cases. *Kaliski v. District Director of Immigration and Naturalization Service*, C.A.9 (Cal.) 1980, 620 F.2d 214.

Determination of child's legitimacy for purposes of obtaining visa preference is governed by the law applicable at the time and place of his birth. *Lau v. Kiley*, C.A.2 (N.Y.) 1977, 563 F.2d 543.

Neither federal student visa program nor the Student and Exchange Visitor Information System (SEVIS) used to monitor student visa holders preempted policy of Virginia post-secondary educational institutions denying admission to illegal aliens; creation of a student visa category did not completely occupy field of alien access to post-secondary educational institutions, and challenged policy did not conflict with federal eligibility criteria for student visas. *Equal Access Educ. v. Merten*, E.D.Va.2004, 305 F.Supp.2d 585. Colleges And Universities ↻ 9.15; States ↻ 18.25

Question of whether an illegitimate child has been legitimated within meaning of subsec. (b)(1)(C) of this section is a question of United States federal law. *de los Santos v. Immigration and Naturalization Service*, S.D.N.Y.1981, 525 F.Supp. 655, affirmed 690 F.2d 56.

5. Amendments

8 U.S.C.A. § 1101

Adequate justification existed for distinction drawn by amendments to Legal Immigration Family Equity Act (LIFE Act) between aliens who had not already been afforded opportunity to move to reopen their deportation proceedings to apply for relief under Nicaraguan Adjustment and Central American Relief Act (NACARA) and those previously afforded such opportunity, in that preventing aliens from being afforded duplicative opportunities to seek relief was within Congress's broad authority to determine shape of immigration laws, and therefore distinction did not violate equal protection component of Fifth Amendment. *Aguilar De Polanco v. U.S. Dept. of Justice*, C.A.2 2005, 398 F.3d 199, for additional opinion, see 123 Fed.Appx. 19, 2005 WL 333680. Aliens 40; Constitutional Law 250.5; Constitutional Law 274.3

Adoption of new definition of "conviction" for purposes of federal immigration laws pursuant to 1996 statutory amendment did not repeal, in whole or in part, provisions of Federal First Offender Act under which expungement of first-time simple possession drug offense results in protection against deportation, or extension of rule to require similar treatment for first-time simple drug possession offenses prosecuted and expunged under state laws, which is mandated by equal protection clause; amendment did not mention Act, and no irreconcilable conflict exists, as amendment can be read as subject to minor exception required by Act. *Lujan-Armendariz v. I.N.S.*, C.A.9 2000, 222 F.3d 728. Aliens 40

Neither fact that defendants' offense had recently been reclassified as an aggravated felony, subjecting him to deportation, nor amendments to the Immigration and Nationality Act (INA) by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) so altered the relationship between conviction and deportation as to require revisitation of rule that attorney's failure to inform a defendant of plea's immigration consequences is not ineffective assistance warranting allowance of motion to withdraw plea, even in the case of aliens who hail from countries with which the United States has no deportation agreement, resulting in administrative detention following release from prison. *U.S. v. Gonzalez*, C.A.1 (N.H.) 2000, 202 F.3d 20. Criminal Law 274(7)

Section of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) precluding appeal by alien who is deportable by reason of having committed one of certain criminal offenses did not deprive Court of Appeals of jurisdiction to determine presence of jurisdictional facts of whether petitioner was an alien and whether he had been convicted of one of the enumerated offenses. *Hall v. U.S. I.N.S.*, C.A.4 (Md.) 1999, 167 F.3d 852. Aliens 54.3(1)

Review of deportation decision by Court of Appeals was not "action taken", within meaning of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) section providing that certain amendments, including amendment to definition of "aggravated felony," applied only to "actions taken" after date of IIRIRA's enactment; thus, amended aggravated felony definition did not apply to review by Court of Appeals, for purpose of Antiterrorism and Effective Death Penalty Act (AEDPA) section precluding judicial review of final orders of deportation against aggravated felons, where no other relevant action was taken by Attorney General or alien after IIRIRA's enactment. *Valderrama-Fonseca v. I.N.S.*, C.A.9 1997, 116 F.3d 853. Aliens 40

Obvious intent of amendment made by Immigration Act of 1990, expanding definition of aggravated felony to include crimes of violence, was to provide effective date of expanded definition for relevant offense of illegal reentry into United States after deportation; amendment was not applicable to predicate offenses that may be used to enhance defendant's sentence. *U.S. v. Campbell*, C.A.4 (Md.) 1996, 94 F.3d 125, petition for certiorari filed 1996 WL 716285, certiorari denied 117 S.Ct. 1847, 520 U.S. 1242, 137 L.Ed.2d 1050. Aliens 56; Aliens 59

Relevant "offense" for determining when court should apply amended definition of aggravated felony, for purposes of sentence for illegal reentry into United States after deportation, is offense of illegal reentry itself, rather than aggravated felony. *U.S. v. Ulyses-Salazar*, C.A.9 (Cal.) 1994, 28 F.3d 932, certiorari denied 115 S.Ct. 1367, 514 U.S. 1020, 131 L.Ed.2d 223. Aliens 59

8 U.S.C.A. § 1101

Under the 1991 amendment to the Immigration Act, alien convicted for sale of cocaine was an "aggravated felon" regardless of the date of his conviction and was not entitled to automatic stay of deportation. *Arthurs v. U.S. I.N.S.*, C.A.9 1992, 959 F.2d 142. Aliens ↪ 53.10(1)

In enacting 1965 amendment to this section which had effect of replacing the phrase "departing from the United States temporarily" with "returning from a temporary visit abroad," Congress did not intend to close borders to alien commuters who have been admitted into United States for permanent residence, but who choose to keep a home in Canada or Mexico and to cross daily or seasonally into the United States to work. *Gooch v. Clark*, C.A.9 (Cal.) 1970, 433 F.2d 74, certiorari denied 91 S.Ct. 2170, 402 U.S. 995, 29 L.Ed.2d 160.

Alien, who was citizen of Guatemala, was ineligible for relief from removal under Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) because she was "apprehended after December 19, 1990, at time of entry," regardless of whether she had already met the residency requirements at that time. *Mendez v. Gonzales*, C.A.2 2006, 170 Fed.Appx. 177, 2006 WL 739701, Unreported. Aliens, Immigration, And Citizenship ↪ 53.10(2)

6. Retroactive effect--Generally

Statutory provision denying naturalization to persons convicted of felony was not improperly retroactively applied to legal resident alien, seeking naturalization under special provision for veterans serving during time of hostilities, when veteran committed felony after disqualification was enacted, even though felony disqualification provision was not in effect at time veteran performed service during time of hostility. *Boatswain v. Gonzales*, C.A.2 (N.Y.) 2005, 414 F.3d 413, certiorari denied 126 S.Ct. 445, 163 L.Ed.2d 338. Aliens ↪ 60.1

"Streamlining regulations" promulgated by the Attorney General in order to address backlog of immigration cases, which permitted adjudication of appeals by single Board of Immigration Appeals (BIA) member and, under certain circumstances, affirmance of immigration judges' decisions without opinion, entailed mere regulatory change in agency's appellate procedures, and did not, as applied to alien who filed application for asylum before regulations went into effect, have constitutionally impermissible retroactive effects. *Blanco de Belbruno v. Ashcroft*, C.A.4 2004, 362 F.3d 272. Aliens ↪ 44

Rule under the Immigration Marriage Fraud Amendments of 1986, barring alien from simultaneously filing both a petition for an immigrant visa and an application for adjustment of status did not apply to alien who married a United States citizen before the effective date of the Amendments, and he should have been permitted to make a simultaneous filing of a petition for an immigrant visa and an application for adjustment of status. *Castillo Ison v. I.N.S.*, C.A.9 2002, 308 F.3d 1036. Aliens ↪ 40

Amended definition of "conviction" with respect to an alien, as set forth in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), applies retroactively. *Perez v. Elwood*, C.A.3 (Pa.) 2002, 294 F.3d 552.

Amendment to Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) effected by Nicaraguan Adjustment and Central American Relief Act (NACARA), which created a special rule for cancellation of removal for aliens meeting certain requirements, did not apply to alien who had been placed in exclusion proceedings several years before IIRIRA's April 1, 1997, effective date, and rather, alien's request for relief from removal was governed by standards applicable prior to adoption of IIRIRA. *Fieran v. I.N.S.*, C.A.6 2001, 268 F.3d 340. Aliens ↪ 40

Alien whose exclusion proceedings commenced prior to effective date of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was not entitled to suspension of deportation, notwithstanding Nicaraguan Adjustment and Central American Relief Act's (NACARA) use of phrase "whether the alien is in exclusion or

8 U.S.C.A. § 1101

deportation proceedings" in rule applicable to aliens from certain Eastern European countries including alien's country of origin, inasmuch as purpose of such provision was not to create remedy of suspension for persons in exclusion proceedings, but merely to allow certain aliens to begin their proceedings anew without being subject to the IIRIRA's stop time rule. *Sherifi v. I.N.S.*, C.A.7 2001, 260 F.3d 737. Aliens ↪ 53.10(2)

"Stop-time" rule of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), preventing foreign nationals from accumulating, during deportation proceedings, the seven years' physical presence in United States necessary for suspension of deportation, was intended to apply retroactively to orders to show cause previously issued in suspension of deportation cases. *Bartoszewska-Zajac v. I.N.S.*, C.A.6 2001, 237 F.3d 710. Aliens ↪ 40

Retroactive application of "stop-time" rule of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), preventing foreign nationals from accumulating, during deportation proceedings, the seven years' physical presence in United States necessary for suspension of deportation, did not violate equal protection by distinguishing between foreign nationals who evade immigration authorities for seven years and those served before their seventh year; statute furthered legitimate governmental interest in removing incentive to delay deportation proceedings. *Bartoszewska-Zajac v. I.N.S.*, C.A.6 2001, 237 F.3d 710. Aliens ↪ 40; Constitutional Law ↪ 250.5

Alien's substantive due process rights were not violated by retroactive application to her of transitional stop-time rule of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), under which alien's accrual of time in residence in United States, for purposes of determining eligibility for suspension of deportation, ended on date of service of order to show cause, despite contention that alien had attained required seven years of continuous physical presence when IIRIRA was enacted and thus purpose of rule, to remove incentive for aliens to delay deportation proceedings, did not apply to alien's case; generalization underlying rule was rationally related to rule's purpose. *Rojas-Reyes v. I.N.S.*, C.A.2 2000, 235 F.3d 115. Aliens ↪ 40; Constitutional Law ↪ 253(4)

Provisions of Nicaraguan Adjustment and Central American Relief Act (NACARA) exempting certain nationalities from retroactive application of "stop time" provision, under which any period of continuous residence or continuous physical presence in United States was deemed to end, for purposes of suspension of deportation, when alien was served notice to appear, did not violate due process rights of alien not subject to such exemption, inasmuch as alien had no constitutionally protected interest in obtaining discretionary relief from deportation. *Ashki v. I.N.S.*, C.A.6 2000, 233 F.3d 913. Aliens ↪ 40; Constitutional Law ↪ 274.3

Non-criminal alien was in deportation proceedings, for purposes of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) section providing that alien in deportation proceedings as of IIRIRA's effective date was not subject to IIRIRA's rules providing for cancellation of removal, when Immigration and Naturalization Service (INS) filed Notice to Appeal (NTA) with Immigration Court, not previously when INS served alien with any Order to Show Cause (OSC) in response to alien's request to be placed in deportation proceedings; alien did not decide to attempt to accelerate consideration of his immigration status under compulsion of any pending criminal charges, he did not rely to his detriment on prior legal regime, and INS's failure to file with Immigration Court before IIRIRA's effective date was not in bad faith. *Costa v. I.N.S.*, C.A.1 2000, 233 F.3d 31. Aliens ↪ 40

Amendment requiring Attorney General's consent for juvenile court to have jurisdiction to determine custody status or placement of alien would not be applied retroactively to state dependency case arising prior to November 26, 1997, when amendment was enacted, inasmuch as threat of deportation and ability to avoid that threat implicated private rights, and Congress did not explicitly dictate that amendment should have retrospective application. *Gao v. Jenifer*, C.A.6 (Mich.) 1999, 185 F.3d 548. Aliens ↪ 40; Infants ↪ 132

Definition of "conviction" found in Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was retroactive, for purposes of determining whether alien was ineligible for permanent residence due to felony conviction; IIRIRA's plain language stated that it was to be applied to convictions entered before date of IIRIRA's

8 U.S.C.A. § 1101

enactment. *Moosa v. I.N.S.*, C.A.5 1999, 171 F.3d 994. Aliens ↪ 40

Permits issued under former § 201 et seq. of this title [now covered by this chapter], were not good for admission prior to July 1, 1924. *Gabriel v. Johnson*, C.C.A.1 (Mass.) 1928, 29 F.2d 347. Aliens ↪ 46

Amendment to Immigration and Nationality Act imposing additional requirements for adjustment of status of special immigrant juveniles did not apply retroactively to pending applications; Congress did not indicate that statute was to apply retroactively, and application of amendment to pending applications would have impermissibly attached new legal consequences to events completed prior to amendment. *Yu v. Brown*, D.N.M.2000, 92 F.Supp.2d 1236. Aliens ↪ 40

Application of permanent rules of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), rather than the transitional rules, to aliens, did not have an impermissibly retroactive effect, despite claim that aliens' admission of unlawful status in their asylum application created a settled expectation that if asylum were denied, they would be able to request suspension of deportation relief; charging documents were issued after effective date of permanent rules. *Ventosa v. Ashcroft*, C.A.3 2004, 92 Fed.Appx. 859, 2004 WL 363302, Unreported. Aliens ↪ 40

Amendments to Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied to alien's request for an adjustment of status, which was filed four years after he was ordered deported; status application was separate and distinct from his exclusion proceeding, alien, who did not move to reopen prior proceedings, neglected to mention existence of the earlier proceeding or deportation order in his application, and alien was illegally present in the United States, but he was not in any exclusion or deportation proceedings on effective date of amendments. *Omogiate v. I.N.S.*, C.A.7 (Ill.) 2003, 61 Fed.Appx. 258, 2003 WL 1466525, Unreported. Aliens ↪ 40

7. ---- Aggravated felony, retroactive effect

Retroactive application of expanded definition of "aggravated felony" under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) to alien who, at time he pled guilty to encouraging another alien to reside illegally in the United States, could not have been deported for that offense because it did not qualify as "aggravated felony," did not violate alien's due process rights; Congress had legitimate interests in protecting society from commission of aggravated felonies and in expeditiously removing aliens who committed such offenses from country, and such interests were rationally furthered by decision to make this expanded definition of "aggravated felony" retroactively applicable. *Sena v. Gonzales*, C.A.1 2005, 428 F.3d 50. Constitutional Law ↪ 253(4)

Denial, pursuant to Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), of opportunity to lawful permanent resident (LPR) alien to apply for waiver of deportation following his conviction upon guilty plea to aggravated felony did not have impermissible retroactive effect; even though alien pleaded guilty and was convicted prior to effective date of IIRIRA, he could not have pleaded guilty in reliance on his ability to obtain discretionary cancellation of removal because under Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) he was statutorily ineligible for relief at time he pleaded guilty. *Garcia-Echaverria v. U.S.*, C.A.6 (Ohio) 2004, 376 F.3d 507, rehearing en banc denied. Aliens ↪ 40

Pursuant to Congress' explicit direction that new provisions of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) apply retroactively, expanded definition of "aggravated felony" applied to alien against whom removal proceedings were initiated after IIRIRA's enactment, and thus, alien's pre-IIRIRA convictions were properly considered in determining his eligibility for discretionary waiver of removal, without regard to whether those convictions were considered aggravated felonies when he pled guilty to those offenses. *Brown v. Ashcroft*, C.A.2 (N.Y.) 2004, 360 F.3d 346. Aliens ↪ 40

8 U.S.C.A. § 1101

Expanded definition of "aggravated felony," an alien's conviction of which will render him subject to deportation and preclude review of removal order, is to be applied retroactively. *Gomez-Diaz v. Ashcroft*, C.A.7 2003, 324 F.3d 913, 194 A.L.R. Fed. 775. Aliens ↪ 40

Pursuant to Congress' explicit direction that new provisions of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) apply retroactively, expanded definition of "aggravated felony" applied to alien against whom removal proceedings were initiated after IIRIRA's enactment, notwithstanding alien's insistence that such result upset his settled expectations under immigration statute in place at time of his conviction. *Kuhali v. Reno*, C.A.2 (N.Y.) 2001, 266 F.3d 93. Aliens ↪ 40

Alien possessed no due process right to be eligible for discretionary relief from removal, nor even a right not to be deemed ineligible based on expanded definition of "aggravated felony" that postdated his guilty pleas, of kind required to support due process challenge to denial of relief from removal. *Mohammed v. Ashcroft*, C.A.11 2001, 261 F.3d 1244. Aliens ↪ 53.10(1); Constitutional Law ↪ 274.3

Expanded definition of "aggravated felony" added to Immigration and Naturalization Act (INA) by Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was meant to apply retroactively, to aliens convicted of otherwise nonqualifying offenses prior to statute's effective date, so as to render such aliens ineligible for relief from removal. *Mohammed v. Ashcroft*, C.A.11 2001, 261 F.3d 1244. Aliens ↪ 40

Defendant's prior burglary conviction was "aggravated felony" for purposes of applying 16-level increase to base level offense in sentencing defendant convicted of unlawfully reentering the United States after being deported; even though burglary was not "aggravated felony" when defendant was convicted of burglary, expanded definition of "aggravated felon" in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) removed temporal limitation based on date of prior conviction. *U.S. v. Luna-Reynoso*, C.A.2 (N.Y.) 2001, 258 F.3d 111. Sentencing And Punishment ↪ 780

Expanded definition of "aggravated felon" in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which removed any temporal limitation based on the date of conviction, established that an alien was removable as an aggravated felon, despite his claim that the statutory section making aggravated felons removable did not contain any provision for retroactive application; the removal provision necessarily adopted the enlarged definition, including the rejection of temporal limitations. *Sousa v. I.N.S.*, C.A.1 2000, 226 F.3d 28. Aliens ↪ 40

Section of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amending definition of "aggravated felony" could be retroactively applied so as to render deportable an alien who had pled guilty to offense that was not "aggravated felony" at time of plea. *Aragon-Ayon v. I.N.S.*, C.A.9 2000, 206 F.3d 847. Aliens ↪ 40

Expansion of definition of "aggravated felony" in Antiterrorism and Effective Death Penalty Act (AEDPA) to include conviction of alien for conspiracy to participate in racketeering enterprise entered before effective date of AEDPA was not improper retroactive application, even though alien's conviction was not considered "aggravated felony" under prior law. *Alfarache v. Cravener*, C.A.5 (Tex.) 2000, 203 F.3d 381, certiorari denied 121 S.Ct. 46, 531 U.S. 813, 148 L.Ed.2d 16. Aliens ↪ 40

Where defendant reentered United States after deportation, and then remained in United States after enactment of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), he was subject to IIRIRA's amended definition of "aggravated felony," inasmuch as his act of remaining in United States was "action taken" within meaning of IIRIRA section providing that IIRIRA's retroactive application of amended definition of "aggravated felony" applied to "actions taken" on or after date of IIRIRA's enactment. *U.S. v. Mendoza-Irbe*, C.A.9 (Nev.) 1999, 198 F.3d 742, certiorari denied 120 S.Ct. 1572, 529 U.S. 1061, 146 L.Ed.2d 475. Aliens ↪ 40

8 U.S.C.A. § 1101

Dismissal by Board of Immigration Appeals (BIA) of aliens' appeal of denial of asylum was "action" for purposes of section of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) providing that IIRIRA's amendment of definition of "aggravated felony" applied to actions taken on or after date of IIRIRA's enactment. *Ortiz v. I.N.S.*, C.A.9 1999, 179 F.3d 1148. Aliens ↪ 40

Alien convicted of murder prior to effective date of section of Anti-Drug Abuse Act (ADAA) allowing for deportation of aggravated felons could not be deported under such section, notwithstanding section of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that amended effective date of definition of "aggravated felony"; IIRIRA eliminated temporal restrictions that existed for different kinds of aggravated felonies, not temporal restrictions associated with consequences of being aggravated felon. *Lettman v. Reno*, C.A.11 1999, 168 F.3d 463, rehearing granted, opinion vacated in part 185 F.3d 1216, on rehearing 207 F.3d 1368. Aliens ↪ 40; Aliens ↪ 53.2(1)

Board of Immigration Appeals' retroactive application of statutory bar to waiver of inadmissibility for alien convicted of aggravated felony who served term of imprisonment for at least five years was reasonable construction of statute. *Asencio v. I.N.S.*, C.A.11 1994, 37 F.3d 614. Aliens ↪ 40

Statutory provision, stating that alien convicted of aggravated felony may not apply for or be granted asylum, retroactively applied to bar Afghanistan citizen, who had been convicted of importation of heroin, from seeking political asylum. *Feroz v. I.N.S.*, C.A.9 1994, 22 F.3d 225. Aliens ↪ 40; Aliens ↪ 53.10(3)

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provision, making alien deportable for aggravated felony conviction, was retroactively applicable to alien whose conviction predated Act's effective date; that Congress intended provision to apply retroactively was sufficiently clear from its explicitly retroactive definition of term "aggravated felony." *Galicia v. Crawford*, D.Or.2003, 294 F.Supp.2d 1191. Aliens ↪ 40

Illegal Immigration Reform and Immigrant Responsibility Act's (IIRIRA's) expanded definition of "aggravated felonies" for which alien may be removed could be applied retroactively to alien who pled guilty to third-degree robbery a few weeks before effective date of the IIRIRA amendments; strong presumption against retroactive legislation embodied in the Supreme Court's *Landgraf* decision was inapplicable, given that Congress had explicitly defined temporal reach of the IIRIRA. *Gomez v. Ashcroft*, D.Conn.2003, 293 F.Supp.2d 162. Aliens ↪ 40

Retroactive application of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provision which made alien removable, by redefining "aggravated felony" to include alien's prior conviction, did not violate Due Process Clause, where alien did not have any settled expectation of being eligible for discretionary relief; alien was not treated differently from similarly-situated aliens, and there was a rational basis for affording discretionary relief only to aliens with a settled expectation regarding their eligibility for such relief. *U.S. v. Saldivar-Vargas*, S.D.Cal.2003, 273 F.Supp.2d 1130, amended on reconsideration 290 F.Supp.2d 1210. Aliens ↪ 40; Constitutional Law ↪ 253(4)

Congress intended the 1996 amendments to Immigration and Nationality Act to make the aggravated felony definition apply retroactively to all defined offenses whenever committed, and to make aliens so convicted eligible for deportation notwithstanding the passage of time between the crime and the removal order. *Mathews v. I.N.S.*, D.Mass.2001, 170 F.Supp.2d 99. Aliens ↪ 40

Application of Illegal Immigration Reform and Immigrant Responsibility Act's (IIRIRA) expansion of definition of the term "aggravated felony" to render alien deportable on basis of pre-IIRIRA conviction did not violate due process in view of fact that alien remained eligible for discretionary relief from deportation. *Maria v. McElroy*, E.D.N.Y.1999, 68 F.Supp.2d 206. Aliens ↪ 40; Constitutional Law ↪ 253(4)

8 U.S.C.A. § 1101

Illegal Immigration Reform and Immigrant Responsibility Act's (IIRIRA) expansion of definition of the term "aggravated felony" rendered alien deportable on basis of pre-IIRIRA conviction. *Maria v. McElroy*, E.D.N.Y.1999, 68 F.Supp.2d 206. Aliens ↪ 40

Subsequent rejections, by Board of Immigration Appeals (BIA) sitting en banc, the Court of Appeals, and the Supreme Court, of BIA's interpretation of term "crime of violence," as used in immigration statute's definition of "aggravated felony" at time of defendant's sentencing for illegal reentry after deportation, to include offense of driving under the influence (DUI), were decisions of statutory construction, and thus, applied retroactively. *U.S. v. Rodriguez-Chavez*, C.A.10 (Kan.) 2005, 153 Fed.Appx. 524, 2005 WL 2995594, Unreported, certiorari denied 126 S.Ct. 1594, 164 L.Ed.2d 317. Courts ↪ 100(1)

Illegal Immigration Reform and Immigrant Responsibility Act's (IIRIRA) expanded definition of an aggravated felony could be retroactively applied to alien in removal proceedings, even though at time he pleaded guilty to California offense of rape by force or fear his conviction was not considered an aggravated felony for removal purposes; Congress, in passing IIRIRA, clearly expressed its intention to apply the expanded definition of aggravated felony retroactively. *Valente-Narcizo v. Gonzales*, C.A.9 2005, 139 Fed.Appx. 878, 2005 WL 1663139, Unreported. Aliens ↪ 40

Expanded definition of "aggravated felony" in Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied retroactively to encompass alien's robbery conviction that predated enactment of IIRIRA, even though conviction predated Anti-Drug Abuse Act of 1988 (ADAA) and Immigration Act of 1990 (IMMAct). *Paul v. U.S. I.N.S.*, C.A.2 2004, 102 Fed.Appx. 195, 2004 WL 1367934, Unreported, certiorari denied 126 S.Ct. 371, 163 L.Ed.2d 133. Aliens ↪ 40

Retroactive application of expanded definition of "aggravated felony" under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), to alien who was convicted of sexual abuse, endangering welfare of minor, and sodomy prior to IIRIRA's enactment, did not raise substantial constitutional question. *Bacchus v. Ashcroft*, C.A.2 (N.Y.) 2003, 78 Fed.Appx. 779, 2003 WL 22440385, Unreported. Aliens ↪ 40

Alien, as lawful permanent resident, was not eligible for discretionary relief from deportation, even though his conviction for weapons possession occurred several years before Congress eliminated discretionary relief for aggravated felons; alien was not eligible for discretionary relief at time of conviction due to his weapons possession conviction. *Cartagena-Paulino v. Reno*, S.D.N.Y.2003, 2003 WL 21436224, Unreported. Aliens ↪ 53.10(1)

8. Transition provisions

Enactment of provision of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) barring appeals in cases where an alien is inadmissible or deportable by reason of having committed a specified criminal offense, under which Court of Appeals is divested of jurisdiction to hear claims of constitutional error on direct appeal from order of Board of Immigration Appeals (BIA), did not violate due process clause, since habeas corpus relief remained available for claims of constitutional violations in deportation proceedings. *Alfaro-Reyes v. I.N.S.*, C.A.9 2000, 224 F.3d 916. Aliens ↪ 40; Constitutional Law ↪ 274.3

Under transitional rule of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) precluding appeal in case of alien who is deportable by reason of having committed aggravated felony, Court of Appeals has jurisdiction to decide whether it has jurisdiction, that is, to decide whether alien is deportable; however, jurisdiction disappears if alien is found deportable. *Lettman v. Reno*, C.A.11 1999, 168 F.3d 463, rehearing granted, opinion vacated in part 185 F.3d 1216, on rehearing 207 F.3d 1368. Aliens ↪ 54.3(1)

Under transitional rules of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), alien who is

8 U.S.C.A. § 1101

subject to deportation order is not entitled to automatic stay of deportation, simply by virtue of filing petition for review, but, rather, it is within discretion of Court of Appeals. *Lucacela v. Reno*, C.A.7 1998, 161 F.3d 1055. Aliens ↪ 54.3(1)

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) section precluding judicial review of discretionary decisions of the Board of Immigration Appeals (BIA) does not violate the Due Process Clause. *Antonio-Cruz v. I.N.S.*, C.A.9 1998, 147 F.3d 1129. Aliens ↪ 40; Constitutional Law ↪ 274.3

8A. State regulation or control

Louisiana Supreme Court Rule which renders nonimmigrant aliens ineligible to sit for the Louisiana Bar, despite fact that, under the Immigration and Nationality Act (INA), such aliens are permitted to seek professional licensing, did not conflict with the INA, which in no way mandated domestic professional licensing, or stand as obstacle to federal law, and was not impliedly preempted. *LeClerc v. Webb*, C.A.5 (La.) 2005, 419 F.3d 405, rehearing and rehearing in banc denied 444 F.3d 428. States ↪ 18.67

9. Declaratory judgment

Immigration judge (IJ) in deportation proceeding underlying defendant's unlawful reentry prosecution under Immigration and Nationality Act (INA) erred in determining that defendant's prior conviction for driving while intoxicated was "aggravated felony" under Washington law, since statute that defendant was charged with violating did not require recklessness in order for person to be convicted. *U.S. v. Modica-Linos*, E.D.Wash.2005, 399 F.Supp.2d 1114. Aliens ↪ 54.2(3)

Under this chapter, one who is not within United States, and who claims a right or privilege as a national of the United States, may not institute proceeding in federal courts for declaratory judgment with respect to right claimed, or for review of action by administrative agencies with respect to such right, except as such question arises in a habeas corpus proceeding in circumstances set forth in note under this section. *D'Argento v. Dulles*, D.C.D.C.1953, 113 F.Supp. 933.

10. Admission

Date on which alien, who had initially been admitted as nonimmigrant visitor, adjusted his status to that of lawful permanent resident was not his "date of admission" for purposes of statute rendering removable any alien convicted of crime of moral turpitude if crime was committed within five years of date of admission; inasmuch as admission as nonimmigrant visitor qualified as admission under statutory definition of admission and occurred more than five years before commission of crimes, alien was not removable under statute. *Aremu v. Department Of Homeland Security*, C.A.4 2006, 450 F.3d 578. Aliens, Immigration, And Citizenship ↪ 280

Detention during pendency of removal proceeding was mandatory for former lawful permanent resident who was reclassified as an "alien seeking admission." *Mejia v. Ashcroft*, D.N.J.2005, 360 F.Supp.2d 647. Aliens ↪ 53.9

Alien who was paroled into and was physically present in the United States did not "enter" the United States and was not "admitted" into the United States within the meaning of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). *Napoles v. I.N.S.*, D.Conn.2003, 278 F.Supp.2d 272. Aliens ↪ 53.6(1)

11. Affiliation

Under former § 137(g) of this title providing for deportation of aliens who were members of or affiliated with any organization that believed in the overthrow by force of the government of the United States, "affiliation" imported less than membership but more than sympathy, and a working alliance to bring to fruition the proscribed program

8 U.S.C.A. § 1101

of a proscribed organization, as distinguished from mere co-operation with a proscribed organization in lawful activities, was essential. *Bridges v. Wixon*, U.S.Cal.1945, 65 S.Ct. 1443, 326 U.S. 135, 89 L.Ed. 2103.

Deportation is not a criminal punishment, but it may deprive an alien of the right to pursue a vocation or result in the loss of all that makes life worth living, and it cannot be assumed that Congress in providing for the deportation of alien members or affiliates of organizations believing in the overthrow by force of the government of the United States employed "affiliation" in a broad, fluid sense that would visit such a hardship on an alien for slight or insubstantial reasons. *Bridges v. Wixon*, U.S.Cal.1945, 65 S.Ct. 1443, 326 U.S. 135, 89 L.Ed. 2103.

For purpose of determining whether alien was affiliated with Communist Party, "affiliation" as used in provision of former § 137 of this title authorizing exclusion of aliens affiliated with organizations believing in, advising, advocating, or teaching overthrow of United States government by force, required showing that alien had so conducted himself as to have brought about status of mutual recognition that he might be relied on to co-operate with Communist Party on fairly permanent basis, and not merely that he was in sympathy with its aims or willing to aid it in casual intermittent way. *U.S. ex rel. Kettunen v. Reimer*, C.C.A.2 (N.Y.) 1935, 79 F.2d 315.

Determination by Immigration and Naturalization Service (INS) that United States company was not an affiliate of Taiwan based company, as required for intercompany transfer visa, was not arbitrary or capricious, although both companies were indirectly owned by same individuals through holding companies; INS regulations required exact same group of individuals to own the two companies claimed to be affiliates in approximately same proportion and interpreted the term "individuals" to exclude companies. *Sun Moon Star Advanced Power, Inc. v. Chappell*, N.D.Cal.1990, 773 F.Supp. 1373.

12. Aggravated felony--Generally

Political offense exception to the Immigration and Nationality Act (INA) was not applicable to alien, a native and citizen of Northern Ireland, applying of relief from removal order, who had engaged in terrorist activities. *Mcallister v. Attorney General of U.S.*, C.A.3 2006, 444 F.3d 178. Aliens, Immigration, And Citizenship 53.10(1)

A state felony drug conviction which does not contain a trafficking component must be punishable as a felony under federal law in order for it to constitute an "aggravated felony," for purpose of applying sentencing enhancement under the Immigration and Nationality Act (INA); INA defines an "aggravated felony" as a drug trafficking crime or a felony punishable under the Controlled Substance Act (CSA), the CSA defines felony as a federal offense with a maximum punishment exceeding one year, and legislative history of INA confirms that Congress did not intend for state felony convictions that do not have any drug trafficking element to qualify as aggravated felonies, unless the state convictions would be punishable as federal felonies under the CSA. *U.S. v. Palacios-Suarez*, C.A.6 (Ohio) 2005, 418 F.3d 692. Sentencing And Punishment 793

Alien who was legal permanent resident and had served in military during time of hostilities was precluded from naturalization, under statute governing naturalization of veterans, by felony conviction which barred satisfaction of requirement that he have good moral character. *Boatswain v. Gonzales*, C.A.2 (N.Y.) 2005, 414 F.3d 413, certiorari denied 126 S.Ct. 445, 163 L.Ed.2d 338. Aliens 62(5)

To determine whether offense of which alien has been convicted qualifies as "aggravated felony," so as to provide basis for alien's removal and to make alien ineligible for cancellation of removal, Court of Appeals looks to statute under which alien was convicted and compares its elements to definition of aggravated felony in the Immigration and Nationality Act (INA). *Ferreira v. Ashcroft*, C.A.9 (Ariz.) 2004, 390 F.3d 1091. Aliens 53.2(3)

To determine whether offense of which alien has been convicted qualifies as "aggravated felony," so as to provide basis for alien's removal and to make alien ineligible for cancellation of removal, Court of Appeals first employs

8 U.S.C.A. § 1101

categorical analysis, under which an offense qualifies as aggravated felony if and only if full range of conduct covered by criminal statute falls within meaning of that term. *Ferreira v. Ashcroft*, C.A.9 (Ariz.) 2004, 390 F.3d 1091. Aliens ↪ 53.2(3)

Court of Appeals reviews de novo whether crime of which alien was convicted qualifies as "aggravated felony," for removal purposes. *Li v. Ashcroft*, C.A.9 2004, 389 F.3d 892. Aliens ↪ 54.3(4)

To decide whether criminal offense of which alien was convicted qualifies as "aggravated felony," and thereby provides basis for alien's removal, court's first task is to make categorical comparison, under which offense qualifies as "aggravated felony" if and only if the full range of conduct covered by statute of conviction falls within meaning of that term; if statute of conviction is not a categorical match, because it criminalizes conduct that does and does not qualify as aggravated felony, court then employs modified categorical approach, under which it considers whether documents or other judicially noticeable facts in record indicate that alien was convicted of the elements of the generically defined crime, though statute of conviction was facially overinclusive. *Huerta-Guevara v. Ashcroft*, C.A.9 2003, 321 F.3d 883. Aliens ↪ 53.2(3)

If criminal statute under which alien was convicted is not categorical match with definition of "aggravated felony" in the Immigration and Nationality Act (INA), because statute criminalizes both conduct that does and conduct that does not qualify as aggravated felony under the INA, Court of Appeals, in deciding whether alien's conviction provides basis for removal, proceeds to modified categorical approach, under which it conducts a limited examination of documents in record of conviction, to determine whether there is sufficient evidence to conclude that alien was convicted of elements of the generically defined crime, even though his or her statute of conviction is facially overinclusive. *Ferreira v. Ashcroft*, C.A.9 (Ariz.) 2004, 390 F.3d 1091. Aliens ↪ 53.2(3)

It was not fundamentally unfair to treat alien as an aggravated felon because Board of Immigration Appeals (BIA) failed to apply its erroneous interpretation of "aggravated felony" statutes at time that alien was removed. *U.S. v. Hernandez-Avalos*, C.A.5 (Tex.) 2001, 251 F.3d 505, certiorari denied 122 S.Ct. 305, 534 U.S. 935, 151 L.Ed.2d 226.

Only foreign, not domestic, offenses are subject to the limitation that the term of imprisonment was completed within the previous 15 years, in order to be considered aggravated felonies for purposes of sentencing as an alien who reentered illegally after having previously been deported following his conviction of an aggravated felony. *U.S. v. Gitten*, C.A.2 (N.Y.) 2000, 231 F.3d 77, post-conviction relief denied 2001 WL 363052, reconsideration denied 2002 WL 662883, reconsideration denied 2002 WL 1891338, remanded 311 F.3d 529. Sentencing And Punishment ↪ 794

Statutes making an alien deportable if convicted of an aggravated felony and depriving courts of jurisdiction to review any final order of removal for committing an aggravated felony do not require that the offense actually have been a felony. *Wireko v. Reno*, C.A.4 2000, 211 F.3d 833. Aliens ↪ 53.2(3); Aliens ↪ 54.3(1)

Prior conviction for third degree assault, in violation of Colorado law, was not an "aggravated felony," as would warrant imposition of 20-year maximum statutory sentence for defendant convicted of illegal reentry after deportation, where defendant was sentenced to 10 days in jail on the prior offense. *U.S. v. Cordova-Arevalo*, D.N.M.2004, 373 F.Supp.2d 1220. Sentencing And Punishment ↪ 1276

Where a criminal statute is "divisible," meaning it contains both crimes that fit the statutory definition of a deportable offense under the INA and those that do not, an alien will not be deemed to have committed a deportable offense unless his record of conviction clearly indicates that he was convicted of a particular subcategory of the statute proscribing a deportable offense. *Kendall v. Mooney*, E.D.N.Y.2003, 273 F.Supp.2d 216. Aliens ↪ 53.2(3)

8 U.S.C.A. § 1101

13. ---- Alien smuggling, aggravated felony

Petitioner's conviction for harboring an alien met the definition of an "aggravated felony" under Immigration and Naturalization Act (INA) despite fact that petitioner had no part in the alien's illegal admission or entry; parenthetical "relates to alien smuggling" in statutory definition of "aggravated felony" was descriptive of all of the offenses contained in statute prohibiting bringing in and harboring certain aliens. *Patel v. Ashcroft*, C.A.3 2002, 294 F.3d 465. Aliens ↩ 53.2(3)

Offense of harboring illegal aliens was an "aggravated felony" pursuant to statutory definition of aggravated felony as an offense described in certain paragraphs of aliens and nationality title, which definition included the parenthetical "relating to alien smuggling," and thus, Court of Appeals lacked jurisdiction over petition for review of order of removal of illegal alien convicted of harboring and aiding and abetting the harboring of an illegal alien. *Castro-Espinosa v. Ashcroft*, C.A.9 2001, 257 F.3d 1130. Aliens ↩ 53.2(3); Aliens ↩ 54.3(1)

Alien's prior conviction for transporting illegal aliens who were already in United States was "aggravated felony" under provision of Immigration and Nationality Act (INA) permitting upward adjustment of sentence for prior aggravated felony, even though INA provision referred to convictions "relating to alien smuggling;" provision was descriptive, rather than restrictive. *U.S. v. Galindo-Gallegos*, C.A.9 (Cal.) 2001, 244 F.3d 728, as amended, amended 255 F.3d 1154. Sentencing And Punishment ↩ 780

Prior conviction of transporting aliens was for an "aggravated felony" for purposes of an increase in the base offense level under federal sentencing guidelines; transportation of aliens was "related to" alien smuggling within meaning of statute defining aggravated felonies. *U.S. v. Salas-Mendoza*, C.A.10 (Okla.) 2001, 237 F.3d 1246. Sentencing And Punishment ↩ 780

Alien convicted of illegally transporting illegal aliens from one point to another within United States without crossing national border committed aggravated felony under statute requiring deportation of aliens convicted of violations of statutes "relating to alien smuggling"; reference of "alien smuggling" in deportation statute was merely shorthand description of class of crimes listed within referenced statute, not restriction on crimes covered by statute. *Ruiz-Romero v. Reno*, C.A.5 2000, 205 F.3d 837. Aliens ↩ 53.2(3)

Parenthetical "(relating to alien smuggling)" contained in subsection of the Immigration and Nationality Act defining "aggravated felony" as meaning "an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling)," was descriptive, rather than restrictive, in nature; given subsection's context within a long list of aggravated felonies, parenthetical provided an aid to identification, other parentheticals in the same statute were expressly limiting, unlike this one, thus demonstrating Congress' ability to exclude some specific offenses from those listed in the more general sections, and phrase "relating to alien smuggling" did describe the offenses in the cited statute. *U.S. v. Monjaras-Castaneda*, C.A.5 (Tex.) 1999, 190 F.3d 326, rehearing denied, certiorari denied 120 S.Ct. 1254, 528 U.S. 1194, 146 L.Ed.2d 111. Aliens ↩ 59

Chinese national who sought naturalization was barred in perpetuity from establishing that he was person of good moral character, due to prior conviction for conspiracy to smuggle illegal aliens; conspiracy was "aggravated felony" under Immigration and Nationality Act (INA), bar applied to one who at any time had been convicted of aggravated felony, applicable section of INA had retroactive effect, and national's prior discretionary relief from deportation did not mandate naturalization. *Chan v. Gantner*, S.D.N.Y.2005, 374 F.Supp.2d 363. Aliens ↩ 62(5)

Resident alien was ineligible, under statutes in effect prior to enactment of Antiterrorism and Effective Death Penalty Act (AEDPA), for discretionary relief from final order of deportation, where alien had been convicted of alien smuggling and drug trafficking offenses, both of which were aggravated felonies, and had served five years in prison for those convictions. *Calderon v. Reno*, N.D.Ill.1998, 39 F.Supp.2d 943, reconsideration denied 56 F.Supp.2d 997. Aliens ↩ 53.10(1)

8 U.S.C.A. § 1101

Alien remained eligible for cancellation of removal despite his testimony that he paid a smuggler to assist his minor children to enter the United States without inspection; alien was eligible for a family unity waiver. *Velazquez v. Gonzales*, C.A.9 2006, 175 Fed.Appx. 152, 2006 WL 925061, Unreported. Aliens, Immigration, And Citizenship ¶ 311

Alien's conviction for concealing and harboring illegal aliens qualified as an aggravated felony, so as to bar alien from eligibility for asylum, regardless of whether Department of Homeland Security had formally charged him as an alien convicted of an aggravated felony. *Zhen v. Gonzales*, C.A.10 2006, 2006 WL 895505, Unreported. Aliens, Immigration, And Citizenship ¶ 509(2)

14. ---- Attempt, aggravated felony

Defendant who was found to be unlawfully in United States following deportation after September 30, 1996 effective date of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was subject to sentencing pursuant to IIRIRA's definition of "aggravated felony," so that his prior New York conviction for attempted murder, for which he served term of 30 to 90 months' imprisonment, was properly treated as an "aggravated felony" for sentencing purposes following his conviction for being found unlawfully in United States. *U.S. v. Morgan*, C.A.2 (N.Y.) 2004, 380 F.3d 698. Sentencing And Punishment ¶ 663; Sentencing And Punishment ¶ 793

Conduct admitted by defendant in previous guilty plea was "attempt" to commit a "theft offense" under Immigration and Nationality Act; information had charged him with intent to commit a theft and with taking a substantial step toward commission of theft in unlawfully entering a motor vehicle without owner's consent, and defendant admitted to this in his plea. *U.S. v. Martinez-Garcia*, C.A.7 (Ill.) 2001, 268 F.3d 460, certiorari denied 122 S.Ct. 1111, 534 U.S. 1149, 151 L.Ed.2d 1006. Aliens ¶ 53.2(3)

"Aggravated felony" provision of statute establishing crime of re-entry after deportation following an aggravated felony applied to defendant's pre-1988 attempted murder conviction; thus, defendant was not prejudiced by failure of his appellate counsel to raise the issue, and consequently defendant could not establish that appellate counsel was constitutionally ineffective. *Tapia-Garcia v. U.S.*, S.D.N.Y.1999, 53 F.Supp.2d 370. Aliens ¶ 56; Criminal Law ¶ 641.13(7)

15. ---- Burglary, aggravated felony

Alien's Texas offense of burglary of a vehicle, for which he was sentenced to five years' deferred adjudication, was "crime of violence" for which term of imprisonment was at least one year, and thus was "aggravated felony" rendering alien deportable. *Santos v. Reno*, C.A.5 (Tex.) 2000, 228 F.3d 591. Aliens ¶ 53.2(3)

Alien's California offense of vehicle burglary, based on information alleging that he entered locked vehicle with intent to commit theft, did not by its nature involve substantial risk of physical force so as to be "crime of violence" rendering him removable; vehicle burglary could be committed in numerous ways short of using violent physical force, and there was little risk of thief stumbling on unexpected occupant in vehicle. *Sareang Ye v. I.N.S.*, C.A.9 2000, 214 F.3d 1128, 168 A.L.R. Fed. 789. Aliens ¶ 53.2(3)

Alien's Illinois offense of "burglary" of an automobile was not "burglary offense" that would render him deportable under Immigration and Nationality Act (INA), inasmuch as offense did not include "building or structure" element required for the generic offense of burglary. *Solorzano-Patlan v. I.N.S.*, C.A.7 2000, 207 F.3d 869. Aliens ¶ 53.2(3)

Alien's burglary conviction was an "aggravated felony" rendering him removable under Immigration and Nationality Act section providing for deportation of aliens convicted of aggravated felonies, although he was

8 U.S.C.A. § 1101

initially sentenced to probation on burglary conviction, where his conditional sentence to probation was revoked because he violated conditions of probation, and he was sentenced to serve four-year prison term. *Da Rosa Silva v. I.N.S.*, E.D.Pa.2003, 263 F.Supp.2d 1005. Aliens ↪ 53.2(3)

16. ---- Conspiracy, aggravated felony

Alien pled guilty to entire conspiracy set forth in first count of indictment, including conspiracy to defraud financial institution, which qualified as aggravated felony offense for purposes of removal, notwithstanding more restrictive "nature of offense" language in amended judgment order, which was limited to conspiracy to sell stolen cars, where written plea agreement called for his plea to entire count, fraud included. *Iysheh v. Gonzales*, C.A.7 2006, 437 F.3d 613. Aliens ↪ 53.2(3)

Because substantive offense of uttering or possessing counterfeit securities qualifies as aggravated felony for which alien may be removed, conspiracy to commit substantive offense also qualifies as aggravated felony without regard to whether, under particular factual circumstances, conspirators could have achieved their substantive objective. *Kamagate v. Ashcroft*, C.A.2 (N.Y.) 2004, 385 F.3d 144. Aliens ↪ 53.2(3)

Prior conviction for conspiracy to transport and harbor illegal aliens qualified as an "alien smuggling offense," required to be treated as aggravated felony, under sentencing guideline providing for 16-level increase for alien convicted of illegal reentry after deportation following conviction for aggravated felony; term "smuggling" did not require border crossing, and statutory definition of "alien smuggling" included acts closely-related to alien smuggling offenses, such as transporting and harboring aliens. *U.S. v. Martinez-Candejas*, C.A.10 (Utah) 2003, 347 F.3d 853. Sentencing And Punishment ↪ 780

Alien's conviction for conspiracy to commit money laundering did not constitute the aggravated felony of trafficking in a controlled substance for removal purposes; Board of Immigration Appeals (BIA) could not rely solely on presentence report (PSR) to demonstrate the elements of alien's conviction. *Lara-Chacon v. Ashcroft*, C.A.9 2003, 345 F.3d 1148, as amended. Aliens ↪ 54.1(5)

In sentencing for conspiring to sell stolen artwork, district court abused its discretion by granting downward departure for purpose of allowing defendant to remain eligible to apply for asylum on basis that her theft offense resulted in sentence of less than one year; departure encroached on prerogative of legislative branch. *U.S. v. Aleskerova*, C.A.2 (N.Y.) 2002, 300 F.3d 286.

Illegal reentry defendant's earlier conviction, for conspiring to perpetrate a checking and savings account kite scheme, was in nature of "aggravated felony," so as to permit enhancement in defendant's base offense level on theory that he had previously been deported following his conviction for aggravated felony, where defendant had been sentenced to four years imprisonment on conspiracy offense. *U.S. v. Dabeit*, C.A.5 (Tex.) 2000, 231 F.3d 979, certiorari denied 121 S.Ct. 1214, 531 U.S. 1202, 149 L.Ed.2d 126. Sentencing And Punishment ↪ 780

Conviction of using a communications device to facilitate conspiracy to distribute and possess controlled substances with intent to distribute was an "aggravated felony" rendering alien removable and ineligible for cancellation of removal, given that conviction was for a drug trafficking crime. *Evola v. Carbone*, D.N.J.2005, 365 F.Supp.2d 592. Aliens ↪ 53.2(3); Aliens ↪ 53.10(1)

Lawful permanent resident alien was not eligible for family hardship relief from deportation, where she had been convicted of conspiracy to commit money laundering at time that offense was defined as an aggravated felony. *Bankhole v. I.N.S.*, D.Conn.2003, 306 F.Supp.2d 185. Aliens ↪ 53.10(3)

Alien's offense of conspiracy to transport and harbor illegal aliens did not constitute an aggravated felony for deportation purposes. *Gavilan-Cuate v. Yetter*, D.Minn.2000, 94 F.Supp.2d 1039, reversed 276 F.3d 418,

8 U.S.C.A. § 1101

rehearing and rehearing en banc denied. Aliens ↪ 53.2(3)

Alien's Wisconsin conviction for conspiracy to commit bank fraud constituted "aggravated felony," and thus provided basis for alien's removal, despite alien's contention that loss to his victims did not exceed \$10,000, where alien's plea agreement incorporated his stipulation to causing losses of \$200,000 to \$350,000. Akkaraju v. Ashcroft, C.A.7 2004, 118 Fed.Appx. 90, 2004 WL 2828950, Unreported. Aliens ↪ 53.2(3)

Defendant's guilty plea to drug conspiracy offense rendered him automatically deportable, precluding downward sentencing departure based upon his agreement voluntarily to be deported. Castro v. U.S., S.D.N.Y.2003, 2003 WL 22909150, Unreported. Sentencing And Punishment ↪ 861

17. ---- Controlled substances, aggravated felony

Alien's Illinois state law conviction for possession of a small quantity of cocaine, a felony under Illinois law that would be punishable only as a misdemeanor under federal law, did not constitute a conviction for a felony punishable under the Controlled Substances Act, and thus, it did not constitute an "aggravated felony" for purposes of Immigration and Nationality Act provision excluding aliens with aggravated felony convictions from eligibility for cancellation of removal. Gonzales-Gomez v. Achim, C.A.7 (Ill.) 2006, 441 F.3d 532. Aliens, Immigration, And Citizenship ↪ 53.10(1)

Alien's Illinois conviction for the unlawful possession of cocaine and unlawful possession of cannabis was an "aggravated felony," for the purposes of the Immigration and Nationality Act (INA), where offense was a felony under Illinois law, and a drug crime. Tostado v. Carlson, C.A.8 (Mo.) 2006, 437 F.3d 706, rehearing and rehearing en banc denied. Aliens ↪ 53.2(3)

Defendant's two prior state felony convictions for possession of cocaine, in violation of Ohio and Kentucky law, did not constitute "aggravated felonies" for purposes of Immigration and Nationality Act's (INA) sentencing enhancement applicable to illegal reentry conviction, since offenses did not involve trafficking, and were not punishable as a felonies under federal law; drug convictions involved possession, not distribution, and federal offense sufficiently analogous to two state convictions was unlawful possession of controlled substance, which was classified as a misdemeanor under federal law. U.S. v. Palacios-Suarez, C.A.6 (Ohio) 2005, 418 F.3d 692. Sentencing And Punishment ↪ 793

Alien's conviction of aggravated felony drug offense prevented him from demonstrating the good moral character required for naturalization. Marquez-Almanzar v. I.N.S., C.A.2 2005, 418 F.3d 210. Aliens ↪ 62(5)

Alien's South Dakota drug conviction was an aggravated felony, for purposes of determination, in removal proceedings, that he was ineligible for cancellation of removal, even though offense would only have qualified as a misdemeanor under federal law; conviction for aiding and abetting the possession of cocaine was a felony under state law. Lopez v. Gonzales, C.A.8 2005, 417 F.3d 934, certiorari granted 126 S.Ct. 1651, 164 L.Ed.2d 395. Aliens ↪ 53.10(1)

Under "guideline" approach, state drug conviction constitutes "drug trafficking crime" for purposes of Immigration and Nationality Act (INA) if: (1) it is punishable under Controlled Substances Act (CSA), and (2) it is felony. Liao v. Rabbett, C.A.6 (Ohio) 2005, 398 F.3d 389. Aliens ↪ 53.2(3)

Chinese national's state conviction for heroin possession was not "aggravated felony," as would destroy national's eligibility under Immigration and Nationality Act (INA) for discretionary cancellation of removal; although crime was defined as fifth-degree felony under Ohio law, conviction was not punishable by more than one year in prison, and conviction was not for "drug trafficking crime" under Controlled Substances Act (CSA). Liao v. Rabbett, C.A.6 (Ohio) 2005, 398 F.3d 389. Aliens ↪ 53.2(3)

8 U.S.C.A. § 1101

Alien's Wisconsin nolo contendere conviction for possession with intent to distribute 200 grams or less of tetrahydrocannabinol (THC) constituted a felony drug trafficking crime, rendering alien deportable as aggravated felon; the controlled substances act regarded THC as a controlled substance and alien was eligible for enhanced sentence of not more than three years as a repeat offender. *Ali v. Ashcroft*, C.A.7 2005, 395 F.3d 722. Aliens 53.2(3)

Alien's conviction for possession of cocaine was a controlled substance offense within scope of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provision which precluded judicial review of removal by reason of conviction of certain criminal offenses, and thus Court of Appeals was without jurisdiction to review final order of removal. *Durant v. U.S. I.N.S.*, C.A.2 2004, 393 F.3d 113, as amended. Aliens 54.3(1)

Even if alien's California conviction for methamphetamine possession contained trafficking element or would be punishable as felony under Controlled Substances Act (CSA), it still would not be aggravated felony for immigration purposes since, even though statute of conviction allowed for maximum penalty of more than one year, offense was "wobbler" offense and, once state court sentenced alien to county jail rather than state prison, offense automatically converted from felony into misdemeanor for all purposes. *Ferreira v. Ashcroft*, C.A.9 (Ariz.) 2004, 382 F.3d 1045. Aliens 53.2(3)

State drug offense is "aggravated felony," an alien's conviction of which will make him ineligible for cancellation of removal and deprive Court of Appeals of jurisdiction to review removal order, only if it would be punishable as felony under federal drug laws, or if it contains a trafficking element. *Cazarez-Gutierrez v. Ashcroft*, C.A.9 2004, 382 F.3d 905. Aliens 53.2(3); Aliens 53.10(1); Aliens 54.3(1)

Alien's Kentucky conviction for trafficking marijuana over 8 ounces, less than 5 pounds was "aggravated felony," within meaning of Immigration and Naturalization Act (INA), making him both deportable and ineligible for relief from deportation/removal; federal analogue for alien's offense was offense of possession with intent to manufacture, distribute, or dispense controlled substance, which was punishable as felony under federal law. *Garcia-Echaverria v. U.S.*, C.A.6 (Ohio) 2004, 376 F.3d 507, rehearing en banc denied. Aliens 53.2(3)

Defendant's prior conviction for possession of Class II controlled substance under Oregon law was "aggravated felony" for purposes of increasing base offense level at sentencing for unlawful reentry after deportation, even though, based on crime-seriousness and criminal history, maximum term of imprisonment he could have faced under state sentencing guidelines was 90 days; maximum penalty allowed for offense by statute was five years in prison. *U.S. v. Rios-Beltran*, C.A.9 (Idaho) 2004, 361 F.3d 1204. Sentencing And Punishment 793

Alien's Arizona state court conviction of possession of methamphetamine, an offense which, while punishable as felony under Arizona law, would have been misdemeanor under federal law, did not qualify as "aggravated felony," such as would disqualify alien from obtaining cancellation of removal and deprive Court of Appeals of jurisdiction to review removal order. *Cazarez-Gutierrez v. Ashcroft*, C.A.9 2004, 356 F.3d 1015, opinion withdrawn 366 F.3d 736, superseded 382 F.3d 905. Aliens 53.2(3); Aliens 53.10(1); Aliens 54.3(1)

Defendant's prior New York state convictions for simple possession of cocaine qualified as "aggravated felonies," within meaning of sentencing guideline provision, mandating eight-level sentencing increase for defendant convicted of illegally reentering country after deportation for commission of aggravated felony; guideline provision defined "aggravated felony" as any drug trafficking crime punishable under Controlled Substances Act, and New York state felony of simple possession of cocaine would be drug trafficking crime punishable under Act. *U.S. v. Ramirez*, C.A.2 (N.Y.) 2003, 344 F.3d 247. Sentencing And Punishment 793

Alien's Travel Act violation, in traveling in interstate commerce with intent to promote or facilitate unlawful activity in nature of cocaine distribution, qualified as "aggravated felony," within meaning of provision of the Immigration and Nationality Act (INA) rendering alien ineligible for discretionary relief from deportation.

8 U.S.C.A. § 1101

Urena-Ramirez v. Ashcroft, C.A.1 2003, 341 F.3d 51. Aliens ↪ 53.2(3)

Alien's Connecticut conviction for "sale of hallucinogen/narcotic" was necessarily conviction for "illegal trafficking in a controlled substance" rendering alien removable for having committed aggravated felony; Connecticut definition of "narcotic substance" was not broader than federal definition of "controlled substance," inasmuch as neither thebaine-derived butorphanol nor nalmefene were within former definition and outside latter definition. Gousse v. Ashcroft, C.A.2 2003, 339 F.3d 91. Aliens ↪ 53.2(3)

Offense of manufacture of methamphetamine was "aggravated felony" and violation of "law relating to a controlled substance," for purposes of determining whether Court of Appeals had jurisdiction to review removal order based upon alien's conviction for such offense. Olivera-Garcia v. I.N.S., C.A.9 2003, 328 F.3d 1083. Aliens ↪ 54.3(1)

Defendant's two drug possession offenses under Arizona law were not "aggravated felonies" for purposes of sentencing guidelines requiring sentencing enhancement for defendants convicted of a criminal offense prior to deportation, and thus defendant would not receive an enhanced sentence for his re-entry after deportation conviction, even though the convictions were punishable under the Controlled Substances Act, where the maximum authorized punishment was probation; Congress intended the word felony to describe offenses punishable by more than one year's imprisonment under applicable state or federal law. U.S. v. Robles-Rodriguez, C.A.9 (Ariz.) 2002, 281 F.3d 900.

Although alien pleaded guilty to a felony for violation of Delaware statute prohibiting "trafficking in cocaine," alien's drug conviction, which was based on his possession of between 5 and 50 grams of cocaine, did not constitute an "aggravated felony" for purposes of Immigration and Naturalization Act (INA) since offense did not contain a trading or dealing element and was not punishable as a felony under federal law; under federal controlled substance simple possession statute, the most analogous federal statute, the offense was a federal misdemeanor. Gerbier v. Holmes, C.A.3 (Pa.) 2002, 280 F.3d 297.

Conviction under California law for transporting, selling, importing, giving away, or otherwise importing marijuana into State, or attempting to do so, does not qualify on its face as an "aggravated felony," for purposes of provision of Sentencing Guidelines requiring a 16-level increase in base offense level if defendant was previously deported after a conviction for an aggravated felony; overruling *United States v. Lara-Aceves*, 183 F.3d 1007; *United States v. Estrada-Torres*, 179 F.3d 776; and *United States v. Lomas*, 30 F.3d 1191. U.S. v. Rivera-Sanchez, C.A.9 (Ariz.) 2001, 247 F.3d 905. Sentencing And Punishment ↪ 793

Alien's second New York misdemeanor conviction for distribution of 30 grams or less of marijuana without remuneration was not for a hypothetical offense punishable as a felony under the federal Controlled Substances Act and therefore was not an "aggravated felony" so as to render alien ineligible to apply for waiver of inadmissibility; alien's "one time loser" status was never litigated as a part of a criminal proceeding, and that status was not an element of the crime charged in the second misdemeanor proceeding against him, and consequently, the record evidenced no judicial determination that such status existed at the relevant time. Steele v. Blackman, C.A.3 (Pa.) 2001, 236 F.3d 130. Aliens ↪ 53.10(2)

Alien's Arizona conviction for solicitation to possess marijuana for sale was not for "aggravated felony" rendering him deportable under Immigration and Nationality Act (INA), inasmuch as Controlled Substances Act listed some generic offenses but did not mention solicitation, and Act did not contain any broad catch-all provision that could be read to cover solicitation. Leyva-Licea v. I.N.S., C.A.9 1999, 187 F.3d 1147. Aliens ↪ 53.2(3)

Asylum applicant's Guatemala conviction for drug trafficking, committed within the previous 15 years, was "aggravated felony" under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Ortiz v. I.N.S., C.A.9 1999, 179 F.3d 1148. Aliens ↪ 53.2(3)

8 U.S.C.A. § 1101

Any violation of California statute relating to transportation, importation or sale of marijuana was "illicit trafficking in a controlled substance," and thus an "aggravated felony," warranting increase in base offense level by 16 levels in sentencing alien for illegal entry into the United States following deportation because of such offense. *U.S. v. Estrada-Torres*, C.A.9 (Cal.) 1999, 179 F.3d 776, certiorari denied 121 S.Ct. 156, 531 U.S. 864, 148 L.Ed.2d 104. Aliens ↻ 59

Attempted possession of a controlled substance, which involved "knowingly and intentionally" attempting to distribute cocaine, was a third degree felony under Utah law, and constituted an "aggravated felony" under federal statute, thus supporting a 16 point increase in offense level under the sentencing guidelines for current offense of possession of cocaine with intent to distribute. *U.S. v. Lugo*, C.A.10 (Utah) 1999, 170 F.3d 996. Sentencing And Punishment ↻ 780

Defendant's prior conviction for aiding and abetting cocaine possession with intent to distribute was "aggravated felony" which warranted enhanced punishment upon defendant's subsequent conviction for illegally reentering United States after being deported, even if conviction was not aggravated felony at time it was committed, as subsequent amendments to Immigration and Nationality Act demonstrated Congress's intent to treat crimes committed before amendments as aggravated felonies for purposes of enhanced punishment. *U.S. v. Baca-Valenzuela*, C.A.8 (Mo.) 1997, 118 F.3d 1223. Aliens ↻ 59

Single conviction for felony sale of controlled substance suffices to support determination that alien is drug trafficker for purposes of the Immigration Act. *Nakhleh v. I.N.S.*, C.A.6 1994, 38 F.3d 829. Aliens ↻ 53.2(3)

Alien's state conviction of attempted criminal possession of controlled substance that was felony under state law, but misdemeanor under federal law, qualified as conviction of "aggravated felony" under statute providing that alien convicted of aggravated felony is not entitled to automatic stay of deportation pending petition for review, as conduct alien pled guilty to in state court was punishable under Controlled Substances Act and classification of offense as felony under state law qualified conviction as felony for purposes of Controlled Substances Act. *Jenkins v. I.N.S.*, C.A.2 1994, 32 F.3d 11. Aliens ↻ 53.10(1)

To determine whether alien defendant's prior state conviction for sale or transportation of cocaine was "aggravated felony" for purposes of statute providing that alien reentering United States without permission after being deported subsequent to conviction for commission of aggravated felony may be sentenced to 15 years' imprisonment, Court of Appeals would look only at state's statutory definition of offense, not underlying factual circumstances of crime, even though prior felony conviction was element of offense. *U.S. v. Lomas*, C.A.9 (Cal.) 1994, 30 F.3d 1191, certiorari denied 115 S.Ct. 1158, 513 U.S. 1176, 130 L.Ed.2d 1114. Aliens ↻ 59

Defendant's California conviction for sale or transportation of a controlled substance was an "aggravated felony" for purposes of offense of being an alien in the United States after deportation and conviction of an aggravated felony; comment to sentencing guideline defined aggravated felony as any illicit trafficking in any controlled substance, regardless of whether it carried a term of imprisonment of at least five years. *U.S. v. Arzate-Nunez*, C.A.9 (Wash.) 1994, 18 F.3d 730.

Alien who had been twice convicted for selling drugs was convicted of aggravated felonies and thus of serious crimes, making him a danger to the community and barring him from consideration for asylum or withholding of deportation. *Urbina-Mauricio v. I.N.S.*, C.A.9 1993, 989 F.2d 1085, 122 A.L.R. Fed. 761. Aliens ↻ 53.2(3)

To fit within definition of aggravated felony, so that alien being deported has only 30 days to seek review of order of deportation, the offense must be punishable under one of the statutorily enumerated drug laws, and it must be a felony. *Amaral v. I.N.S.*, C.A.1 1992, 977 F.2d 33. Administrative Law And Procedure ↻ 722.1; Aliens ↻ 54.3(1)

8 U.S.C.A. § 1101

Alien's conviction for conspiracy to possess heroin with intent to distribute was "drug trafficking crime," and was thus "aggravated felony" which rendered him statutorily ineligible to apply for asylum. *Martins v. I.N.S.*, C.A.5 1992, 972 F.2d 657. Aliens ↻ 53.10(3)

For purposes of statute providing that alien could not establish good moral character necessary to become a United States citizen if he had been convicted of an aggravated felony on or after a certain date, alien was convicted of aggravated felony of conspiracy to distribute a controlled substance on either the date of sentencing or date that judgment of conviction was filed with Clerk of the Court, rather than on date he entered guilty plea. *Puello v. Bureau of Citizenship and Immigration Services*, S.D.N.Y.2005, 418 F.Supp.2d 436. Aliens, Immigration, And Citizenship ↻ 62(5)

Alien was ineligible for asylum or withholding of removal by reason of his conviction of aggravated felony of sale of narcotics under Connecticut law. *Gerve v. District Director, Bureau of Immigration & Customs Enforcement*, D.Conn.2005, 363 F.Supp.2d 251. Aliens ↻ 53.10(3)

Alien's conviction under Connecticut law of possession of marijuana with intent to sell was removable "aggravated felony." *Ferris v. I.N.S.*, D.Conn.2004, 303 F.Supp.2d 103. Aliens ↻ 53.2(3)

Board of Immigration Appeals (BIA) did not abuse its discretion when it denied alien relief from removal without rational explanation, since there was no factual dispute as to what occurred, such that there was no need for BIA to provide a factual basis for affirming Immigration Judge's ruling that alien's drug trafficking conviction qualified as an aggravated felony. *Kayrouz v. Ashcroft*, E.D.Ky.2003, 261 F.Supp.2d 760, affirmed 115 Fed.Appx. 783, 2004 WL 2320341. Aliens ↻ 54(5)

Alien's conviction for selling cocaine in violation of New York Penal Law constituted an "aggravated felony" which disqualified him from eligibility for cancellation of removal. *Manzueta v. Ashcroft*, W.D.N.Y.2002, 206 F.Supp.2d 386.

Alien's conviction under Pennsylvania law for possession of cocaine with intent to deliver constituted an aggravated felony, so as render alien subject to removal, since analogous federal offense of possession of cocaine with intent to deliver was punishable under Controlled Substances Act by maximum sentence of imprisonment in excess of one year. *Calix-Chavarria v. Attorney General of U.S.*, C.A.3 2006, 2006 WL 1308568, Unreported. Aliens, Immigration, And Citizenship ↻ 274

Alien was removable even if he had been granted asylum or refugee status; government had authority to terminate asylum and initiate removal proceedings based on alien's state conviction for delivering cocaine, an aggravated felony. *Duarte-Vestar v. Gonzales*, C.A.7 2006, 2006 WL 959467, Unreported. Aliens, Immigration, And Citizenship ↻ 274

Conviction of alien, a native of Trinidad and Tobago, for sale of crack cocaine in violation of New York law was "aggravated felony," and thus, alien was not eligible for waiver of removal; offense was analogous to federal drug trafficking crime. *Smith v. Atty. Gen. of U.S.*, C.A.3 2006, 172 Fed.Appx. 465, 2006 WL 825692, Unreported. Aliens, Immigration, And Citizenship ↻ 322

Alien's conviction of Pennsylvania offense of possession with intent to deliver cocaine constituted conviction for committing an aggravated felony, for purposes of determination that he was subject to removal, even though he did not spend more than one year in prison; offense was a felony under Pennsylvania law, and it involved drug trafficking. *Browne v. Attorney General of U.S.*, C.A.3 2006, 163 Fed.Appx. 109, 2006 WL 41952, Unreported. Aliens, Immigration, And Citizenship ↻ 53.2(3)

Court of Appeals did not have jurisdiction over alien's petition seeking cancellation of removal, where alien

8 U.S.C.A. § 1101

conceded that his drug possession charge was considered an aggravated felony under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which prohibits appeals by aliens who are deportable by reason of having committed certain criminal offenses. *Trujillo-Garcia v. Gonzales*, C.A.10 2005, 125 Fed.Appx. 229, 2005 WL 419815, Unreported. Aliens ☞ 54.3(1)

Alien's conviction under the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, which prohibited "knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance," was a controlled substance offense constituting a deportation ground under the Immigration and Nationality Act (INA); all the illicit substances covered by the Pennsylvania statute were listed by federal statute in the schedule of controlled substances, and the Board of Immigration Appeals' (BIA) reasonably interpreted the term "counterfeit controlled substance" in the Pennsylvania statute as referring to a substance that included at least some substance that it was prohibited. *Clarke v. Ashcroft*, C.A.3 2004, 100 Fed.Appx. 884, 2004 WL 1345161, Unreported. Aliens ☞ 53.2(3)

Alien's guilty plea to unlawful possession of heroin for sale and purchase of heroin for purposes of sale rendered him deportable as an aggravated felon and as a controlled substance violator. *Duarte-Arzate v. Ashcroft*, C.A.9 2004, 100 Fed.Appx. 666, 2004 WL 1238861, Unreported. Aliens ☞ 53.2(3)

Alien's conviction in Rhode Island, following plea of nolo contendere, for possession of cocaine with intent to manufacture or deliver was "aggravated felony," and thus alien was ineligible for cancellation of removal. *Brito-Batista v. Ashcroft*, C.A.2 (N.Y.) 2004, 95 Fed.Appx. 374, 2004 WL 848260, Unreported. Aliens ☞ 53.2(3); Aliens ☞ 53.10(1)

Alien was not eligible for discretionary relief from deportation at the time he pleaded guilty to state drug offense, and thus could not apply retroactively for such relief, when alien entered plea more than a week after Antiterrorism and Effective Death Penalty Act (AEDPA) eliminated discretionary relief for aliens convicted of controlled substance offenses and aggravated felonies and offense to which petitioner pleaded guilty qualified as both. *Vargas v. U.S. Immigration Service*, S.D.N.Y.2003, 2003 WL 22056922, Unreported. Aliens ☞ 40

Under federal narcotics statutes, state offense of attempted criminal sale of controlled substance to which alien pleaded guilty was aggravated felony even if alien did not possess cocaine that he admittedly attempted to sell, in that statute made attempt to distribute controlled substance punishable in the same manner as actual violation, and therefore alien's contention that he was not convicted of aggravated felony did not establish prejudice overcoming default of such claim for purposes of alien's petition for habeas relief from order of removal. *Thomas v. Holmes*, C.A.2 (N.Y.) 2003, 77 Fed.Appx. 538, 2003 WL 21949753, Unreported, certiorari denied 124 S.Ct. 1888, 541 U.S. 978, 158 L.Ed.2d 477. Habeas Corpus ☞ 282

Board of Immigration Appeals (BIA) properly denied defendant's motion to reopen his deportation case where defendant was not entitled to discretionary relief, as his prior drug conviction constituted an aggravated felony. *Queeley v. Ashcroft*, C.A.5 (La.) 2003, 73 Fed.Appx. 1, 2003 WL 21654013, Unreported. Aliens ☞ 54(5)

Alien's conviction for possession with intent to distribute cocaine was aggravated felony that rendered him statutorily ineligible for cancellation of removal. *Ortega v. Reno*, S.D.N.Y.2003, 2003 WL 359464, Unreported. Aliens ☞ 53.10(1)

The Immigration and Naturalization Service (INS) established that alien had been convicted of complicity in trafficking marijuana, as would render alien deportable by reason of having committed an aggravated felony, where it presented to immigration judge (IJ) alien's passport, the indictment, judgment and entry of conviction, and "Record of Deportable/Inadmissible Alien" form. *Walker v. Ashcroft*, C.A.6 2002, 54 Fed.Appx. 438, 2002 WL 31890925, Unreported. Aliens ☞ 54.1(5)

8 U.S.C.A. § 1101

18. ---- Counterfeiting, aggravated felony

California gross-vehicular-manslaughter-while-intoxicated offense of which alien was convicted, not having as element that alien intentionally used vehicle to cause injury or acted with any malice aforethought, but only that he accidentally caused the death of another, albeit by his grossly negligent operation of motor vehicle, did not qualify as "crime of violence" and was not "aggravated felony," within meaning of removal and jurisdiction-stripping provisions of the Immigration and Nationality Act (INA). *Lara-Cazares v. Gonzales*, C.A.9 2005, 408 F.3d 1217. Aliens ↻ 53.2(3)

Possession of counterfeit securities with intent to deceive did not necessarily constitute an attempt to pass those securities and cause loss, and therefore alien's conviction arising from guilty plea to charge of possessing counterfeit securities was not "aggravated felony" as defined, under immigration statute, to include attempt to commit fraud or deceit resulting in loss exceeding \$10,000, even though jury might have found that, under state law, alien's underlying conduct would support conviction for attempted fraud. *Ming Lam Sui v. I.N.S.*, C.A.2 2001, 250 F.3d 105. Aliens ↻ 53.2(3)

Knowledge of counterfeit nature of bill and intent to defraud required for conviction under federal statute proscribing use or possession of counterfeit money was sufficient to make conviction for possession of counterfeit obligations of United States one related to act of counterfeiting itself, and therefore offense qualified as "aggravated felony" supporting deportation of alien. *Albillo-Figueroa v. I.N.S.*, C.A.9 2000, 221 F.3d 1070. Aliens ↻ 53.2(3)

Alien's New York state conviction of use of a child in a sexual performance, which had no scienter requirement, did not constitute an "aggravated felony" for purposes of removal provisions of Immigration and Nationality Act (INA); New York offense was not equivalent to federal felony relating to child pornography, which required parent to "knowingly permit" minor to engage in sexually explicit conduct, or felony relating to sexual abuse of minor, which invoked higher scienter requirement by requiring "employment, use, persuasion, inducement, enticement, or coercion of a child." *Gonzalez v. Ashcroft*, S.D.N.Y.2005, 369 F.Supp.2d 442. Aliens ↻ 53.2(3)

Alien's conviction in the state of Colorado for sexual assault of a minor constituted an "aggravated felony," within the meaning of the Immigration and Nationality Act (INA), supporting removal order, even though Colorado law classified the offense as a misdemeanor. *Rios v. Gonzales*, C.A.10 2005, 132 Fed.Appx. 189, 2005 WL 1155920, Unreported. Aliens ↻ 53.2(3)

By its nature, offense of residential entry under Indiana law, which criminalized knowingly or intentionally breaking and entering a dwelling, involved substantial risk that physical force against person or property of another could be used, and therefore offense qualified as "crime of violence," and, in light of alien's sentence for such offense of more than one year in jail, as "aggravated felony" under Immigration and Nationality Act (INA), supporting alien's removability. *Gill v. Gonzales*, C.A.7 2005, 128 Fed.Appx. 548, 2005 WL 946559, Unreported. Aliens ↻ 53.2(3)

Alien's Pennsylvania conviction for trademark counterfeiting was crime relating to counterfeiting, and thus was "aggravated felony" for purposes of federal removal statute. *Fofana v. Ridge*, C.A.3 2004, 114 Fed.Appx. 490, 2004 WL 2496498, Unreported. Aliens ↻ 53.2(3)

19. ---- Crime of violence, aggravated felony

A California conviction for evading an officer does not categorically qualify as a "crime of violence," and, thus, a court determining whether such a conviction is an aggravated felony rendering an alien removable must apply the modified categorical approach. *Penuliar v. Gonzales*, C.A.9 2006, 435 F.3d 961. Aliens ↻ 53.2(3)

8 U.S.C.A. § 1101

Pennsylvania crime of reckless burning or exploding, which criminalized the act of intentionally starting a fire with a reckless mens rea regarding damage to property of another, was not a crime of violence under federal law, and therefore, was not an aggravated felony warranting removal; crime involved neither use of force nor a substantial risk of use of force. *Tran v. Gonzales*, C.A.3 2005, 414 F.3d 464. Aliens ↪ 53.2(3)

Alien's Illinois conviction for aggravated criminal sexual abuse was a crime of violence, and as such, an "aggravated felony" warranting his removal under the Immigration and Nationalization Act (INA), where it involved a non-consensual act, i.e., sodomy of a mentally and physically handicapped woman. *Patel v. Ashcroft*, C.A.6 2005, 401 F.3d 400. Aliens ↪ 53.2(3)

Alien's conviction under Illinois law for harassment by telephone was not a conviction for a crime of violence, and thus was not an aggravated felony subjecting him to removal; although indictment setting forth harassment by telephone charge to which alien pleaded guilty alleged that he had threatened the life of his victim, the statute defining the offense prohibited only making telephone call with intent to abuse, threaten, or harass someone at called number, and did not include as an element the use, attempted use, or threatened use of physical force. *Szucz-Toldy v. Gonzales*, C.A.7 2005, 400 F.3d 978. Aliens ↪ 53.2(3)

Alien's conviction for sexual battery under Oklahoma law constituted a "crime of violence," and thus an aggravated felony rendering alien subject to removal; consequently court lacked jurisdiction to review the final order of removal. *Zaidi v. Ashcroft*, C.A.5 2004, 374 F.3d 357. Aliens ↪ 53.2(3); Aliens ↪ 54.3(1)

Prior Texas conviction for aggravated assault was for "crime of violence," and thus offense level enhancement was warranted when calculating defendant's sentence following subsequent conviction for illegal reentry, even though state court had sentenced defendant to deferred adjudication probation instead of term of imprisonment. *U.S. v. Ramirez*, C.A.5 (Miss.) 2004, 367 F.3d 274, certiorari denied 125 S.Ct. 145, 543 U.S. 882, 160 L.Ed.2d 137. Sentencing And Punishment ↪ 793

Alien's involvement in drive-by shooting as driver of vehicle from which passenger discharged firearm, resulting in conviction for facilitation under Oklahoma drive-by statute, constituted "crime of violence" for purposes of aggravated felony removal statute. *Nguyen v. Ashcroft*, C.A.5 2004, 366 F.3d 386, rehearing and rehearing en banc denied 115 Fed.Appx. 765, 2004 WL 1736791. Aliens ↪ 53.2(3)

Petitioner's prior California conviction for exhibiting a deadly weapon with intent to evade arrest constituted a crime of violence, which therefore qualified as an aggravated felony under Immigration and Nationality Act (INA); thus, petitioner was subject to removal. *Reyes-Alcaraz v. Ashcroft*, C.A.9 2004, 363 F.3d 937. Aliens ↪ 53.2(3)

California crime of mayhem, which is defined as act of depriving another person of member of his body, or of disabling, disfiguring or rendering it useless, quintessentially involves substantial risk that physical force will be used in process of committing that crime, and thus qualified as "crime of violence," an alien's conviction of which made him subject to removal and deprived Court of Appeals of jurisdiction to review removal order. *Ruiz-Morales v. Ashcroft*, C.A.9 2004, 361 F.3d 1219. Aliens ↪ 53.2(3); Aliens ↪ 54.3(1)

Defendant's prior Colorado conviction of first degree criminal trespass of a dwelling was a "crime of violence" and, consequently, was an "aggravated felony" for purposes of enhancing his sentence under Sentencing Guidelines for illegal reentry following deportation; offense required entering or remaining in dwelling of another, creating substantial risk that physical force would be used against residents of dwelling. *U.S. v. Venegas-Ornelas*, C.A.10 (N.M.) 2003, 348 F.3d 1273, certiorari denied 125 S.Ct. 494, 543 U.S. 986, 160 L.Ed.2d 370. Sentencing And Punishment ↪ 793

Alien's California state court conviction of making terroristic threats to commit crime which would result in death or great bodily injury, with specific intent that his statements were to be taken as threats, qualified as "crime of

8 U.S.C.A. § 1101

violence" and as "aggravated felony," which subjected alien to deportation and deprived Court of Appeals of jurisdiction to review deportation order. *Rosales-Rosales v. Ashcroft*, C.A.9 2003, 347 F.3d 714. Aliens 53.2(3); Aliens 54.3(1)

The risk of the use of force was inherent in each offense set forth in Connecticut's second degree sexual assault statute, thus alien's conviction under statute constituted a crime of violence for removal purposes; although a conviction could be obtained under statute for consensual sexual intercourse, under the statute, a minor victim could not consent creating a substantial risk that force would be used to accomplish sexual intercourse with the victim. *Chery v. Ashcroft*, C.A.2 (Conn.) 2003, 347 F.3d 404. Aliens 53.2(3)

New York offense of unlawful imprisonment of an incompetent person or a child under 16 is not a "crime of violence," and thus an aggravated felony warranting removal, since it neither has as an element the use of force nor categorically involves a substantial risk that force may be used. *Dickson v. Ashcroft*, C.A.2 2003, 346 F.3d 44. Aliens 53.2(3)

Third degree assault under Connecticut law, requiring proof that defendant intentionally caused physical injury to another person, was not a "crime of violence," and therefore did not qualify as an "aggravated felony" that would render lawful permanent resident alien removable, under statute requiring that "use of force" must be an element of the offense for that offense to be a "crime of violence," since intentional causation of injury did not necessarily involve use of force, and Connecticut law did not require government to prove to jury that force was used in causing the injury. *Chranoski v. Ashcroft*, C.A.2 (Conn.) 2003, 327 F.3d 188. Aliens 53.2(3)

Alien's state conviction for second-degree manslaughter was not a "crime of violence," and thus was not an "aggravated felony" warranting his removal, since minimum criminal conduct required to commit second-degree manslaughter did not necessarily present substantial risk of use of physical force against person of another, but rather, only recklessness with respect to substantial risk of death. *Jobson v. Ashcroft*, C.A.2 2003, 326 F.3d 367. Aliens 53.2(3)

Illegal reentry defendant's prior Texas state court conviction for injury to child was not "crime of violence," as required for it to qualify as "aggravated felony" for sentence enhancement purposes, where Texas statute criminalizing injury to child did not require perpetrator to actually use, attempt to use, or threaten to use physical force, and where, since crime was results-oriented, and since statute criminalized both acts and omissions intentionally, recklessly or negligently resulting in injury to child, there was no substantial risk that physical force would be used to effectuate offense. *U.S. v. Gracia-Cantu*, C.A.5 (Tex.) 2002, 302 F.3d 308, rehearing en banc denied. Sentencing And Punishment 793

Minnesota offense of criminal vehicular homicide fit within statutory definition of crime of violence because the inherent nature of that felony was such that it involved a substantial risk that physical force may be used against another person; thus, conviction for such offense was an aggravated felony for removal purposes. *Omar v. I.N.S.*, C.A.8 2002, 298 F.3d 710, rehearing and rehearing en banc denied. Aliens 53.2(3)

Fact that defendant's prior state court conviction of child abuse--cruelty toward child was classified as a misdemeanor did not preclude it from qualifying as an "aggravated felony" as defined in the Immigration and Nationality Act (INA), for purpose of sentence enhancement, under guidelines, for the offense of reentering the United States as a deported alien previously convicted of an aggravated felony; all the INA required was a crime of violence for which the term of imprisonment was at least one year. *U.S. v. Saenz-Mendoza*, C.A.10 (N.M.) 2002, 287 F.3d 1011, certiorari denied 123 S.Ct. 315, 537 U.S. 923, 154 L.Ed.2d 213. Sentencing And Punishment 780

Offense of making terroristic threats, which was a crime of violence, qualified as one "for which the term of imprisonment [sic] at least one year," so that Court of Appeals lacked jurisdiction to entertain alien's petition to

8 U.S.C.A. § 1101

review a final order of removal based on that conviction, though the minimum sentence was 11 months, where the maximum term was 23 months and, under Pennsylvania law, the minimum term imposed on a prison sentence merely sets the date prior to which a prisoner may not be paroled, so that the sentence was functionally the same as a sentence of 23 months, with parole eligibility beginning after 11 months. *Bovkun v. Ashcroft*, C.A.3 2002, 283 F.3d 166. Aliens ↻ 53.2(3); Aliens ↻ 54.3(1)

Fact that offense of assault was classified as misdemeanor under state law did not preclude alien's assault conviction from qualifying as "aggravated felony" for purpose of enhanced penalty provisions for offense of illegal reentry into United States; alien was sentenced to one year for assault, satisfying statutory definition of "a crime of violence ... for which the term of imprisonment [is] at least one year." *U.S. v. Urias-Escobar*, C.A.5 (Tex.) 2002, 281 F.3d 165, certiorari denied 122 S.Ct. 2377, 536 U.S. 913, 153 L.Ed.2d 196.

Alien's California involuntary manslaughter conviction was for a "crime of violence" under federal law, and thus was an "aggravated felony" conviction, which rendered alien deportable. *Park v. I.N.S.*, C.A.9 2001, 252 F.3d 1018. Aliens ↻ 53.2(3)

Florida offense of driving under the influence with serious bodily injury was "crime of violence," as required for such offense to be "aggravated felony" under Immigration and Nationalization Act (INA), so as to preclude jurisdiction of Court of Appeals to review final order of removal against alien convicted of such offense. *Le v. U.S. Atty. Gen.*, C.A.11 1999, 196 F.3d 1352. Aliens ↻ 54.3(1)

Colorado offense of criminal trespass was "crime of violence," and thus was aggravated felony warranting 16-level enhancement under Sentencing Guidelines of sentence for illegal re-entry as deported alien, inasmuch as offense required entering or remaining in dwelling of another, creating substantial risk that physical force would be used against residents of dwelling. *U.S. v. Delgado-Enriquez*, C.A.5 (Tex.) 1999, 188 F.3d 592. Aliens ↻ 59

Alien's Wisconsin offense of sexual assault of a child was not "crime of violence," and thus was not basis for finding that alien committed aggravated felony and thus was deportable, where conduct of which alien was convicted consisted of consensual sex between 18-year-old boyfriend and his 15-year-old girlfriend. *Xiong v. I.N.S.*, C.A.7 1999, 173 F.3d 601. Aliens ↻ 54(3.1); Aliens ↻ 54.3(6); Constitutional Law ↻ 274.3

Definition of "crime of violence" for purposes of determining whether alien is subject to deportation for being convicted of aggravated felony requires Court of Appeals to look at whether elements of offense include "use, attempted use, or threatened use of physical force," or whether offense, if felony, involves substantial risk of use of physical force. *Ramsey v. I.N.S.*, C.A.11 1995, 55 F.3d 580. Aliens ↻ 53.2(3)

Conviction under Texas law of unauthorized use of motor vehicle qualifies as "crime of violence" and thus "aggravated felony" warranting deportation under the Immigration and Nationalization Act (INA); vandalizing vehicle to obtain unauthorized access creates substantial risk of the use of physical force, and offense requires defendant to intentionally or knowingly operate vehicle without the owner's consent. *Ramirez v. Ashcroft*, S.D.Tex.2005, 361 F.Supp.2d 650. Aliens ↻ 53.2(3)

Risk that physical force would be used was inherent in Connecticut offenses of risk of injury to a child and sexual assault in the fourth degree, and thus, alien convicted of those offenses was convicted of crimes of violence for removal purposes, given that victim could not consent to the felonious sexual contact. *Hongsathirath v. Ashcroft*, D.Conn.2004, 322 F.Supp.2d 203. Aliens ↻ 53.2(3)

Indecent assault and battery on a person fourteen or older under Massachusetts law was a "crime of violence" within the meaning of federal law, and therefore constituted an aggravated felony for deportation purposes. *U.S. v. Lepore*, D.Mass.2004, 304 F.Supp.2d 183. Aliens ↻ 53.2(3)

8 U.S.C.A. § 1101

Alien's third-degree robbery offense, under Connecticut statute that implicated only acts which "threaten the immediate use of physical force," qualified as "crime of violence," for which alien could be removed. *Gomez v. Ashcroft*, D.Conn.2003, 293 F.Supp.2d 162. Aliens ↪ 53.2(3)

Suspension of five-year term of imprisonment imposed on alien after he was convicted of robbery for engaging in acts which threatened immediate use of physical force did not affect nature of offense as "crime of violence," for which alien could be removed. *Gomez v. Ashcroft*, D.Conn.2003, 293 F.Supp.2d 162. Aliens ↪ 53.2(3)

Connecticut offense of third-degree assault, which requires proof that defendant intentionally caused physical injury to another person, was not "crime of violence," and thus did not qualify as "aggravated felony," a conviction for which would render lawful permanent resident alien subject to removal; intentional causation of injury does not necessarily involve use of force, and Connecticut law did not require government to prove to jury that force was used in causing the injury. *Milbin v. Ashcroft*, D.Conn.2003, 293 F.Supp.2d 158. Aliens ↪ 53.2(3)

Convictions for risk of injury to a minor under Connecticut statute for acts likely to injure the health of a minor constitute crimes of violence under federal criminal law, and thus, are "aggravated felonies" under the Immigration and Nationality Act (INA); there was a substantial risk that physical force would be used against children under the age of sixteen by a defendant in the course of committing the offense. *Santapaola v. Ashcroft*, D.Conn.2003, 249 F.Supp.2d 181. Aliens ↪ 53.2(3)

Defendant's prior conviction for assault with dangerous weapon was "crime of violence," and thus increased his base offense level sixteen levels following his subsequent conviction for unlawful entry of deported alien, even if defendant's prior sentence had been suspended; offense had as element use, attempted use, and threatened use of physical force against another person, and was felony that involved substantial risk of physical force, and defendant was sentenced to two year term of imprisonment. *U.S. v. Ortega-Garcia*, C.A.10 (Okla.) 2001, 12 Fed.Appx. 897, 2001 WL 699074, Unreported, certiorari denied 122 S.Ct. 189, 534 U.S. 883, 151 L.Ed.2d 132. Sentencing And Punishment ↪ 781

Defendant's prior Texas conviction for assault was "aggravated felony," for purposes of sentencing enhancement for illegal reentry offense, even though crime was misdemeanor under Texas law, and his sentence was suspended, where state court sentenced defendant to one year confinement. *U.S. v. Rodriguez-Rojo*, C.A.10 (N.M.) 2006, 2006 WL 979303, Unreported. Sentencing And Punishment ↪ 793

By its nature, offense of residential entry under Indiana law, which criminalized knowingly or intentionally breaking and entering a dwelling, involved substantial risk that physical force against person or property of another could be used, and therefore offense qualified as "crime of violence," and, in light of alien's sentence for such offense of more than one year in jail, as "aggravated felony" under Immigration and Nationality Act (INA), supporting alien's removability. *Gill v. Gonzales*, C.A.7 2005, 128 Fed.Appx. 548, 2005 WL 946559, Unreported. Aliens ↪ 53.2(3)

Alien's conviction for misdemeanor assault under Montana law did not categorically qualify as conviction for a "crime of domestic violence" rendering him removable; state statute allowed conviction for negligent conduct, and thus criminalized conduct that would not constitute crime of domestic violence under federal law. *Fang v. Ashcroft*, C.A.9 2004, 111 Fed.Appx. 912, 2004 WL 2411263, Unreported. Aliens ↪ 53.2(3)

Alien who was convicted of false imprisonment was convicted of a "crime of violence" within meaning of definition of "aggravated felony" for purpose of deportable aliens statute, and thus, the Court of Appeals lacked jurisdiction to review Board of Immigration Appeals' (BIA) final order of removal, where he pled guilty to amended indictment charging him with committing false imprisonment by violence. *Benavides-Perez v. Ashcroft*, C.A.9 2004, 92 Fed.Appx. 407, 2004 WL 61238, Unreported. Aliens ↪ 54.3(1)

8 U.S.C.A. § 1101

Nature of alien's crime and sentence imposed qualified it as an aggravated felony, and thus rendered him removable; felony conviction for discharging a firearm into a dwelling in violation of California law was a "crime of violence," since it involved a substantial risk that physical force against the person or property of another may be used, and he received a three year sentence for it. *Granados v. Ashcroft*, N.D.Cal.2003, 2003 WL 22416417, Unreported. Aliens ☞ 53.2(3)

Alien's conviction under Delaware law for reckless endangering in the second degree, which occurs when person recklessly engages in conduct which creates a substantial risk of physical injury to another person, was not a crime of violence, and thus not an "aggravated felony" supporting removal of alien under immigration statute, as Delaware offense did not include as an element the use, attempted use, or threatened use of physical force against the person or property of another, and offense was classified as a misdemeanor under state law. *Amaye v. Elwood*, M.D.Pa.2002, 2002 WL 1747540, Unreported. Aliens ☞ 53.2(3)

20. ---- Drunk driving, aggravated felony

Alien's conviction for driving under the influence of alcohol (DUI) and causing serious bodily injury in an accident, in violation of Florida law, was not a "crime of violence," and thus was not an "aggravated felony" warranting deportation under the Immigration and Nationalization Act (INA); although Florida's DUI statute required proof of causation, it did not require any proof of mental state and it did not involve the use of physical force against the person or property of another; *Le v. United States Attorney General*, 196 F.3d 1352. *Leocal v. Ashcroft*, U.S.2004, 125 S.Ct. 377, 543 U.S. 1, 160 L.Ed.2d 271. Aliens ☞ 53.2(3)

United States Supreme Court's ruling that driving under the influence was not "crime of violence" under definition of federal criminal code, and thus not "aggravated felony" under Immigration and Nationality Act (INA), was retroactively applicable, i.e. rendered invalid removal order issued prior to Court's decision that was based on finding that alien's conviction for driving under the influence constituted aggravated felony. *U.S. v. Rivera-Nevarez*, C.A.10 (Kan.) 2005, 418 F.3d 1104, certiorari denied 126 S.Ct. 1912. Courts ☞ 100(1)

Illegal reentry defendant's prior Texas conviction for driving while intoxicated (DWI) was not crime which, by its very nature, posed substantial risk that physical force might be used to commit it, and did not qualify as "crime of violence" or as "aggravated felony," the defendant's commission of which would warrant eight-level enhancement of his base offense level for illegal reentry offense. *U.S. v. Lucio-Lucio*, C.A.10 (N.M.) 2003, 347 F.3d 1202. Sentencing And Punishment ☞ 793

Texas offense of driving while intoxicated (DWI) was not crime of violence or aggravated felony warranting increase in base offense level for illegally re-entering United States. *U.S. v. Cervantes-Nava*, C.A.5 (Tex.) 2002, 281 F.3d 501, certiorari denied 122 S.Ct. 2379, 536 U.S. 914, 153 L.Ed.2d 197, appeal after new sentencing hearing 79 Fed.Appx. 17, 2003 WL 22408349, certiorari denied 124 S.Ct. 1490, 540 U.S. 1211, 158 L.Ed.2d 138.

Enhancement statute that was applied to alien convicted of driving under the influence of alcohol (DUI), based on his four prior DUI convictions in past seven years, did not convert his DUI offense into "crime of violence" and "aggravated felony," for which he could be removed; statute under which alien was convicted did not require proof of injury to another. *Montiel-Barraza v. I.N.S.*, C.A.9 2002, 275 F.3d 1178. Aliens ☞ 53.2(3)

District court's improper classification of alien's four prior California convictions for driving under the influence (DUI), and one California felony conviction for DUI following prior DUI offenses, as aggravated felonies, and use of convictions as basis for enhancement of his sentence after he was convicted of illegally entering, attempting to enter, and being found in the United States following deportation, rose to level of plain error warranting relief notwithstanding defendant's failure to raise issue below. *U.S. v. Portillo-Mendoza*, C.A.9 (Ariz.) 2001, 273 F.3d 1224, for additional opinion, see 25 Fed.Appx. 543, 2001 WL 1631857. Criminal Law ☞ 1042

8 U.S.C.A. § 1101

Prior California conviction for driving under influence of alcohol with injury to another was not "crime of violence," and thus was not "aggravated felony" warranting 16-level increase in sentence for illegally re-entry following deportation, inasmuch as statute prohibiting such California offense could be violated through negligence. *U.S. v. Trinidad-Aquino*, C.A.9 (Cal.) 2001, 259 F.3d 1140.

Not all violations by aliens of New York's felony driving while intoxicated (DWI) statute are by their nature "crimes of violence," and thus "aggravated felonies" warranting removal, inasmuch as the risk of physical force is not a requisite element of such offense. *Dalton v. Ashcroft*, C.A.2 2001, 257 F.3d 200.

Texas felony driving while intoxicated (DWI) is not "crime of violence," and thus not aggravated felony the prior conviction for which would warrant enhancement of sentence upon conviction for unlawfully being in United States after removal therefrom. *U.S. v. Chapa-Garza*, C.A.5 (Tex.) 2001, 243 F.3d 921, rehearing and rehearing en banc denied 262 F.3d 479. Sentencing And Punishment 793

Alien's Idaho DUI (driving under the influence of drugs or alcohol) offense constituted a crime of violence and was therefore an aggravated felony rendering him deportable. *Tapia Garcia v. I.N.S.*, C.A.10 2001, 237 F.3d 1216. Aliens 53.2(3)

Immigration judge (IJ) in deportation proceeding underlying defendant's unlawful reentry prosecution under Immigration and Nationality Act (INA) erred in determining that defendant's prior conviction for driving while intoxicated was "aggravated felony" under Washington law, since statute that defendant was charged with violating did not require recklessness in order for person to be convicted. *U.S. v. Modica-Linos*, E.D.Wash.2005, 399 F.Supp.2d 1114. Aliens 54.2(3)

21. ---- Firearms, aggravated felony

Defendant's Texas conviction of possession of an unregistered sawed-off shotgun was for a "crime of violence" and, thus, was an "aggravated felony" within meaning of Sentencing Guideline providing for 16-level increase to a defendant's offense level if he was previously deported after conviction of an aggravated felony. *U.S. v. Rivas-Palacios*, C.A.5 (Tex.) 2001, 244 F.3d 396. Sentencing And Punishment 793

Washington conviction for possession of firearm by non-citizen was not "aggravated felony," and defendant convicted of illegal reentry following such conviction and deportation thus was not subject to 16-level enhancement under Sentencing Guidelines, inasmuch as such conviction was not described in federal statute setting forth crime of possession of firearm by illegal alien; federal statute applied to some aliens while Washington statute applied to all aliens. *U.S. v. Sandoval-Barajas*, C.A.9 (Wash.) 2000, 206 F.3d 853. Aliens 59

California conviction for unlawful possession of short-barreled shotgun was not described in federal statute setting forth crime of possession of firearm by illegal alien and, thus, was not "aggravated felony" within meaning of section of Sentencing Guidelines providing for 16 level enhancement to base offense level if defendant was deported after conviction for aggravated felony; California statute applied to any person while federal statute applied only to illegal aliens. *U.S. v. Villanueva-Gaxiola*, D.Kan.2000, 119 F.Supp.2d 1185. Sentencing And Punishment 773

22. ---- Forgery, aggravated felony

Even assuming that Connecticut offense of second-degree forgery, in criminalizing mere possession of a forged instrument with intent to defraud, punished conduct that would not have been "forgery" under common law, such possession was nevertheless an offense "relating to forgery," so that alien's conviction of this Connecticut offense qualified as aggravated felony under the Immigration and Nationality Act (INA), in which term was defined to include "offense relating to...forgery," and provided basis for alien's removal. *Richards v. Ashcroft*, C.A.2 (Conn.)

8 U.S.C.A. § 1101

2005, 400 F.3d 125. Aliens ↻ 53.2(3)

Non-citizen defendant's prior Colorado conviction for forgery, for which he was sentenced to one year imprisonment and deported, was "aggravated felony," justifying increase in defendant's sentence under the sentencing guideline for offense of unlawfully reentering the United States following deportation. *U.S. v. Johnstone*, C.A.1 (Me.) 2001, 251 F.3d 281. Sentencing And Punishment ↻ 780

Alien's conviction under Pennsylvania law for forgery constituted an offense related to forgery, for purposes of determination of whether that conviction met statutory definition of aggravated felony, conviction of which would render alien subject to removal, although Pennsylvania forgery statute under which alien was convicted encompassed an intent to injure, which arguably was outside traditional definition of forgery. *Onyejiaka v. Attorney General of U.S.*, C.A.3 2006, 2006 WL 1308570, Unreported. Aliens, Immigration, And Citizenship ↻ 277

23. ---- Fraud or deceit, aggravated felony

Losses stemming from dismissed second count of two-count bank fraud indictment against lawful permanent resident alien, a citizen of Norway, could not be added to the losses from the first count, to which the alien pled guilty, for purpose of showing that the loss to the victim exceeded \$10,000, as required for the alien's offense to constitute an "aggravated felony" and render him removable, even though the two counts involved the same victim and involved common purpose of obtaining money for the alien's own ends, where each count in the indictment pertained to a separate and distinct fraudulent scheme involving different time periods and different types of fraudulent acts, and there was no allegation in the indictment of a single overarching scheme uniting the two counts. *Knutsen v. Gonzales*, C.A.7 2005, 429 F.3d 733.

Virginia offense of credit card fraud encompassed activities that did not involve the taking of property, and thus, alien's Virginia conviction for credit card fraud was not a categorical match for a theft offense that would constitute an aggravated felony rendering alien removable under Immigration and Nationality Act. *Soliman v. Gonzales*, C.A.4 2005, 419 F.3d 276. Aliens ↻ 53.2(3)

While alien's California state court conviction of submitting false statement to obtain aid in violation of the California Welfare and Institutions Code, pursuant to statute that punished welfare fraud in any amount greater than \$400, was not categorical match with definition of "aggravated felony" under the Immigration and Nationality Act (INA), which includes offenses involving fraud or deceit only if amount of loss is in excess of \$10,000, court could look to alien's plea agreement, which required her to pay restitution in amount of \$22,305, to determine that state court conviction qualified as "aggravated felony," so as to provide basis for alien's removal and to make alien ineligible for cancellation of removal. *Ferreira v. Ashcroft*, C.A.9 (Ariz.) 2004, 390 F.3d 1091. Aliens ↻ 53.2(3)

Alien's California state court conviction of submitting false statement to obtain aid in violation of the California Welfare and Institutions Code necessarily involved fraud or deceit, as required for state court conviction to qualify as "aggravated felony" and provide basis for her removal. *Ferreira v. Ashcroft*, C.A.9 (Ariz.) 2004, 390 F.3d 1091. Aliens ↻ 53.2(3)

In calculating "loss" which resulted from particular count of bank fraud indictment to which alien pled guilty, for purposes of deciding whether that count qualified as "aggravated felony" for removal purposes, court could not restrict its inquiry solely to amount of check alleged in that count as having been written in furtherance of check-kiting scheme; while each count identified a different check as having been written in furtherance of scheme, each count charged alien, not just with writing that particular insufficient funds (NSF) check, but with participating in check-kiting scheme, such that court had to consider loss resulting from entire scheme. *Khalayleh v. I.N.S.*, C.A.10 2002, 287 F.3d 978. Aliens ↻ 53.2(3)

8 U.S.C.A. § 1101

Conviction for embezzlement from national bank which establishes only that defendant employee of bank acted with intent to injure his or her employer is not offense that "involves fraud or deceit" under Immigration and Nationality Act's (INA) definition of "aggravated felony." *Valansi v. Ashcroft*, C.A.3 2002, 278 F.3d 203.

The crime of misapplication of bank funds is an "aggravated felony" for purposes of the statute providing for the removal of aggravated felons, inasmuch as such crime necessarily involves fraud or deceit. *Moore v. Ashcroft*, C.A.11 2001, 251 F.3d 919.

Alien's conviction for use of a false social security number involved fraud or deceit, as would support finding that conviction was an aggravated felony justifying his deportation; statute under which he was convicted included intent to deceive as an element. *St. John v. Ashcroft*, C.A.10 (Okla.) 2002, 43 Fed.Appx. 281, 2002 WL 1722104, Unreported.

Conspiracy to commit mail fraud constituted an "aggravated felony" under the Immigration and Nationality Act (INA), subjecting alien convicted of that offense to removal. *Sidhu v. Gonzales*, C.A.5 2006, 2006 WL 1162196, Unreported. Aliens, Immigration, And Citizenship ☞ 277

Judgment of conviction, in prosecution of alien for conspiracy to use and traffic in counterfeit access devices, which ordered alien to pay restitution of \$60,800, established the requisite loss, such that alien's conviction was for an aggravated felony involving fraud or deceit, and therefore Court of Appeals lacked jurisdiction to review final order of removal. *Karavolos v. Ashcroft*, C.A.3 2004, 95 Fed.Appx. 397, 2004 WL 557337, Unreported. Aliens ☞ 53.2(3); Aliens ☞ 54.3(1)

24. ---- Homicide, aggravated felony

Legal permanent resident alien's conviction for vehicular homicide under New Jersey law was not a "crime of violence," and thus did not qualify as an "aggravated felony" as would warrant removal under the Immigration and Nationalization Act (INA); although the vehicular homicide statute required proof of reckless driving of a motor vehicle, it did not require the intentional use of physical force. *Oyebanji v. Gonzales*, C.A.3 (N.J.) 2005, 418 F.3d 260. Aliens ☞ 53.2(3)

Alien's conviction for involuntary manslaughter, under Virginia law, was not a "crime of violence," and thus was not an "aggravated felony" warranting removal under the Immigration and Nationalization Act (INA); although a violation of Virginia's involuntary manslaughter statute intrinsically involved a substantial risk that the perpetrator's actions would cause physical harm, since it required reckless disregard for human life, it did not intrinsically involve a substantial risk that force would be applied as a means to an end. *Bejarano-Urrutia v. Gonzales*, C.A.4 2005, 413 F.3d 444. Aliens ☞ 53.2(3)

California gross-vehicular-manslaughter-while-intoxicated offense of which alien was convicted, not having as element that alien intentionally used vehicle to cause injury or acted with any malice aforethought, but only that he accidentally caused the death of another, albeit by his grossly negligent operation of motor vehicle, did not qualify as "crime of violence" and was not "aggravated felony," within meaning of removal and jurisdiction-stripping provisions of the Immigration and Nationality Act (INA). *Lara-Cazares v. Gonzales*, C.A.9 2005, 408 F.3d 1217. Aliens ☞ 53.2(3)

Alien's state-court misdemeanor conviction of vehicular homicide was not an "aggravated felony" under the Immigration and Nationality Act (INA), as would provide grounds for alien's removal, and thus Board of Immigration Appeals's (BIA) interpretation of general criminal statute defining "felony" to include vehicular homicide was not a permissible construction of statute, given that default statute BIA relied on in determining that state vehicular homicide offense was a felony for purposes of removability statute was intended as a last resort, and state law, rather than federal classification, determined what was considered a felony under subsection of criminal

8 U.S.C.A. § 1101

statute. *Francis v. Reno*, C.A.3 2001, 269 F.3d 162. Aliens ↪ 53.2(3)

First degree manslaughter under Connecticut law involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense, and thus, is a "crime of violence" rendering an alien deportable; while the statute does not require the use of force, conduct carried out with the intent to cause serious physical injury carries with it a substantial risk that force will be used to accomplish the intended goal. *Benjamin v. Bureau of Customs*, D.Conn.2005, 383 F.Supp.2d 344. Aliens ↪ 53.2(3)

25. ---- Kidnapping, aggravated felony

Alien's kidnapping offense was "aggravated felony" under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) because alien's term of imprisonment exceeded one year, and offense was crime of violence because it was offense that had as element the use, attempted use, or threatened use of physical force against person or property of another. *Choeum v. I.N.S.*, C.A.1 1997, 129 F.3d 29. Aliens ↪ 53.2(1); Aliens ↪ 53.2(3)

26. ---- Obstruction of justice, aggravated felony

Alien's offense of contempt of court was one "relating to obstruction of justice," and thus an "aggravated felony" for which he could be deported; alien, who was advised by the district court that he had been granted immunity from prosecution, informed that the grand jury was investigating possible criminal activity and warned that he would be prosecuted if he failed to testify, refused to testify before grand jury. *Alwan v. Ashcroft*, C.A.5 2004, 388 F.3d 507. Aliens ↪ 53.2(3)

27. ---- Sex offenses, aggravated felony

Alien's conviction for California offense of sexual battery was for an offense that by its nature involved a substantial risk that physical force against a person might be used, and thus, it was a crime of violence, and therefore an aggravated felony rendering alien removable; statutory definition of sexual battery required sexual touching that was not only committed against the victim's will, but also by the restraint of the victim. *Lisbey v. Gonzales*, C.A.9 2005, 420 F.3d 930. Aliens ↪ 53.2(3)

Under formal categorical approach of *Taylor v. United States*, alien's prior Delaware conviction for unlawful sexual contact in the third degree was not for aggravated felony, and thus did not render him removable, since statute of conviction said nothing about age of victim, and, even assuming that appeals to other statutes fell within formal categorical approach, Delaware's statutory scheme did not establish that sexual abuse of minor was necessary for conviction under statute of conviction. *Singh v. Ashcroft*, C.A.3 2004, 383 F.3d 144. Aliens ↪ 53.2(3)

Third-degree rape under Washington law fits within a generic, contemporary definition of rape, which can, but does not necessarily, include an element of physical force beyond that required for penetration, and thus, was an "aggravated felony" for enhancement purposes under sentencing guideline for unlawfully entering the United States. *U.S. v. Yanez Saucedo*, C.A.9 (Cal.) 2002, 295 F.3d 991, certiorari denied 123 S.Ct. 1312, 537 U.S. 1214, 154 L.Ed.2d 1066. Sentencing And Punishment ↪ 793

Regardless of whether alien was convicted for possession of cocaine, alien was within class of aliens subject to removal from the United States based on his conviction for aggravated criminal sexual abuse. *Guadarrama v. Perryman*, N.D.Ill.1999, 48 F.Supp.2d 782. Aliens ↪ 53.2(1)

Alien's New Jersey conviction for fourth-degree criminal sexual contact constituted a crime of violence for purposes of removal proceedings; crime could be characterized as a felony under New Jersey law since it was

8 U.S.C.A. § 1101

punishable by more than a year in prison, and crime involved a substantial risk that physical force would intentionally be used, since alien was charged with either using physical force or having sexual contact with a physically helpless victim. *Remoi v. Attorney General of U.S.*, C.A.3 2006, 175 Fed.Appx. 580, 2006 WL 1168777, Unreported. Aliens, Immigration, And Citizenship ↪ 276

Court of Appeals lacked jurisdiction over petition for review brought by Nigerian national, challenging denial by Board of Immigration Appeals (BIA) of his request for discretionary relief from order of removal, since sexual abuse offense of which national was convicted constituted "aggravated felony" under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). *Kykoyi v. Gonzales*, C.A.5 2005, 136 Fed.Appx. 717, 2005 WL 1527679, Unreported. Aliens ↪ 54.3(1)

28. ---- Sexual abuse of a minor, aggravated felony

Alien's conviction under New Jersey law for engaging in sexual conduct which would impair or debauch the morals of a child did not constitute a conviction for sexual abuse of a minor, so as to be an aggravated felony conviction that would render alien deportable; statute of conviction did not require, and charging document did not allege, that alien engaged in sexual conduct with the child. *Stubbs v. Attorney General of U.S.*, C.A.3 2006, 452 F.3d 251. Aliens, Immigration, And Citizenship ↪ 275

Offense committed by alien, who was native and citizen of Guatemala, of felony rape in third degree under Oregon law for sexual relationship with fourteen-year-old girl, constituted an aggravated felony for which alien was deportable; sexual intercourse with person under age of eighteen was without consent as matter of Oregon law and conviction under statute fell within ordinary, contemporary, and common meaning of word "rape." *Rivas-Gomez v. Gonzales*, C.A.9 2006, 441 F.3d 1072. Aliens, Immigration, And Citizenship ↪ 53.2(3)

Alien's conviction for Connecticut offense of risk of injury to a child by means of contact with the child's intimate parts constituted a "crime of violence" and thus was an aggravated felony for purposes of his deportation proceedings; offense was a felony that involved a substantial risk that physical force might intentionally be used. *Dos Santos v. Gonzales*, C.A.2 2006, 440 F.3d 81. Aliens, Immigration, And Citizenship ↪ 53.2(3)


Alien's Illinois state law conviction for misdemeanor offense of solicitation of a sexual act qualified as conviction for sexual abuse of a minor, and thus as aggravated felony under Immigration and Nationality Act (INA), rendering alien ineligible for cancellation of removal; although state statute pursuant to which alien was convicted reached conduct aimed at adults and minors, complaint against alien indicated that he solicited a minor, and by offering minor cigarettes if she would engage in oral sex with him, alien used persuasion or inducement in effort to convince her to engage in sexually explicit conduct. *Gattem v. Gonzales*, C.A.7 2005, 412 F.3d 758, rehearing and suggestion for rehearing en banc denied. Aliens ↪ 53.10(1)


For purposes of sentencing guideline that provided for an eight-level increase when a defendant was previously deported after conviction of an aggravated felony, defendant's prior gross misdemeanor conviction under Nevada state law for statutory sexual seduction, though not a traditional felony in that it was not punishable by more than one year, was an aggravated felony under immigration law which defined an aggravated felony as murder, rape, or sexual abuse of a minor, without reference to a term of imprisonment. *U.S. v. Alvarez-Gutierrez*, C.A.9 (Ariz.) 2005, 394 F.3d 1241. Sentencing And Punishment ↪ 793



Given that alien's state-law conviction for felony aggravated criminal sexual abuse fell within definition of "sexual abuse of minor" applied by federal courts under Immigration and Nationality Act (INA), Board of Immigration Appeals (BIA) did not violate either constitutional rule of uniformity in immigration and naturalization laws or alien's equal protection rights in ruling that alien was convicted of aggravated felony as defined by INA and thus subject to removal, notwithstanding alien's contention that state's broad sexual abuse law was outlier and his conduct would not have supported conviction in most states or under federal law. *Espinoza-Franco v. Ashcroft*,


8 U.S.C.A. § 1101

C.A.7 2005, 394 F.3d 461. Aliens  53.2(3); Constitutional Law  250.5


Alien's Illinois conviction for felony aggravated criminal sexual abuse constituted "sexual abuse of a minor" under Immigration and Nationality Act (INA), and thus was "aggravated felony" under INA, when alien was convicted under statutes which criminalized act of sexual conduct on family member younger than 18 and defined sexual conduct to include touching of any part of victim's body for purpose of sexual gratification or arousal if victim was under age 13, and indictment charged that he fondled his daughter's leg for his own sexual gratification, based on incidents that occurred while daughter was seven and eight years old. *Espinoza-Franco v. Ashcroft*, C.A.7 2005, 394 F.3d 461. Aliens  53.2(3)


Alien's Florida conviction for "indecent assault child under 16" qualified as sexual abuse of a minor, thus rendering him deportable as an aggravated felon. *Chuang v. U.S. Atty. Gen.*, C.A.11 2004, 382 F.3d 1299. Aliens  53.2(3)


Alien's North Carolina conviction of taking indecent liberties with minor qualified as conviction for "sexual abuse of a minor," so as to constitute an "aggravated felony" conviction that supported alien's removal and that precluded judicial review of removal order. *Del Pilar v. U.S. Atty. Gen.*, C.A.11 2003, 326 F.3d 1154. Aliens  53.2(3); Aliens  54.3(1)


Defendant's prior Florida offense of lewd and lascivious assault on child fell within physical contact provisions of statute setting forth such offense, and thus was "aggravated felony" warranting enhancement of sentence for illegal reentry, even if such statute encompassed both predicate and nonpredicate offenses, where information charged defendant with fondling child's breasts and/or touching and/or rubbing her genital area, and placing child's hand on his penis. *U.S. v. Londono-Quintero*, C.A.1 (R.I.) 2002, 289 F.3d 147. Sentencing And Punishment  793

Alien need not have engaged in some form of physical contact with minor, in order to have committed crime constituting "sexual abuse of a minor," so as to be subject to removal as aggravated felon. *Bahar v. Ashcroft*, C.A.11 2001, 264 F.3d 1309.

Conviction of alien under New York statute providing that "A person is guilty of rape in the third degree when: ... [b]eing twenty-one years old or more, he or she engages in sexual intercourse with another person to whom the actor is not married less than seventeen years old" was ground for deportation as conviction for aggravated felony of "sexual abuse of a minor." *Mugalli v. Ashcroft*, C.A.2 2001, 258 F.3d 52. Aliens  53.2(3)

Alien's state law misdemeanor conviction for sexual abuse of minor was "aggravated felony" within meaning of INA, rendering alien removable. *Guerrero-Perez v. I.N.S.*, C.A.7 2001, 256 F.3d 546. Aliens  53.2(3)

Prior conviction for criminal sexual assault under Illinois law, pursuant to indictment charging that defendant inserted his finger into vagina of his daughter of less than 18 years in age, fit within federal understanding of phrase "sexual abuse of a minor," which adopted ordinary, contemporary, and common meaning of those words, and thus qualified as "aggravated felony" under immigration statute, supporting 16-level enhancement under Sentencing Guidelines to defendant's base offense level for unlawfully reentering United States. *U.S. v. Martinez-Carillo*, C.A.7 (Ill.) 2001, 250 F.3d 1101, certiorari denied 122 S.Ct. 285, 534 U.S. 927, 151 L.Ed.2d 210. Sentencing And Punishment  780

Interpretation by Immigration and Naturalization Service (INS) of term "sexual abuse of a minor," conviction of alien for which is an aggravated felony warranting automatic deportation under Immigration and Nationality Act (INA), is entitled to deference, and if reasonable must be upheld. *Emile v. I.N.S.*, C.A.1 2001, 244 F.3d 183. Statutes  219(6.1)

Alien's conviction for sexual abuse of minor was "aggravated felony," and thus alien was removable, even though

8 U.S.C.A. § 1101

conviction was classified as misdemeanor under state law, where Immigration and Naturalization Act (INA) included sexual abuse of minor in its definition of "aggravated felony." *Guerrero-Perez v. I.N.S.*, C.A.7 2001, 242 F.3d 727, rehearing denied 256 F.3d 546. Aliens ↻ 53.2(3)

Sexual indecency with a child by exposure under Texas law, which involves intentionally and knowingly exposing one's genitals to a minor for sexual arousal or gratification, without physical contact, constitutes "sexual abuse of a minor" for purposes of aggravated felony sentence enhancement of alien convicted of illegal reentry after removal. *U.S. v. Zavala-Sustaita*, C.A.5 (Tex.) 2000, 214 F.3d 601, certiorari denied 121 S.Ct. 434, 531 U.S. 982, 148 L.Ed.2d 441. Aliens ↻ 59

California crime of lewd or lascivious act on a child under the age of 14 years constitutes "sexual abuse of a minor," and thus an "aggravated felony" under statute listing crimes that qualify as aggravated felonies for purposes of Immigration and Nationality chapter of the United States Code, thus warranting a 16-level sentencing enhancement upon conviction for entering the United States after being deported subsequent to a conviction for that crime. *U.S. v. Baron-Medina*, C.A.9 (Cal.) 1999, 187 F.3d 1144, certiorari denied 121 S.Ct. 1130, 531 U.S. 1167, 148 L.Ed.2d 996. Aliens ↻ 59

Defendant's prior Nebraska conviction for sexual assault of a child was a conviction for a crime of violence for which term of imprisonment was at least one year, and thus constituted an "aggravated felony," so that prior conviction required a 16-level enhancement to defendant's base offense level under Sentencing Guidelines following his subsequent conviction for illegally reentering United States following deportation. *U.S. v. Alas-Castro*, C.A.8 (Neb.) 1999, 184 F.3d 812. Aliens ↻ 59

Alien was sentenced to term of at least five years for attempted sexual abuse of child, for purposes of determination of whether he was "aggravated felon" so as to have warranted his deportation. *U.S. v. Reyes-Castro*, C.A.10 (Utah) 1993, 13 F.3d 377.

Alien's New York state conviction of use of a child in a sexual performance, which had no scienter requirement, did not constitute an "aggravated felony" for purposes of removal provisions of Immigration and Nationality Act (INA); New York offense was not equivalent to federal felony relating to child pornography, which required parent to "knowingly permit" minor to engage in sexually explicit conduct, or felony relating to sexual abuse of minor, which invoked higher scienter requirement by requiring "employment, use, persuasion, inducement, enticement, or coercion of a child." *Gonzalez v. Ashcroft*, S.D.N.Y.2005, 369 F.Supp.2d 442. Aliens ↻ 53.2(3)

Alien's Illinois conviction for predatory sexual assault of a child was a conviction for sexual abuse of a minor, as would make alien subject to removal as an aggravated felon; Illinois statute required an act of sexual penetration upon a victim under the age of thirteen, which fell within the ordinary meaning of the term "sexual abuse of a minor". *Patel v. Gonzales*, C.A.7 2006, 178 Fed.Appx. 564, 2006 WL 1153764, Unreported. Aliens, Immigration, And Citizenship ↻ 275

Petitioner's prior conviction for unlawful sexual intercourse with minor more than three years younger was not aggravated felony that subjected petitioner to removal. *Soto-Armenta v. Gonzales*, C.A.9 2006, 174 Fed.Appx. 386, 2006 WL 903686, Unreported. Aliens, Immigration, And Citizenship ↻ 275

Alien's conviction in the state of Colorado for sexual assault of a minor constituted an "aggravated felony," within the meaning of the Immigration and Nationality Act (INA), supporting removal order, even though Colorado law classified the offense as a misdemeanor. *Rios v. Gonzales*, C.A.10 2005, 132 Fed.Appx. 189, 2005 WL 1155920, Unreported. Aliens ↻ 53.2(3)

Alien's conviction for California offense of unlawful sexual intercourse with a minor constituted an "aggravated felony," for purposes of determination, in removal proceeding, of whether alien had been convicted of an

8 U.S.C.A. § 1101

aggravated felony, even though the conviction was subsequently reduced from a felony to a misdemeanor; alien's conduct constituted sexual abuse of a minor under the statute defining "aggravated felony". *Tabalanza v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 542, 2005 WL 1127081, Unreported. Aliens ↪ 53.2(3)

Alien convicted on a plea of nolo contendere to violating a provision of the criminalizing sex with minors who are three years younger than the perpetrator was convicted of an "aggravated felony" subjecting him to removal; the criminal complaint charged that the alien had sexual intercourse with a 14-year-old girl, which qualified as "sexual abuse of a minor." *Tabalanza v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 995, 2004 WL 2245250, Unreported. Aliens ↪ 53.2(3)

Record of alien's conviction for sexual battery failed to establish that he was convicted of the predicate offense of sexual abuse of a minor, so as to be removable as an aggravated felon; defendant's conviction did not meet the generic definition of "sexual abuse of a minor," because statute of conviction did not include the age of the victim as an element of the offense, and alien stipulated to only those facts necessary to support his conviction for sexual battery, which did not include age of the victim. *Larroulet v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 506, 2004 WL 1941274, Unreported. Aliens ↪ 53.2(3)

Alien's admitted conduct of touching a 12-year-old girl on her breasts under clothing, and touching other intimate parts, constituted sexual abuse of a minor under federal law, such that his California conviction based on that behavior was an aggravated felony, and therefore alien was ineligible for asylum. *Lazovic v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 660, 2004 WL 1157680, Unreported. Aliens ↪ 53.10(3)

Alien's conviction under California statute, prohibiting annoying or molesting child under age 18, did not constitute "sexual abuse of minor," under the categorical approach for determining whether prior conviction was aggravated felony for federal deportation purpose. *Camacho-Barajas v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 530, 2004 WL 958068, Unreported. Aliens ↪ 53.2(3)

State-law offense of lewdness with child under 14 years of age qualified as "sexual abuse of a minor," and thus "aggravated felony," under Immigration and Nationality Act (INA), regardless of whether state offense was broader than offense of sexual abuse of minor under federal criminal statute, and therefore Court of Appeals lacked jurisdiction to review alien's final order of removal based on conviction for such offense. *Cedano-Viera v. Ashcroft*, C.A.9 2003, 2003 WL 1542642, amended and superseded 324 F.3d 1062. Aliens ↪ 53.2(3); Aliens ↪ 54.3(1)

29. ---- Tax offenses, aggravated felony

Alien's conviction of filing false income tax returns was not an aggravated felony for purposes of determining removability under the Immigration and Naturalization Act, and thus alien was not removable; other subsection of statute specifically applied to federal tax evasion indicating that only removable tax offense was tax evasion. *Ki Se Lee v. Ashcroft*, C.A.3 2004, 368 F.3d 218. Aliens ↪ 53.2(3)

Alien's conviction of an offense under Internal Revenue Code section dealing with crimes of attempting to evade or defeat tax was "related to tax evasion," within meaning of Immigration and Nationality Act's (INA) definition of "aggravated felony" for the purpose of determining who is deportable under the INA, and thus, the offense, which caused revenue loss to the government exceeding \$10,000, rendered the alien deportable irrespective of whether he was convicted of tax evasion under that section. *Evangelista v. Ashcroft*, C.A.2 (N.Y.) 2004, 359 F.3d 145, certiorari denied 125 S.Ct. 1293, 543 U.S. 1145, 161 L.Ed.2d 105. Aliens ↪ 53.2(3)

Crime of subscribing to a false tax return fell within the definition of aggravated felony, rendering an alien subject to removal. *Abreu-Reyes v. I.N.S.*, C.A.9 2002, 292 F.3d 1029, opinion withdrawn on grant of rehearing 350 F.3d 966.

8 U.S.C.A. § 1101

30. ---- Theft offenses, aggravated felony

A California conviction for unlawful driving or taking of a vehicle does not categorically qualify as a "theft offense," and, thus, a court determining whether such a conviction renders an alien removable must apply the modified categorical approach. *Penuliar v. Gonzales*, C.A.9 2006, 435 F.3d 961. Aliens ↪ 53.2(3)

Conviction of alien, who was native of Ukraine, under Pennsylvania theft of services statute, related to diverting dispatch calls for ambulances to his employer, constituted an aggravated felony which was grounds for removal under Immigration and Nationality Act (INA); ambulance calls were not valueless, reason calls were diverted was because they had value, and crime required taking or exercise of control over something of value knowing that its owner had not consented. *Ilchuk v. Attorney General of U.S.*, C.A.3 2006, 434 F.3d 618. Aliens ↪ 53.2(3)

Florida theft statute under which alien had been convicted was divisible, for purposes of determining whether conviction constituted "theft offense" within meaning of Immigration and Nationality Act's aggravated felony definition; conviction under statute's "deprive the other person of a right to the property or a benefit" provision clearly comprised required intent element of INA "theft offense," but conviction under separate and presumably disjunctive "appropriate the property to his or her own use" provision did not, requiring additional showing, beyond fact of conviction under one of the provisions and sentence of one year or more, in order to qualify as aggravated-felony "theft offense." *Jaggernauth v. U.S. Atty. Gen.*, C.A.11 2005, 432 F.3d 1346. Aliens ↪ 53.2(3)

Prior conviction of alien from Nigeria for embezzling more than \$10,000 from United States was "aggravated felony," within meaning of exception from waiver of inadmissibility; federal government qualified as "victim," within meaning of definition for aggravated felony. *Balogun v. U.S. Atty. Gen.*, C.A.11 2005, 425 F.3d 1356, rehearing and rehearing en banc denied 167 Fed.Appx. 169, 2005 WL 3630324, certiorari denied 126 S.Ct. 1920. Aliens ↪ 53.10(1)

Alien's Connecticut third-degree larceny offense constituted a theft offense, and was therefore an "aggravated felony" under the Immigration and Nationality Act (INA), subjecting alien to removal. *Abimbola v. Ashcroft*, C.A.2 (N.Y.) 2004, 378 F.3d 173, certiorari denied 126 S.Ct. 734, 163 L.Ed.2d 577. Aliens ↪ 53.2(3)

Alien's conviction under a Pennsylvania theft by deception statute, stemming from alien's involvement with \$4,800 in bad checks, did not constitute an aggravated felony as defined by the Immigration and Nationality Act (INA); although an offense under the Pennsylvania statute was a "theft offense" as defined by the INA, because the state statute was bottomed on fraud or deceit, the offense also qualified as an "offense involving fraud or deceit," requiring victims' loss to exceed \$10,000 in order to be considered an aggravated felony. *Nugent v. Ashcroft*, C.A.3 2004, 367 F.3d 162. Aliens ↪ 53.2(3)

Alien's prior Arizona offense of theft of means of transportation was not "theft offense" warranting her removal, where some kinds of conduct covered by such offense, such as car renter keeping car beyond date of return specified in contract, did not require criminal intent to deprive owner. *Nevarez-Martinez v. I.N.S.*, C.A.9 2003, 326 F.3d 1053. Aliens ↪ 53.2(3)

Illegal reentry defendant's prior Arizona felony conviction for unlawful use of a means of transportation (joyriding) did not constitute "theft offense," and thus was not "aggravated felony" for sentence enhancement purposes, as offense could be accomplished without intent to deprive vehicle owner of use or possession of property. *U.S. v. Perez-Corona*, C.A.9 (Ariz.) 2002, 295 F.3d 996. Sentencing And Punishment ↪ 780

Alien's prior Illinois conviction for possession of a stolen motor vehicle could be classified as a "theft offense," and therefore constituted an "aggravated felony" rendering alien deportable; alien's conviction for possession of a stolen motor vehicle entailed a knowing exercise of control over another's property without consent.

8 U.S.C.A. § 1101

Hernandez-Mancilla v. I.N.S., C.A.7 2001, 246 F.3d 1002, rehearing and rehearing en banc denied.

Alien's state conviction for shoplifting was "aggravated felony" for purpose of enhanced penalty provisions for offense of illegal reentry into United States, where alien had been sentenced to twelve months imprisonment for shoplifting, even though state court had suspended sentence. U.S. v. Christopher, C.A.11 (Ga.) 2001, 239 F.3d 1191, rehearing and suggestion for rehearing en banc denied 252 F.3d 444, certiorari denied 122 S.Ct. 178, 534 U.S. 877, 151 L.Ed.2d 123. Sentencing And Punishment ↻ 793

Alien would have been deported irrespective of alleged errors in expedited removal proceeding, and alleged errors thus did not prevent deportation proceeding from being basis for illegal reentry conviction, where alien was convicted of theft of over \$1,500 for which term of imprisonment was at least one year, and, as alien convicted of aggravated felony, he was ineligible for discretionary relief from removal. U.S. v. Benitez-Villafuerte, C.A.5 (Tex.) 1999, 186 F.3d 651, certiorari denied 120 S.Ct. 838, 528 U.S. 1097, 145 L.Ed.2d 704. Aliens ↻ 56

Defendant's prior offense of petit larceny under New York law was "aggravated felony," for purpose of enhanced penalty provisions for offense of reentering United States following deportation, even though petit larceny was misdemeanor under state law, where defendant received one-year sentence for that prior offense. U.S. v. Graham, C.A.3 (Pa.) 1999, 169 F.3d 787, certiorari denied 120 S.Ct. 116, 528 U.S. 845, 145 L.Ed.2d 99, habeas corpus denied 2001 WL 872748. Aliens ↻ 59

Conviction of Colombian national for fourth-degree grand larceny under New York law constituted "aggravated felony" for purpose of Immigration and Nationality Act (INA), and thus final order of removal by Immigration and Naturalization Service (INS) would be properly upheld; while national was initially sentenced to probation for larceny, he was resentenced to one to three years incarceration when convicted of other crimes. Osse v. McElroy, W.D.N.Y.2003, 287 F.Supp.2d 199. Aliens ↻ 53.2(3)

District court would review de novo the question of whether alien's crime of possession of stolen property was an aggravated felony warranting removal under the INA. Kendall v. Mooney, E.D.N.Y.2003, 273 F.Supp.2d 216. Aliens ↻ 54.3(4)

Alien's conviction for criminal possession of stolen property under New York law was a theft offense within meaning of INA provision governing aggravated felonies for which an alien could be deported. Kendall v. Mooney, E.D.N.Y.2003, 273 F.Supp.2d 216. Aliens ↻ 53.2(3)

Both permanent and temporary deprivations of property could constitute theft offenses within meaning of INA provision setting forth deportable offenses, and thus state statute which applied to temporary deprivations which did not themselves constitute theft offenses was not divisible for immigration purposes. Kendall v. Mooney, E.D.N.Y.2003, 273 F.Supp.2d 216. Aliens ↻ 53.2(3)

Larceny in the second degree, as prohibited by Connecticut law, constituted an "aggravated felony," so that alien's conviction for that offense could serve as basis for removal order; Connecticut statute defined larceny as wrongful taking with intent to deprive owner of property or to appropriate the property for himself for a third person, and such offense was properly classified as theft offense, for purpose of Immigration and Nationality Act's (INA) removal provisions. Plummer v. Ashcroft, D.Conn.2003, 258 F.Supp.2d 43. Aliens ↻ 53.2(3)

Mexican native's California conviction for unlawful driving or taking of a vehicle did not categorically qualify as a "theft offense," which required denial of relief of cancellation of removal; there was no evidence native took and exercised control over a stolen car, making it possible that he pleaded guilty as an accomplice. Oliva-Osuna v. Gonzales, C.A.9 2006, 169 Fed.Appx. 501, 2006 WL 462472, Unreported. Aliens, Immigration, And Citizenship ↻ 53.10(1)

8 U.S.C.A. § 1101

Subparts of Utah statute under which alien was convicted of attempting to possess a stolen vehicle did not require criminal intent of a qualifying theft offense, and thus alien's conviction was not for an aggravated felony which would render him removable. *Peterson v. Gonzales*, C.A.9 2005, 126 Fed.Appx. 866, 2005 WL 851279, Unreported. Aliens ↪ 53.2(3)

Alien's Colorado conviction of knowingly entering a motor vehicle with intent to steal a thing of value constituted a theft offense and was therefore an aggravated felony rendering him removable. *Novitskiy v. Ashcroft*, C.A.10 2005, 120 Fed.Appx. 286, 2005 WL 139186, Unreported. Aliens ↪ 53.2(3)

Alien's conviction for receiving stolen property constituted aggravated felony, and thus rendered him deportable, where alien received three year sentence. *Ortega-Lopez v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 119, 2004 WL 1416385, Unreported. Aliens ↪ 53.2(3)

Alien's prior convictions for receipt of stolen property qualified as "aggravated felonies," within meaning of federal statute depriving courts of jurisdiction to review any final order of removal against alien who was removable by reason of his having committed aggravated felony, where alien was sentenced to imprisonment for term of at least one year on each conviction. *Idokogi v. Ashcroft*, C.A.5 (La.) 2004, 96 Fed.Appx. 203, 2004 WL 878478, Unreported. Aliens ↪ 53.2(3)

California offense of grand theft to which alien pleaded nolo contendere qualified as "aggravated felony" under Immigration and Nationality Act (INA), even though state offense was broader than definition of theft offense under federal criminal statute, and therefore Court of Appeals lacked jurisdiction to review alien's order of removal based on conviction for such offense; charging document alleged that alien had taken personal property exceeding \$400 in value, satisfying elements of theft offense. *Rodas v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 872, 2003 WL 23098452, Unreported. Aliens ↪ 53.2(3); Aliens ↪ 54.3(1)

Alien's conviction for possession of stolen mail was a "theft offense" within the meaning of the Immigration and Nationality Act (INA) sections providing that aliens convicted of aggravated felonies, including theft offenses, may not appeal from a removal order of the Board of Immigration Appeals (BIA). *Ibrahim v. Ashcroft*, C.A.5 2003, 74 Fed.Appx. 426, 2003 WL 22100829, Unreported. Aliens ↪ 53.2(3)

Alien's California conviction for "Steal from Elder" was not theft offense, and thus did not qualify as aggravated felony under removal statute, where statute of conviction criminalized taking of labor, and charging document alleged that alien "did willfully and unlawfully embezzle and steal the money, labor, and property" of elder and dependent adult. *Macapagal v. I.N.S.*, C.A.9 2003, 68 Fed.Appx. 109, 2003 WL 21418375, Unreported. Aliens ↪ 53.2(3)

Alien's Connecticut larceny offense constituted an "aggravated felony," for purposes of final order of removal on basis of being an alien convicted of an aggravated felony; all offenses covered by larceny statute fell under definition of "theft" in Immigration and Naturalization Act (INA). *Abimbola v. Ashcroft*, E.D.N.Y.2002, 2002 WL 2003186, Unreported, affirmed 378 F.3d 173, certiorari denied 126 S.Ct. 734, 163 L.Ed.2d 577. Aliens ↪ 53.2(3)

31. ---- Sentence, aggravated felony

California's theft statutes did not have to be separated from enhancement provision for purposes of determining whether alien had been convicted of an "aggravated felony" within meaning of INA provision making cancellation of removal unavailable. *Mutascu v. Gonzales*, C.A.5 2006, 444 F.3d 710. Aliens, Immigration, And Citizenship ↪ 53.10(1)

Sentence of six to twenty-three months of house arrest with electronic monitoring was a term of imprisonment

8 U.S.C.A. § 1101

under Immigration and Nationality Act (INA); nothing in INA indicated that site or mode of imprisonment was determinative, home confinement with monitoring was serious restriction of liberty, and statute's disjunctive phrasing that imprisonment included period of incarceration or confinement suggested intent to cover more than just time spent in jail. *Ilchuk v. Attorney General of U.S.*, C.A.3 2006, 434 F.3d 618. Aliens ↻ 53.2(3)

Alleged criminal attempt to kidnap alien's sister for prostitution and the subsequent beating alien suffered did not constitute persecution, for purposes of alien's asylum claim; even if the police were so corrupt that they colluded with traffickers in attempts to export girls abroad for monetary gain, alien failed to allege how such criminal activities were directed at him on account of race, religion, or political activities. *Topalli v. Gonzales*, C.A.1 2005, 417 F.3d 128. Aliens ↻ 53.10(3)

A conviction is an "aggravated felony," within the meaning of the Sentencing Guideline providing for an enhancement when a defendant convicted of illegally reentering the United States has been previously deported after a criminal conviction for an aggravated felony, if the defendant receives a sentence of at least one year, even if the sentence is suspended. *U.S. v. Echavarria-Escobar*, C.A.9 (Nev.) 2001, 270 F.3d 1265, certiorari denied 122 S.Ct. 1943, 535 U.S. 1069, 152 L.Ed.2d 847. Sentencing And Punishment ↻ 790

Reduction granted to illegal re-entry defendant in four-year term of imprisonment originally imposed for his state court menacing conviction, once defendant successfully completed Colorado's Regimented Inmate Training Program, was not mere suspension of execution of sentence, but effectively reduced defendant's sentence from imprisonment to probation, such that his menacing conviction could not be regarded as prior "aggravated felony," for sentencing enhancement purposes. *U.S. v. Landeros-Arreola*, C.A.5 (Tex.) 2001, 260 F.3d 407. Sentencing And Punishment ↻ 790

Defendant's prior state court conviction for inflicting corporal injury on spouse was "aggravated felony," on which district court could rely to enhance his sentence for illegal reentry offense, though defendant was originally sentenced to probation with only a 365-day jail condition, and was not sentenced to two-year term of imprisonment until after he violated his probation; fact that this term of imprisonment was imposed only after he violated his probation was not legally significant, as long as both statutory elements of definition of "aggravated felony" were met prior to his deportation and reentry. *U.S. v. Jimenez*, C.A.9 (Nev.) 2001, 258 F.3d 1120, certiorari denied 122 S.Ct. 1115, 534 U.S. 1151, 151 L.Ed.2d 1009. Sentencing And Punishment ↻ 780

Word "suspension," as used in prison-term test found in Immigration and Nationality Act's definition of "aggravated felony," has federal meaning, and refers to a procedural act that precedes a court's authorization for a defendant to spend part or all of the imposed prison sentence outside of prison. *U.S. v. Ayala-Gomez*, C.A.11 (Ga.) 2001, 255 F.3d 1314, certiorari denied 122 S.Ct. 905, 534 U.S. 1105, 151 L.Ed.2d 874. Aliens ↻ 59

Alien, whose assault convictions carried a 365-day sentence, was sentenced to "at least one year" for convictions for violent crimes; accordingly, alien's convictions met the definition of an "aggravated felony" under Immigration and Nationality Act (INA). *Matsuk v. I.N.S.*, C.A.9 2001, 247 F.3d 999. Aliens ↻ 53.2(3)

Alien's suspended sentence of one year on each of two forgery counts under Delaware law was "term of imprisonment [of] at least one year" under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as required to divest Court of Appeals of jurisdiction to hear alien's petition to review deportation order. *Drakes v. Zimski*, C.A.3 (N.J.) 2001, 240 F.3d 246. Aliens ↻ 54.3(1)

Florida conviction, coupled with the 18-month prison sentence for probation violation after deportation and after reentry, did not qualify as an "aggravated felony" at the time of defendant's deportation and at the time of his reentry since defendant was initially sentenced to straight probation for grand theft conviction grand theft conviction which precipitated his deportation; thus, defendant was not subject to provision of sentencing guidelines authorizing enhancement of base offense level when a defendant reenters the United States after being previously

8 U.S.C.A. § 1101

deported after a criminal conviction for an aggravated felony. *U.S. v. Guzman-Bera*, C.A.11 (Fla.) 2000, 216 F.3d 1019. Sentencing And Punishment ☞ 790

For purposes of transitional rule of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) precluding appeal by alien deportable by reason of having committed aggravated felony, statute defining "aggravated felony" as stolen property offense for which term of imprisonment was "at least one year" referred to actual sentence imposed by trial judge, not to potential sentence that judge could have imposed. *Alberto-Gonzalez v. I.N.S.*, C.A.9 2000, 215 F.3d 906. Aliens ☞ 53.2(3); Aliens ☞ 54.3(1)

When a court does not order a period of incarceration and then suspend it, but instead imposes probation directly, the conviction is not an "aggravated felony" for purposes of Sentencing Guideline authorizing enhancement for unlawful reentry if defendant has been deported after committing aggravated felony. *U.S. v. Banda-Zamora*, C.A.5 (Tex.) 1999, 178 F.3d 728. Aliens ☞ 59

"Term of imprisonment" to which defendant had been sentenced for prior aggravated felony was five years, and he thus was not entitled to downward departure in illegal reentry sentence pursuant to Sentencing Guideline Application Note allowing for departure if, inter alia, term of imprisonment imposed for aggravated felony did not exceed one year, where defendant had been sentenced for aggravated felony to term "not to exceed five years," but court had stayed sentence and placed defendant on 36 months' probation on terms which included 45 days in jail. *U.S. v. Chavez-Valenzuela*, C.A.10 (Utah) 1999, 170 F.3d 1038. Sentencing And Punishment ☞ 860

Defendant's one year suspended sentence for his prior criminal assault conviction constituted "term of imprisonment" of at least one year, for purposes of determining whether defendant's prior criminal assault conviction was aggravated felony within meaning of Sentencing Guideline section providing for 16 level enhancement to defendant's base level if he was previously deported after conviction for aggravated felony. *U.S. v. Holguin-Enriquez*, D.Kan.2000, 120 F.Supp.2d 969. Sentencing And Punishment ☞ 792

Alien who received 18-month term of imprisonment was convicted of "aggravated felony," for purposes of determining his eligibility for discretionary relief from deportation, even though alien was only required to serve six months, pursuant to provision of statute defining "conviction" which indicated that reference to term of imprisonment included period of incarceration or confinement ordered by court. *Vasquez v. Reno*, D.Mass.2000, 97 F.Supp.2d 142, vacated 233 F.3d 688, certiorari denied 122 S.Ct. 43, 534 U.S. 816, 151 L.Ed.2d 15. Aliens ☞ 53.2(3)

Since alien was sentenced to a term of imprisonment of one year, his state petit larceny conviction was an "aggravated felony" for removal purposes under statutory subsection which makes an aggravated felony any theft offense for which the term of imprisonment is at least one year. *Jaafar v. Immigration & Naturalization*, W.D.N.Y.1999, 77 F.Supp.2d 360. Aliens ☞ 53.2(3)

Actual sentence imposed is not required to be more than one year to qualify as a federal felony and hence as an aggravated felony for deportation purposes. *Hypolite v. Blackman*, M.D.Pa.1999, 57 F.Supp.2d 128. Aliens ☞ 53.2(3)

32. ---- Sentencing guidelines, aggravated felony

State felon in possession offense was not required to include interstate or foreign commerce nexus as one of its elements in order to qualify as aggravated felony for purposes of sentence enhancement for removal subsequent to conviction for aggravated felony. *U.S. v. Castillo-Rivera*, C.A.9 (Cal.) 2001, 244 F.3d 1020, certiorari denied 122 S.Ct. 294, 534 U.S. 931, 151 L.Ed.2d 217. Sentencing And Punishment ☞ 793

Prior New York conviction of menacing, for defendant's attempt to throw his wife off balcony, threatening wife

8 U.S.C.A. § 1101

and children, and holding gun to girlfriend's head and threatening to kill her, qualified as "aggravated felony" under sentencing guideline for purposes of 16-level enhancement when a defendant who unlawfully enters the United States has previously been deported after being convicted of an aggravated felony, because it was a crime of violence for which term of imprisonment was at least one year. U.S. v. Drummond, C.A.11 (Fla.) 2001, 240 F.3d 1333. Sentencing And Punishment ↻ 793

Defendant's prior Arizona conviction for attempted aggravated assault with a deadly weapon or deadly instrument, which had led to his deportation, was for a "crime of violence" for which term of imprisonment was at least one year, and thus was for an "aggravated felony," so that Sentencing Guidelines required 16-level increase in defendant's base offense level following his subsequent conviction for unlawful reentry into United States. U.S. v. Ceron-Sanchez, C.A.9 (Ariz.) 2000, 222 F.3d 1169. Sentencing And Punishment ↻ 780; Sentencing And Punishment ↻ 781

Defendant was previously convicted of aggravated felony for which term of imprisonment exceeded one year, for purposes of Sentencing Guideline Application Note allowing for downward departure when term of imprisonment for aggravated felony underlying prior deportation and triggering offense level adjustment for crime involving unlawfully entering or remaining in United States did not exceed one year, even though state trial court had suspended two years and three months of three-year prison term, pursuant to statute incorporated by guideline and defining "term of imprisonment" as period of incarceration ordered by court. U.S. v. McKenzie, C.A.3 (N.J.) 1999, 193 F.3d 740. Sentencing And Punishment ↻ 860

Because offense of illegal reentry was on-going offense that ended only when offender was discovered, defendant violated illegal reentry statute when he was found in United States in 1997, and, thus, district court did not violate ex post facto clause by applying Sentencing Guidelines that were in effect in 1997 so as to impose harsher sentence for illegal reentry subsequent to a conviction for aggravated felony, even though prior conviction on which sentencing increase was based was not considered an aggravated felony in 1991, the year that he physically reentered the country. U.S. v. Estrada-Quijas, C.A.8 (Neb.) 1999, 183 F.3d 758. Aliens ↻ 59; Constitutional Law ↻ 203

Illegal reentry defendant's prior Tennessee conviction for facilitation of aggravated robbery was "aggravated felony," within meaning of guideline provision authorizing offense level increase; offense inherently involved conduct that presented serious potential risk of physical injury to another. U.S. v. Trejo-Palacios, S.D.Tex.2006, 418 F.Supp.2d 915. Sentencing And Punishment ↻ 793

Defendant's prior state conviction for simple assault, with its accompanying one-year suspended sentence, did not qualify as "aggravated felony" warranting eight-level enhancement in base offense upon his conviction of illegal re-entry following deportation, although defendant's conduct qualified as both an "aggravated felony" and a misdemeanor, in light of rule of lenity. U.S. v. Ponce-Casalez, D.R.I.2002, 212 F.Supp.2d 42. Sentencing And Punishment ↻ 780

The Fifth Circuit's *Reyna-Espinosa* decision, interpreting "aggravated felony" as basis under federal sentencing guidelines for a 16-level upward adjustment of sentence for a defendant previously deported after conviction for an aggravated felony, did not apply a new law of constitutional importance or a rule of criminal procedure, and thus, the decision could be applied retroactively. Rios-Delgado v. U.S., W.D.Tex.2000, 117 F.Supp.2d 581. Courts ↻ 100(1); Sentencing And Punishment ↻ 780

Two elements are required in order to deem a prior conviction an "aggravated felony" under the Sentencing Guidelines: (1) the prior offense must be a felony under the law of the state of conviction, and (2) the prior conviction must also have been punishable under the Controlled Substances Act. U.S. v. Galvan-Zermeno, C.D.Ill.1999, 52 F.Supp.2d 922. Sentencing And Punishment ↻ 780

8 U.S.C.A. § 1101

33. ---- State law, aggravated felony

New Jersey statute under which alien was convicted of third-degree endangering welfare of children invited further inquiry into the facts in order for Board of Immigration Appeals (BIA) to determine whether alien's conviction was for sexual abuse of a minor, so as to render him deportable for having an aggravated felony conviction, and thus, BIA properly examined the charging instrument; New Jersey statute under which alien was convicted prohibited both sexual conduct that would impair or debauch the morals of a child and causing harm to a child the would make the child an abused or neglected child. *Stubbs v. Attorney General of U.S.*, C.A.3 2006, 452 F.3d 251. Aliens, Immigration, And Citizenship ↻ 275

In determining whether alien's Colorado state law conviction for contributing to the delinquency of a minor constituted an aggravated felony conviction, so as to render alien deportable, it was appropriate for Board of Immigration Appeals (BIA) to look at charging document to see which law the alien induced, aided, or encouraged the minor to break, since Colorado statute criminalizing contributing to the delinquency of a minor covered broad range of conduct, some of which would constitute an aggravated felony and some of which would not. *Vargas v. Department Of Homeland Security*, C.A.10 2006, 451 F.3d 1105. Aliens, Immigration, And Citizenship ↻ 273

Alien's conviction based upon state law rather than federal law could nevertheless be "aggravated felony" within meaning of alien detention statute. *Paxton v. U.S. I.N.S.*, E.D.Mich.1990, 745 F.Supp. 1261.

34. ---- Miscellaneous offenses, aggravated felony

Alien's conviction under Pennsylvania's misdemeanor simple assault statute did not constitute a "crime of violence," as would render him removable as an aggravated felon; the simple assault statute required only a showing of recklessness for the mens rea, rather than intent to use force, and it did not involve a substantial risk that the perpetrator would intentionally use physical force in committing the offense. *Popal v. Gonzales*, C.A.3 2005, 416 F.3d 249. Aliens ↻ 53.2(3)

Phrase "amount of the funds" in statute defining money laundering for purposes of listing offenses constituting an "aggravated felony" rendering an alien removable referred to the amount of money that was laundered rather than the amount of loss suffered by the victims of the underlying criminal activity; thus, alien's conviction for laundering \$1,310 did not constitute an "aggravated felony." *Chowdhury v. I.N.S.*, C.A.9 2001, 249 F.3d 970.

Prior conviction for third degree assault, in violation of Colorado law, was a "felony," rather than a misdemeanor, as would warrant imposition of 10-year maximum statutory sentence for defendant convicted of illegal reentry after deportation, even though Colorado law classified assault offense as a misdemeanor, where maximum sentence for assault offense was 18 months in prison. *U.S. v. Cordova-Arevalo*, D.N.M.2004, 373 F.Supp.2d 1220. Sentencing And Punishment ↻ 1276

Former alien's naturalization could not be revoked, for commission of aggravated felony, when underlying conviction was for committing self abuse in presence of minor; necessary element of use or attempt to use force against victim was missing. *U.S. v. Reve*, D.N.J.2003, 241 F.Supp.2d 470. Aliens ↻ 71(5)

Alien's Connecticut conviction for failure to appear when legally called was not for an aggravated felony, so as to make him deportable; even if executed by alien, appearance bond constituted merely a promise to appear at various times and recognized certain consequences in the failure to do so and did not meet the court order requirement of Connecticut statute. *Barnaby v. Reno*, D.Conn.2001, 142 F.Supp.2d 277. Aliens ↻ 53.2(3)

Alien's conviction for falsely making "document prescribed by statute or regulation as evidence of authorized stay or employment in the United States" constituted "aggravated felony" within meaning of Immigration and Nationality Act (INA). *Pena-Rosario v. Reno*, E.D.N.Y.2000, 83 F.Supp.2d 349, reconsideration denied 2000 WL

8 U.S.C.A. § 1101

620207. Aliens ↪ 53.2(3)

Alien's conviction for willful infliction of corporal injury on his spouse, in violation of California law, for which he was imprisoned for one year, constituted an "aggravated felony," for purposes of statute depriving Court of Appeals of jurisdiction to consider petition for review from an alien found removable on account of a conviction for an aggravated felony. *Castaneda v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 319, 2005 WL 79075, Unreported. Aliens ↪ 53.2(3)

Absent any showing that alien's Utah conviction for enticing a minor over the Internet did not involve an actual minor, conviction constituted an aggravated felony, such that Court of Appeals lacked jurisdiction to consider alien's appeal of the denial of his motion for stay of removal. *Farhang v. Ashcroft*, C.A.10 2004, 104 Fed.Appx. 696, 2004 WL 1497544, Unreported. Aliens ↪ 53.2(3); Aliens ↪ 54.3(1)

Defendant's state court conviction for performing lewd and lascivious acts in presence of minor constituted "aggravated felony" for purpose of federal sentencing guidelines, and thus eight-level enhancement to defendant's sentence for illegal reentry of United States following deportation would be properly applied. *U.S. v. Billy*, C.A.3 (Virgin Islands) 2004, 94 Fed.Appx. 56, 2004 WL 758571, Unreported, certiorari denied 125 S.Ct. 85, 543 U.S. 885, 160 L.Ed.2d 144. Sentencing And Punishment ↪ 793

Alien's offense of conviction for obstruction of a federal audit did not involve a \$10,000 loss, even though the indictment, the presentence report, and alien's settlement of civil forfeiture action for \$900,000 left little doubt that the entire scheme perpetrated by alien and his co-defendants caused a loss well in excess of \$10,000, and thus, the offense of conviction was not an "aggravated felony" as defined under statute providing that Courts of Appeals lack jurisdiction to review a final order of removal predicated on alien's conviction of certain listed criminal offenses, including any "aggravated felony." *Woldiger v. Ashcroft*, C.A.3 2003, 77 Fed.Appx. 586, 2003 WL 22293207, Unreported. Aliens ↪ 53.2(3)

35. Alien

United States national who acquired his nationality by virtue of his having been born in the Philippine Islands became an alien upon the grant of independence to the Philippines notwithstanding his permanent residence in the continental United States on the date of Philippine independence. *Rabang v. Boyd*, U.S.Wash.1957, 77 S.Ct. 985, 353 U.S. 427, 1 L.Ed.2d 956, rehearing denied 77 S.Ct. 1421, 354 U.S. 944, 1 L.Ed.2d 1542.


In construing Act of 1907 the term "aliens" included not only "alien immigrants" but every alien irrespective of any previous residence or domicile in United States. *Lapina v. Williams*, U.S.N.Y.1914, 34 S.Ct. 196, 232 U.S. 78, 58 L.Ed. 515. See, also, *U.S. v. Tsunezo Kusano*, Hawaii 1914, 217 F. 50, 133 C.C.A. 36; *U.S. v. Tsurukichi Nakao*, Hawaii 1914, 217 F. 49, 133 C.C.A. 35; *U.S. v. Suekichi*, Hawaii 1912, 199 F. 750, 118 C.C.A. 188; *U.S. v. Rodgers*, Pa.1911, 191 F. 970, 112 C.C.A. 382; *U.S. v. Nakashima*, Hawaii 1908, 160 F. 842, 87 C.C.A. 646; *In re Buchsbaum*, D.C.Pa.1905, 141 F. 221; *Moffitt v. U.S.*, Cal.1904, 128 F. 375, 63 C.C.A. 117; *In re Moses*, C.C.N.Y.1897, 83 F. 995; *U.S. v. Sandrey*, C.C.La.1891, 48 F. 550, 552; 1900, 23 Op.Atty.Gen. 278; 1899, 22 Op.Atty.Gen. 353; 1892, 20 Op.Atty.Gen. 371.

Alien has been defined to be "one born out of the jurisdiction of the United States, and who has not been naturalized under their Constitution and laws." *Low Wah Suey v. Backus*, U.S.Cal.1912, 32 S.Ct. 734, 225 U.S. 460, 56 L.Ed. 1165.

Native of Puerto Rico who was an inhabitant of that island at the time of its cession to the United States by the treaty with Spain of April 11, 1899, 30 Stat. 1754, was not, on her arrival at the Port of New York, an alien immigrant, within the meaning of Act March 3, 1891. *Gonzales v. Williams*, U.S.N.Y.1904, 24 S.Ct. 177, 192 U.S. 1, 48 L.Ed. 317.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

A person born in England before 1775, and who always resided there, and never was in the United States, was an alien. *Dawson's Lessee v. Godfrey*, U.S. Dist. Col. 1808, 4 Cranch 321, 8 U.S. 321, 2 L.Ed. 634. Aliens  1

Alien residents of the continental United States are not subject to the exclusion provisions of this chapter when traveling from the continental United States to any of our insular possessions and returning. *U.S. ex rel. Alcantra v. Boyd*, C.A.9 (Wash.) 1955, 222 F.2d 445. See, also, *International Longshoremen's and Warehousemen's Union, Local 37 v. Boyd*, Wash. 1954, 74 S.Ct. 447, 347 U.S. 222, 98 L.Ed. 650.

Filipino, who came lawfully into the United States at age of seventeen in 1930 and who had thereafter resided in the United States, became as alien upon proclamation of Philippine Independence on July 4, 1946. *Gonzales v. Barber*, C.A.9 (Cal.) 1953, 207 F.2d 398, certiorari granted 74 S.Ct. 274, 346 U.S. 914, 98 L.Ed. 410, affirmed 74 S.Ct. 822, 347 U.S. 637, 98 L.Ed. 1009.

The word "alien" in former § 173 of this title [now covered by this section] meant not a native-born or naturalized citizen, and that was also its meaning in former § 501 et seq. of this title. *Scholz v. Shaughnessy*, C.A.2 (N.Y.) 1950, 180 F.2d 450.

Whether a Filipino is an alien as that term was used in other acts of Congress was not controlling in determining whether Filipino was an alien within meaning of former chapter 10 of this title. *Gancy v. U. S.*, C.C.A.8 (Minn.) 1945, 149 F.2d 788, certiorari denied 66 S.Ct. 166, 326 U.S. 767, 90 L.Ed. 463, rehearing denied 66 S.Ct. 229, 326 U.S. 810, 90 L.Ed. 495.

A native-born Filipino who was living in the United States but who had not become a naturalized citizen was required to register as an "alien" under former § 452 of this title [now covered by § 1302 of this title]. *Gancy v. U. S.*, C.C.A.8 (Minn.) 1945, 149 F.2d 788, certiorari denied 66 S.Ct. 166, 326 U.S. 767, 90 L.Ed. 463, rehearing denied 66 S.Ct. 229, 326 U.S. 810, 90 L.Ed. 495.

An alien who was lawfully admitted for permanent residence in 1913 and went abroad for a temporary visit in 1921 was an "alien immigrant" within former § 203 of this title [now covered by this section] and hence could not re-enter in 1927 without a re-entry permit or unexpired immigration visa, notwithstanding that he was allegedly returning to an unrelinquished domicile and could have secured a reentry permit. *U.S. ex rel. De Vita v. Uhl*, C.C.A.2 (N.Y.) 1938, 99 F.2d 825, certiorari denied 59 S.Ct. 464, 306 U.S. 631, 83 L.Ed. 1033.

Alien woman married abroad to American citizen is "alien." *U.S. ex rel. Ulrich v. Kellogg*, App.D.C. 1929, 30 F.2d 984, 58 App.D.C. 360, certiorari denied 49 S.Ct. 482, 279 U.S. 868, 73 L.Ed. 1005, rehearing denied 50 S.Ct. 79.

Husband's naturalization after order of deportation of wife as person of constitutional psychopathic inferiority did not make her citizen, defeating power of deportation. *U.S. ex rel. Paolantonio v. Day*, C.C.A.2 (N.Y.) 1927, 22 F.2d 914.

Alien passing through United States on transit certificate, which entitled him to remain for 60 days, was without right to re-enter, otherwise than on his status at that time. *The Bremen*, D.C.N.Y. 1927, 18 F.2d 960.

Plaintiffs, neither native-born nor naturalized, attempting re-entry after absence from claimed domicile of seven years, were "aliens." *Lidonnici v. Davis*, App.D.C. 1926, 16 F.2d 532, 57 App.D.C. 36, certiorari denied 47 S.Ct. 591, 274 U.S. 744, 71 L.Ed. 1325.

Former § 224(b) of this title [now covered by subsec. (a)(3) of this section] defining "alien", was cited in connection with habeas corpus proceedings for release from order of deportation by a person born in the Philippine Islands Sept. 24, 1898, of a Chinese father and a Filipino mother. *Ex parte Palo*, D.C.Wash. 1924, 3 F.2d 44,

8 U.S.C.A. § 1101

affirmed 8 F.2d 607.

Alien did not cease to be alien by declaring his intention to become citizen and taking out his "first papers," but remained such until naturalization was complete. *U.S. v. Uhl*, C.C.A.2 (N.Y.) 1914, 211 F. 628, 128 C.C.A. 560.

Iranian national who was seeking status change from nonimmigrant visitor to nonimmigrant student was "alien" as term was defined in this section, and, therefore, she was subject to provisions of this chapter. *Najafi v. Civiletti*, W.D.Mo.1981, 511 F.Supp. 236.

Individual who expatriated himself by signing an oath of renunciation of American citizenship was an "alien." *Davis v. District Director, Immigration & Naturalization Service*, D.C.D.C.1979, 481 F.Supp. 1178.

Even after passage of the Philippine Independence Act, 48 Stat. 456, all citizens of the Philippines continued to owe allegiance to the United States until July 4, 1946, the date of complete independence for the Philippines. *Matter of Naturalization of 68 Filipino War Veterans*, N.D.Cal.1975, 406 F.Supp. 931.

Under § 1253(h) of this title, authorizing Attorney General to grant political asylum to aliens, term "alien" means any person not a citizen or national of the United States and therefore includes a foreign crewman. *U. S. ex rel. Szlajmer v. Esperdy*, S.D.N.Y.1960, 188 F.Supp. 491.

Within § 1223 of this title, making carrier liable for detention expenses attendant to detention of "aliens" the word "alien" includes citizens suspected of being aliens. *Pan Am World Airways v. U.S.*, Ct.Cl.1954, 122 F.Supp. 682, 129 Ct.Cl. 53. Aliens ↩ 57

Commissioner of Immigration and Naturalization's regulation defining term "alien" as any alien as defined by immigration laws and any person applying for admission to United States on ground that he is citizen or national of the United States was void. *American President Lines v. Mackey*, D.C.D.C.1953, 120 F.Supp. 897.

During period that United States exercised control of Philippine Islands, children born there were entitled to protection of the United States and citizens of islands owed allegiance to United States and were not deemed to be aliens. *Varleta v. Barber*, N.D.Cal.1951, 98 F.Supp. 177, affirmed 199 F.2d 419.

An "alien" is one born out of the United States, and who has not been naturalized under the Constitution and laws of the United States, but the term has been extended to apply to a native born United States citizen who has lost his citizenship by removal to and acquisition of the citizenship of a foreign country. *Ex parte Tadayasu Abo*, N.D.Cal.1947, 76 F.Supp. 664, reversed in part on other grounds 186 F.2d 775, certiorari denied 72 S.Ct. 39, 342 U.S. 832, 96 L.Ed. 629, certiorari denied 72 S.Ct. 40, 342 U.S. 832, 96 L.Ed. 629.

A native-born Filipino living in the United States but not admitted to United States citizenship was an "alien" within meaning of regulation of Commissioner of Immigration and Naturalization defining aliens as used in former §§ 137, 155, 156a and 451 to 460 of this title and former §§ 9 to 13 of Title 18 as including any person not a citizen of the United States. *U. S. v. Gancy*, D.C.Minn.1944, 54 F.Supp. 755, affirmed 149 F.2d 788, certiorari denied 66 S.Ct. 166, 326 U.S. 767, 90 L.Ed. 463, rehearing denied 66 S.Ct. 229, 326 U.S. 810, 90 L.Ed. 495.

An alien was one born without the allegiance of the commonwealth. *Ainslie v. Martin*, 1813, 9 Mass. 456.

36. Child--Generally

Pre-2000 law governing acquisition through parents of derivative citizenship by child born outside United States imposes age 18 cutoff for satisfying its conditions, notwithstanding default definition of child elsewhere in INA as "an unmarried person under twenty-one years of age." *Langhorne v. Ashcroft*, C.A.2 (N.Y.) 2004, 377 F.3d 175,

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

certiorari denied 125 S.Ct. 1347, 543 U.S. 1167, 161 L.Ed.2d 143. Citizens ↻ 9

Child Status Protection Act, which amended Immigration and Nationality Act (INA) to provide age-out protection for individuals who were children at the time a petition or application for permanent resident status was filed on their behalf, applied to alien, whose case was awaiting a final determination by court at the time of the statute's enactment; statutory term "final determination" referred not to the final decision by the agency, but to the final determination of the matter from which no appeal or writ of error could be taken. *Padash v. I.N.S.*, C.A.9 2004, 358 F.3d 1161. Aliens ↻ 40

In order to qualify as a "son" or "daughter" for purposes of obtaining visa preference, one must have qualified as a "child" under this chapter. *Lau v. Kiley*, C.A.2 (N.Y.) 1977, 563 F.2d 543.

Alien was not an "orphan" on basis that she was a child of a "sole parent" "incapable of providing proper care;" alien's biological father, who was listed on birth certificate as "unknown" to facilitate adoption, shared the same house with alien's mother and was providing ample financial support to all of them, and thus had not severed all parental rights to alien in the manner contemplated by the statute, and there was no evidence that alien's mother was incapable of providing proper care for alien. *Rogan v. Reno*, E.D.N.Y.1999, 75 F.Supp.2d 63. Aliens ↻ 51.5

The word "child" as used in § 1433 of this title respecting naturalization of a child born outside the United States one or both of whose parents is a citizen of the United States means an unmarried person under 21 years of age. *Petition of Marques*, Mass.1961, 172 N.E.2d 262, 341 Mass. 715.

37. ---- Adoption, child

Adoption need not conform to Board of Immigration Appeal's or Anglo-American notions of adoption to be valid under 8 U.S.C.A. § 1101(b)(1)(E) which defines adoption for purposes of eligibility for second preference immigrant visas; adoption need only be recognized under law of country where adoption occurred. *Kaho v. Ilchert*, C.A.9 (Cal.) 1985, 765 F.2d 877.

Unmarried, adopted person over 21 years of age may qualify for second preference visa if he or she once satisfied requirements of 8 U.S.C.A. § 1101(b)(1)(E) which defines manner of qualifying adopted child for second preference status. *Kaho v. Ilchert*, C.A.9 (Cal.) 1985, 765 F.2d 877.

Service did not abuse its discretion in denying petition of alien, who had been adopted by Tongan custom but not according to Tongan law, for a permanent visa on alien's asserted preferential status as sister of a naturalized United States citizen in view of fact that Service's interpretation of this section setting forth requirements adopted children must meet in order to establish sibling relationship entitling them to preferential treatment as requiring that adoption be in accordance with law of country where it took place was a reasonable construction, although not the only reasonable construction. *Mila v. District Director of Denver, Colorado Dist. of Immigration and Naturalization Service*, U. S. Dept. of Justice, C.A.10 (Utah) 1982, 678 F.2d 123, certiorari denied 103 S.Ct. 726, 459 U.S. 1104, 74 L.Ed.2d 952.

Adopted son of native-born American citizen of Chinese race was formerly admissible if adopted before January 1, 1924. *Tillinghast v. Chin Mon ex rel. Chin Yuen*, C.C.A.1 (Mass.) 1928, 25 F.2d 262, certiorari granted 49 S.Ct. 12, 278 U.S. 586, 73 L.Ed. 521, certiorari dismissed 49 S.Ct. 249, 278 U.S. 666, 73 L.Ed. 571.

Board of Immigration Appeals' (BIA) interpretation that all other familial relationships referred to in Immigration and Nationality Act (INA) depended on definitions of parent and child and that sibling relationship with biological siblings was severed when sibling was adopted, was reasonable interpretation, which had to be upheld by district court regardless of how court itself would have resolved issue. *Young v. Reno*, D.Hawai'i 1996, 931 F.Supp. 1495,

8 U.S.C.A. § 1101

affirmed 114 F.3d 879. Aliens  51.5; Statutes  219(6.1)

Service's interpretation of terms "son" and "daughter" as used for immigration purposes in granting preference classifications, which allowed adopted children to be comprehended by those terms only when adoption took place when child was under age of 14 years and when child resided with and in custody of adopting parent or parents for at least two years after adoption, was not unreasonable. *Nazareno v. Attorney General of U. S.*, D.C.D.C.1973, 366 F.Supp. 1219, affirmed 512 F.2d 936, 168 U.S.App.D.C. 22, certiorari denied 96 S.Ct. 53, 423 U.S. 832, 46 L.Ed.2d 49.

The policy in favor of facilitating entry of alien children adopted by American citizens is related to policy of § 1434 of this title to expedite naturalization of such children, and uniform interpretation of similar language of said section and this section is to be preferred, particularly when underlying purpose of § 1434 of this title relating to naturalization of such adopted children to eliminate disparity of treatment of adopted and natural children will thereby be implemented. *In re Chin Thloot Har Wong*, S.D.N.Y.1963, 224 F.Supp. 155.

Under amendment to this section including in definition of "child" a child adopted while under age of 14 years if child has thereafter been with adopting parent or parents for at least two years, the residence of adopted child for such period is not required to be with the citizen adopting parent but residence with noncitizen adopting parent will suffice and where American citizen, while in China, and his wife who was Chinese citizen adopted a child, the American citizen returned to the United States and his wife and adopted child continued to reside together, the adopted child was within the definition of a "child" under this section and was entitled to nonquota immigrant status, so that child might accompany plaintiff's wife who had also been approved for admission as nonquota immigrant. *Ng Fun Yin v. Esperdy*, S.D.N.Y.1960, 187 F.Supp. 51.


In adopting amendment to subsection (b)(1)(E) of this section embracing within definition of child a child adopted while under age of 14, if child has thereafter been in legal custody of or has resided with adopting parent or parents for at least two years, Congress intended to avoid harsh results of breaking up bona fide family units and Congress inserted two years' residence requirement as an assurance that the family unit would be bona fide. *Ng Fun Yin v. Esperdy*, S.D.N.Y.1960, 187 F.Supp. 51.

Where an alien child is admitted to the United States for the purpose of adoption, the adoptive parents must comply with the preadoptive requirements of the state of proposed residence of the child. *In re Adoption of Pyung B.*, N.Y.Fam.Ct.1975, 371 N.Y.S.2d 993, 83 Misc.2d 794.

Adoption is exclusively a state responsibility while immigration is exclusively a federal responsibility; the two procedures should not be intermixed. *In re Adoption of Pyung B.*, N.Y.Fam.Ct.1975, 371 N.Y.S.2d 993, 83 Misc.2d 794.

McKinney's N.Y. Domestic Relations Law § 115-a et seq. setting forth special provisions relating to alien children to be brought into the state for private-placement adoption was enacted for a dual purpose; to satisfy federal immigration requirements as well as to prevent the tragedy of a child's coming to New York state from a foreign country only to have the petition for adoption denied on the ground that the adoption would not be in the child's best interests. *In re Adoption of Pyung B.*, N.Y.Fam.Ct.1975, 371 N.Y.S.2d 993, 83 Misc.2d 794.

38. ---- Illegitimacy, child

Provisions of this section which have the effect of excluding the relationship between an illegitimate child and his natural father, as opposed to its natural mother, from the special preference immigration status accorded to the "child" or "parent" of a United States citizen or lawful permanent resident are constitutional. *Fiallo v. Bell*, U.S.N.Y.1977, 97 S.Ct. 1473, 430 U.S. 787, 52 L.Ed.2d 50. Aliens  40

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Purpose of provisions of this section which have the effect of excluding the relationship between an illegitimate child and its natural father from the special preference status accorded a "child" or "parent" of a United States citizen or lawful permanent resident was to clarify prior law so that an illegitimate child would, in relation to his mother, enjoy the same immigration status as a legal child; legislative history reflects an intentional choice not to provide similar treatment with regards to an illegitimate child and his natural father. *Fiallo v. Bell*, U.S.N.Y.1977, 97 S.Ct. 1473, 430 U.S. 787, 52 L.Ed.2d 50. Aliens ↪ 51.5

A son born in Mexico to biological parents who were Mexican citizens, and raised by his biological father and his stepmother, who was married to his father at the time of his birth and who together with his father raised him from his infancy as his mother, was a legitimate child under the law of California, the relevant state of domicile, and was not "born out of wedlock," and thus was a United States citizen by virtue of the United States citizenship of his stepmother, although they did not share a blood relationship. *Solis-Espinoza v. Gonzales*, C.A.9 2005, 401 F.3d 1090. Citizens ↪ 9

If person for whom visa preference was sought by permanent resident alien were proven to be the natural son of the alien, he would be the "child" of the alien for purposes of this chapter even though he was born out of wedlock since, under Article 15 of the Marriage Law of the People's Republic of China, in which country the child was born, all children are legitimate at birth. *Lau v. Kiley*, C.A.2 (N.Y.) 1977, 563 F.2d 543.

If, at time of Massachusetts marriage ceremony between naturalized United States citizen and defendant's mother, naturalized citizen was married to another person and such marriage had not been terminated by annulment or divorce, marriage was void, and defendant did not secure derivative citizenship and remained an alien. *U. S. v. Sacco*, C.A.9 (Cal.) 1970, 428 F.2d 264, certiorari denied 91 S.Ct. 141, 400 U.S. 903, 27 L.Ed.2d 140, rehearing denied 91 S.Ct. 864, 401 U.S. 926, 27 L.Ed.2d 831.

In order to meet legitimation requirement for derivative citizenship under pre-1986 version of INA, alien who was born out-of-wedlock to U.S. serviceman in Vietnam was required to show that he was legitimated according to law of Arizona, where he domiciled after entering United States as refugee, and that he was in legal custody of legitimating parent within meaning of Arizona law at that time. *Chau v. U.S. Dept. of Homeland Sec.*, D.Ariz.2006, 424 F.Supp.2d 1159. Citizens ↪ 9

Passport applicant, born out of wedlock to a father who was a United States citizen and a mother who was an Irish citizen, failed to demonstrate that his father agreed in writing to provide financial support for him, as required to satisfy statute governing citizenship of children born out of wedlock outside the United States; although applicant's father provided checks to applicant's mother, none of the checks specified that they were for child support, and the checks were not written by the father himself, but were instead written by applicant's grandmother. *O'Donovan-Conlin v. U.S. Dept. of State*, N.D.Cal.2003, 255 F.Supp.2d 1075. Citizens ↪ 9

Subsec. (b)(1)(C) of this section, by requiring an illegitimate child who seeks a preferential immigration classification through his or her father to have been "legitimated," but making any illegitimate child who seeks priority through his or her mother eligible for such a classification, did not violate equal protection. *de los Santos v. Immigration and Naturalization Service*, S.D.N.Y.1981, 525 F.Supp. 655, affirmed 690 F.2d 56. Aliens ↪ 40; Constitutional Law ↪ 250.5

The concededly illegitimate child of plaintiff, a native and male citizen of Dominican Republic who was presently lawfully admitted for permanent residence in United States, had not been "legitimated" within meaning of subsec. (b)(1)(C) of this section and was therefore not a "child" within meaning of United States immigration laws so as to be entitled to a preferential immigration classification. *de los Santos v. Immigration and Naturalization Service*, S.D.N.Y.1981, 525 F.Supp. 655, affirmed 690 F.2d 56.

Illegitimate child has been "legitimated" within meaning of subsec. (b)(1)(C) of this section only if all benefits of

8 U.S.C.A. § 1101

legitimacy have been conferred on him or her. *de los Santos v. Immigration and Naturalization Service*, S.D.N.Y.1981, 525 F.Supp. 655, affirmed 690 F.2d 56.

Provision defining term "child" for purposes of visa preferences was not a denial of equal protection on basis that it treats illegitimate children differently depending on whether priority for immigration visa is claimed through father or mother. *Reyes v. Immigration and Naturalization Service*, E.D.N.Y.1979, 478 F.Supp. 63.

Provisions of this chapter classifying offspring of a common mother as "children" regardless of legitimacy, while requiring legitimation of illegitimate offspring of common father, are not violative of equal protection. *Delgado v. Immigration & Naturalization Service*, S.D.N.Y.1979, 473 F.Supp. 1343. Aliens 40; Constitutional Law 250.5

Illegitimate child of naturalized United States citizen qualified for naturalization as "child" where, although he was born out of wedlock and not legitimized by his parents' later remarriage, he had been acknowledged as his father's natural son in his birth certificate. *Petition for Naturalization of Fraga*, D.C.Puerto Rico 1974, 429 F.Supp. 549.

Where plaintiff was illegitimate son of a Mexican mother who became a naturalized citizen on March 7, 1950 and plaintiff was born in Mexico and was lawfully admitted to the United States, plaintiff did not, in view of the express language of this chapter and interpretation thereof by Congress, automatically derive citizenship as result of his mother's naturalization. *Espindola v. Barber*, N.D.Cal.1957, 152 F.Supp. 829.

"Person" has broader connotations than "child" and clearly includes both legitimate and illegitimate children, and use of quoted word, in this section defining term child to mean an unmarried "person" under twenty-one years of age, implied a Congressional intent to eliminate and avoid any requirement of legitimacy by inference or implication; and therefore foreign-born, minor, illegitimate child of citizen could be naturalized on its mother's petition. *Petition of Howard in Behalf of Applegarth*, W.D.Mo.1956, 147 F.Supp. 676.

The word "child", in Act May 24, 1934, § 1, 48 Stat. 797, bestowing citizenship on foreign-born "child" of American citizen, was not intended to include the common-law illegitimate whose claim of citizenship would involve a paternity trial. *Compagnie Generale Transatlantique v. U.S.*, Ct.Cl.1948, 78 F.Supp. 797, 111 Ct.Cl. 601. Citizens 9

39. Conviction

Alien's no contest plea to domestic battery, which was later vacated because alien was not advised, as required by Florida law, of the immigration consequences when he pled no contest, did not count as a second conviction for purposes jurisdiction stripping provision of the Immigration and Nationality Act (INA) for aliens convicted of two crimes involving moral turpitude. *Alim v. Gonzales*, C.A.11 2006, 446 F.3d 1239. Aliens, Immigration, And Citizenship 54.3(1)

Alien's prior conviction for possession of cocaine was vacated based on a defect in the underlying criminal proceedings, and was therefore no longer a conviction for purposes of application for adjustment of status based on marriage to a United States citizen; in his pleading for post-conviction relief, the alien raised only one claim, namely, ineffective assistance of counsel, the state did not file an answer, and the judge's vacatur order referred to placement in Pre-Trial Intervention (PTI) program, which was reached in settlement of alien's ineffective assistance claim. *Pinho v. Gonzales*, C.A.3 (N.J.) 2005, 432 F.3d 193. Aliens 53.10(2)

Attorney general's determination that alien's prior conviction was not valid for immigration purposes because the conviction was undisputedly vacated for procedural and substantive defects rendered moot alien's petition for rehearing en banc of prior panel opinion by the Court of Appeals dismissing alien's petition for review of Board of Immigration Appeals' (BIA) order of deportation based on the prior conviction; thus, case was remanded to the

8 U.S.C.A. § 1101

BIA to allow Attorney General to terminate removal proceedings. *Discipio v. Ashcroft*, C.A.5 2005, 417 F.3d 448. Aliens ↪ 54.3(6)

Expunged Nebraska conviction for attempted possession of cocaine constituted a "conviction," for purposes of statute making a person who committed a controlled substance offense automatically removable. *Ramos v. Gonzales*, C.A.7 2005, 414 F.3d 800, certiorari denied 126 S.Ct. 1331, 164 L.Ed.2d 48. Aliens ↪ 53.2(1)

Board of Immigration Appeals' (BIA) finding that alien's plea of guilty to third degree sexual conduct constituted a "conviction" under the Immigration and Nationality Act (INA) subjecting alien to removal, even though alien had been designated and sentenced as a youthful trainee under Michigan law, did not violate alien's equal protection rights; Michigan law was rationally distinguishable from New York juvenile delinquency law, which had been held to not constitute a conviction under the INA, given that adjudications made pursuant to the Michigan's Youthful Trainee law were revocable adjudications, but findings of delinquency under New York law conveyed an irrevocable status. *Uritsky v. Gonzales*, C.A.6 2005, 399 F.3d 728, certiorari denied 126 S.Ct. 359, 163 L.Ed.2d 66 . Aliens ↪ 53.2(3); Constitutional Law ↪ 250.5

Board of Immigration Appeals' (BIA) interpretation, that state conviction is conviction for immigration purposes even if it is later expunged under state rehabilitative statute, such that alien accorded such rehabilitative treatment is removable while alien prosecuted under federal law and Federal First Offender Act (FFOA) may not be removable, did not violate equal protection guarantees, inasmuch as Congress had rational basis for distinguishing between federal scheme, with which it was familiar, and state schemes, which might permit dangerous offenders to "plead down." *Resendiz-Alcaraz v. U.S. Atty. Gen.*, C.A.11 2004, 383 F.3d 1262. Aliens ↪ 53.2(1); Constitutional Law ↪ 250.5

Equal protection did not mandate that the dismissal of alien's state charge of heroin possession be treated as if the same charge had been dismissed under Federal First Offenders Act (FFOA) for purposes of determining whether alien had been convicted of a controlled substance offense for purposes of Immigration and Naturalization Act (INA); Congress rationally could have thought that aliens whose federal charges were dismissed under the FFOA were unlikely to present a substantial threat of committing subsequent serious crimes, and could have rationally worried that state criminal justice systems, under the pressure created by heavy case loads, might permit dangerous offenders to plead down to simple possession charges and take advantage of those state schemes to escape what was considered a conviction under state law. *Acosta v. Ashcroft*, C.A.3 2003, 341 F.3d 218. Aliens ↪ 53.2(3); Constitutional Law ↪ 250.5

For purposes of the immigration law, alien was imprisoned for five years despite his having absconded for one day from work release, and therefore he was ineligible for waiver of deportation. *Reid v. Holmes*, C.A.2 (N.Y.) 2003, 323 F.3d 187, certiorari denied 124 S.Ct. 827, 540 U.S. 1050, 157 L.Ed.2d 699. Aliens ↪ 53.10(1)

Board of Immigration Appeals' (BIA) construction of statute defining "conviction," for purposes of determining whether alien is removable for having been convicted of aggravated felony, as precluding recognition of subsequent state rehabilitative expungements of convictions, was permissible, and was entitled to *Chevron* deference; although BIA's interpretation was not the only plausible one, statute was silent about expungement, and could well be interpreted to establish only when conviction occurred without determining what might be effect of later expungement. *Murillo-Espinoza v. I.N.S.*, C.A.9 2001, 261 F.3d 771. Aliens ↪ 53.2(1); Statutes ↪ 219(6.1)

Alien who had been waived out of Rhode Island juvenile court in proceeding arising from acts committed prior to his 18th birthday, and who after being charged as an adult had pled guilty to attempted theft, and been sentenced to term of ten years' imprisonment, had been "convicted" of an aggravated felony after admission to the United States, so that he was subject to deportation. *Vieira Garcia v. I.N.S.*, C.A.1 2001, 239 F.3d 409. Aliens ↪ 53.2(3)

8 U.S.C.A. § 1101

As a matter of equal protection, benefits of Federal First Offender Act, under which expungement of first-time simple possession drug offenses will protect against deportation, must be extended to aliens whose offenses are expunged under state rehabilitative laws, provided that they would have been eligible for relief under Act had their offenses been prosecuted as federal crimes. *Lujan-Armendariz v. I.N.S.*, C.A.9 2000, 222 F.3d 728. Aliens 53.2(1); Constitutional Law 250.5

Statute defining "conviction" for purposes of federal immigration law, as applied in ordering removal of alien who had been found guilty in Puerto Rico court of abuse but was later exonerated by such court after he fulfilled certain conditions, did not violate Tenth Amendment; Congress was free to displace or preempt state law with respect to immigration matters. *Herrera-Inirio v. I.N.S.*, C.A.1 2000, 208 F.3d 299. Aliens 40; States 4.16(1); States 18.43

Alien's Illinois conviction for predatory sexual assault of a child was adequately proved, for purposes of removal proceeding based on his conviction of an aggravated felony, even though Certified Statement of Conviction/Disposition did not disclose the disposition of the three counts that were not shown dismissed; Order of Sentence and Commitment plainly stated that alien was adjudged guilty of committing "Pred Criminal Sexual" and sentenced to eight years' incarceration. *Patel v. Gonzales*, C.A.7 2006, 178 Fed.Appx. 564, 2006 WL 1153764, Unreported. Aliens, Immigration, And Citizenship 429

Alien's claims that IJ erred in denying his application for cancellation of removal because most of time he spent in jail in connection with two assault convictions did not occur "as result of conviction," and that IJ erred in considering his criminal record when reviewing his application for adjustment of status and in finding that he had filed numerous frivolous applications for immigration benefits, were not administratively exhausted, and thus would not be considered by Court of Appeals. *Ighodaro v. Gonzales*, C.A.5 2005, 145 Fed.Appx. 488, 2005 WL 2404758, Unreported. Aliens 54.3(1)

40. Crewmen

Canadian operators of on-board cranes were not "alien crewmen" entitled to enter United States and operate cranes to load logs onto logging vessels, but rather were excludable as alien workers; cargo handling is not activity associated with traditional crewmen, operators did not aid in navigation because their primary and substantial duties did not occur while ship was underway, and operators did not have permanent connection with ship. *International Longshoremen's and Warehousemen's Union v. Meese*, C.A.9 (Wash.) 1989, 891 F.2d 1374.

The definition of "crewman" within this section relating to alien crewmen as "a person serving in any capacity on board a vessel or aircraft" does not limit it in any way so as to exclude sailors on foreign ships of war. *U. S. ex rel. Martinez-Angosto v. Mason*, C.A.2 (N.Y.) 1965, 344 F.2d 673.

Subdivision (5) of former § 203 of this title [now covered by subsec. (a)(15) of this section] was not confined to seamen who had been paid off and discharged but applied to a deserter. *U.S. ex rel. Cateches v. Day*, C.C.A.2 (N.Y.) 1930, 45 F.2d 142.

Under subdivision (5) of former § 203 of this title and former § 155 of this title [now covered by subsec. (a)(15) of this section and § 1251 of this title, respectively], an alien seaman, who entered the United States as deserter from a foreign ship and thereafter was employed in coastwise trade, was nevertheless subject to be deported if he had no certificate or visé showing his lawful entry, and the fact that he had filed a declaration of intention to become a citizen did not entitle him to remain. *In re Marchant*, D.C.Cal.1925, 3 F.2d 695.

An alien employed as a seaman on a vessel American registry and therefore entitled to be returned to the United States when discharged in a foreign port on account of injury or illness, and who at the instance of the American consul was brought back to this country by the master of another vessel who signed him on as a member of the

8 U.S.C.A. § 1101

ship's company, formally and for the unusual was of twenty-five cents per month, was an American seaman within the meaning of former § 173 of this title [now covered by this section]. *The Santa Elena*, S.D.N.Y.1920, 271 F. 347.

Horsemen, signed for service on vessel in caring for horses during voyage, were "seamen" for purpose of determining the application to them of immigration Acts. *U.S. v. Atlantic Transport Co.*, C.C.A.2 (N.Y.) 1911, 188 F. 42, 110 C.C.A. 420, certiorari denied 32 S.Ct. 525, 223 U.S. 724, 56 L.Ed. 631.

Persons employed as purser and assistant purser on a steamship were "seamen" within former § 173 of this title [now covered by this section] defining the term "seaman" as including every person signed on the ship's articles and employed in any capacity on board any vessel arriving in United States from any foreign port, notwithstanding that such persons were employed by and paid by charterer. *The Navemar*, E.D.N.Y.1941, 41 F.Supp. 846.

Under Act Aug. 3, 1882, "alien seaman" was one who, in pursuit of and as necessary incident of his calling, temporarily entered this country and was awaiting his departure, while "alien immigrant" was one who entered country with intention of remaining in it. 1901, 23 Op.Atty.Gen. 521.

41. Departure

Departure of alien, who had entered United States as nonimmigrant business visitor and who had applied for an adjustment of status to that of permanent resident, did not deprive him of right to deportation proceedings, rather than exclusion, after he returned, where alien's departure was with permission of Immigration and Naturalization Service, notwithstanding that such permission was styled an "advance parole." *Joshi v. District Director, I.N.S.*, C.A.4 (Md.) 1983, 720 F.2d 799.

Alien who had been informed when he first entered the country that he had to get approval from government before he could accept employment, and who accepted employment prior to certification by Department of Labor was not denied due process by order compelling voluntary departure in lieu of deportation by reason of failure of Immigration and Naturalization Service to inform him of his rights. *David v. Immigration and Naturalization Service*, C.A.8 1977, 548 F.2d 219. Constitutional Law ↪ 274.3

Under § 1251 of this title providing that alien who was convicted of felony prior to "entry" shall be subject to deportation, there must be a departure from before there can be an "entry" into the United States by a resident alien of the mainland, and to "leave" the alien must intentionally depart from the United States and to "enter" he must arrive from outside the United States from a foreign port or place. *Savoretti v. Voiler*, C.A.5 (Fla.) 1954, 214 F.2d 425.

An alien who was forcibly brought to the United States against his will by a United States warship had not "departed" from foreign port within meaning of former § 203 of this title [now covered by this section]. *U.S. ex rel. Bradley v. Watkins*, C.C.A.2 (N.Y.) 1947, 163 F.2d 328.

42. Deportation

Subsection (g) of this section providing that any alien ordered deported and who has left United States shall be considered to have been deported in pursuance of law, irrespective of source from which expenses of his transportation were defrayed or of place to which he departed, was enacted for purposes of excluding deported alien from subsequent admission and making it felony for such alien to enter or attempt to enter United States. *Mrvica v. Esperdy*, U.S.N.Y.1964, 84 S.Ct. 833, 376 U.S. 560, 11 L.Ed.2d 911.

Subsec. (g) of this section providing that any alien ordered deported who has left the United States shall be considered to have been deported in pursuance of law irrespective of the source from which the expenses of his

8 U.S.C.A. § 1101

transportation were defrayed was intended to make it clear that an alien who had been ordered deported and who had then departed the United States at his own expense, as opposed to the expense of the government, had in fact been deported and had not avoided the possible future collateral consequences of deportation; phrase "who has left the United States" as used in such subsection excludes illegally executed departure effected by the government. *Mendez v. Immigration & Naturalization Service*, C.A.9 1977, 563 F.2d 956. Aliens 53

Alien who voluntarily left the United States while under order of deportation could be considered "deported" and that determination was final, notwithstanding that alien had pending administrative appeal before Board of Immigration Appeals (BIA) at time of departure. *Mejia-Ruiz v. I.N.S.*, E.D.N.Y.1994, 871 F.Supp. 159. Aliens 3; Aliens 53.10(1)

43. Diplomatic visa

Visa, which was issued to Russian who had title of First Secretary of the Ministry of Foreign Affairs, and who entered United States to accept post in personnel office of United Nations, and which bore notation "Employee of U.N. Secretariat," was a G-4 visa and not a diplomatic visa and therefore it did not clothe him with diplomatic immunity which would preclude arrest and prosecution of him and his wife. *U. S. v. Egorov*, E.D.N.Y.1963, 222 F.Supp. 106.

44. Entry--Generally

An innocent, casual, and brief excursion by a resident outside this country's borders would not subject him to consequences of an "entry" on his return, but if the purpose of leaving the country is to accomplish some object which is itself contrary to some policy reflected in our immigration laws, it would appear that the interruption of residence thereby occurring would properly be regarded as meaningful. *Landon v. Plasencia*, U.S.Cal.1982, 103 S.Ct. 321, 459 U.S. 21, 74 L.Ed.2d 21, on remand 719 F.2d 1425.

Section 1251 of this title permitting deportation of alien who at any time after entry is convicted of two crimes involving moral turpitude applies to convictions of aliens and not to convictions of persons who are naturalized citizens at time of convictions and was not applicable to naturalized citizen even though his naturalization had been procured by willful misrepresentation. *Costello v. Immigration and Naturalization Service*, U.S.N.Y.1964, 84 S.Ct. 580, 376 U.S. 120, 11 L.Ed.2d 559.

Section 1251 of this title authorizing deportation of alien convicted of federal narcotics offense did not make entry from foreign country a condition of deportability, and hence was applicable to native of Philippines who had been admitted for permanent residence in continental United States but had become an alien on grant of independence to Philippines. *Rabang v. Boyd*, U.S.Wash.1957, 77 S.Ct. 985, 353 U.S. 427, 1 L.Ed.2d 956, rehearing denied 77 S.Ct. 1421, 354 U.S. 944, 1 L.Ed.2d 1542.


Person who was born a national of the United States in the Philippine Islands and who came to the continental United States as a national prior to the Philippine Independence Act of 1934 had never entered the United States as an alien and could not therefore be deported, on the basis of sentence to imprisonment in 1941 and 1950 for crimes involving moral turpitude, as an alien who "after entry" committed crimes involving moral turpitude. *Barber v. Gonzales*, U.S.Cal.1954, 74 S.Ct. 822, 347 U.S. 637, 98 L.Ed. 1009.

Entry within this section means entry as an alien, not entry as a national of the United States. *Barber v. Gonzales*, U.S.Cal.1954, 74 S.Ct. 822, 347 U.S. 637, 98 L.Ed. 1009.



Neither an alien's prior residence in United States nor his harborage on Ellis Island will transform a proceeding pursuant to which alien is denied entry into something other than an exclusion proceeding, since such harborage is


8 U.S.C.A. § 1101


not tantamount to an entry into the United States. *Shaughnessy v. United States ex rel. Mezei*, U.S.N.Y.1953, 73 S.Ct. 625, 345 U.S. 206, 97 L.Ed. 956.


"Entry," within former § 155 of this title [now covered by § 1251 of this title] requiring deportation of aliens convicted prior to entry of crime involving moral turpitude, included any coming of alien from foreign country into United States, whether it be first or subsequent coming. *U.S. ex rel. Volpe v. Smith*, U.S.Ill.1933, 53 S.Ct. 665, 289 U.S. 422, 77 L.Ed. 1298. See, also, *Del Guercio v. Delgadillo*, C.C.A.Cal.1947, 159 F.2d 130, reversed on other grounds 68 S.Ct. 10, 332 U.S. 388, 92 L.Ed. 17; *Rasmussen v. Robinson*, D.C.Virgin Islands 1946, 68 F.Supp. 930, reversed on other grounds 163 F.2d 732. Aliens  53.5


An alien child who was denied entry to the United States as a feeble-minded person, and ordered deported, but was permitted under special safeguards to remain with her father while the deportation was temporarily suspended because of the late war, had not "entered" the United States and was not "found" there, and the five year limitation for deportation was inapplicable. *Kaplan v. Tod*, U.S.N.Y.1925, 45 S.Ct. 257, 267 U.S. 228, 69 L.Ed. 585.

Alien who arrived at the border seeking admission, but who was deemed ineligible for entry, placed in exclusion proceedings, and paroled into the United States pending completion of these proceedings, did not lawfully enter the United States and was thus ineligible for withholding of deportation. *Simeonov v. Ashcroft*, C.A.9 2004, 371 F.3d 532, certiorari denied 125 S.Ct. 887, 543 U.S. 1052, 160 L.Ed.2d 774. Aliens  53.6(1); Aliens  53.10(3)

Alien did not "enter" into United States, and thus he was subject to exclusion proceedings, rather than deportation proceedings, although Immigration and Naturalization Service (INS) released alien after his arrest, it delayed for over two months before reinstating alien's parole, and only condition on alien's freedom was that he appear for his continued hearing one month later; alien was already in active exclusion proceedings when his alleged "entry" occurred, and he was never inspected and admitted in usual manner by immigration officer, and he did not actually succeed in evading inspection at border. *Mariscal-Sandoval v. Ashcroft*, C.A.9 2004, 370 F.3d 851, for additional opinion, see 101 Fed.Appx. 186, 2004 WL 1194192. Aliens  53.6(1)

Resident alien did not make an "entry" into United States by intending to depart in a manner meaningfully interruptive of his permanent residence, as required to support charges of illegal entry without inspection and alien smuggling; resident alien maintained his home in El Paso, Texas with his wife, a United States citizen, he taught classes at dance school in Juarez, Mexico, and entered many times into United States by showing his immigration card, on night in question he was with his wife at a party and dance for purely social reasons, and he and one of his students, an alien without proper documents in his possession, were apprehended after crossing border bridge into United States where resident alien intended to buy beer and return to party in Juarez, there was evidence that resident alien believed that his student was a documented alien, and no evidence that resident alien formed fully consummated criminal intent to secret aliens into United States. *Carbajal-Gonzalez v. I.N.S.*, C.A.5 1996, 78 F.3d 194. Aliens  53.4

Under the Immigration and Nationality Act (INA), merely crossing into the territorial waters of United States is insufficient to constitute "physical presence" for purpose of determining whether alien has entered the United States; physical presence requirement of entry test can be satisfied only when alien reaches dry land. *Yang v. Maugans*, C.A.3 (Pa.) 1995, 68 F.3d 1540, rehearing and suggestion for rehearing in banc denied. Aliens  53.4

Persons who do not submit themselves for inspection by immigration officers "enter" United States only if they are free from official restraint when they achieve physical presence in United States through actual and intentional evasion of detection and capture by officers at nearest inspection point. *Zhang v. Slattery*, C.A.2 (N.Y.) 1995, 55 F.3d 732, certiorari denied 116 S.Ct. 1271, 516 U.S. 1176, 134 L.Ed.2d 217. Aliens  53.6(1)

Colombian national, who had been granted resident alien status, did not make an "entry" into United States when detained by customs officials who believed her to be cocaine trafficker and, thus, she was subject to exclusion

8 U.S.C.A. § 1101

instead of deportation where alien had not passed through customs area of airport before her arrest. *Correa v. Thornburgh*, C.A.2 (N.Y.) 1990, 901 F.2d 1166.

Whether there was "entry" by an alien into the United States is a jurisdictional fact, for purposes of determining whether entry into the United States can be litigated in deportation proceedings. *Castillo-Magallon v. I.N.S.*, C.A.9 1984, 729 F.2d 1227. Aliens ↩ 53.6(1)

Aliens made an "entry" into United States and were therefore subject to deportation proceedings, where they crossed border into Vermont, hidden in a van, where they had previously been deported, where the van did not use ordinary route to inspection station but traveled without lights on another road, where a mechanical means was within van to deactivate vehicle detention apparatus at border, where a border patrol agent heard the van after it had proceeded four-tenths of a mile into the United States, and where he followed it for about a mile, until it turned in a direction away from border inspection checkpoint, at which time he stopped it and arrested petitioners. *Cheng v. Immigration and Naturalization Service*, C.A.2 1976, 534 F.2d 1018. Aliens ↩ 53.4

Where aliens who defendant was accused of aiding in illegal entry, although they did cross border into United States, were never free of official restraint by customs officials, and where, although they falsely stated that they were United States citizens, aliens did not evade examination or inspection, aliens were not guilty of "entry" into United States and did not "elude examination or inspection by immigration officers" as required by this section and section 1325 of this title in order for them to be found guilty of illegal entry, and defendant therefore could not be held guilty of having aided and abetted such entry. *U. S. v. Oscar*, C.A.9 (Cal.) 1974, 496 F.2d 492.

Evidence sustained determination of Board of Immigration Appeals that petitioner had made an entry into United States after his conviction of crime abroad involving moral turpitude. *Caudillo-Villalobos v. Immigration and Naturalization Service*, C.A.5 (Tex.) 1966, 361 F.2d 329. Aliens ↩ 54.1(5)

As used in § 1251 of this title respecting the deportability of an alien who has within five years of his entry into the United States committed a crime involving moral turpitude, the word "entry" is a word of art meaning more than the technical physical act of coming into the geographical territory of the United States, and it refers, rather, to entry by one who has not theretofore acquired the status of a naturalized citizen and is entering the United States as an alien for the purpose of living here and possibly becoming a citizen and not to those who re-enter on the basis of citizenship that is lost at a later time. *U. S. ex rel. Brancato v. Lehmann*, C.A.6 (Ohio) 1956, 239 F.2d 663.

Aliens coming from abroad directly to designated stations for entry and seeking admission in the regular course do not accomplish an "entry" into the United States by crossing the national boundary in transit or even by arrival at a port so long as they are detained there pending formal disposition of their requests for admission. *U. S. v. Vasilatos*, C.A.3 (Pa.) 1954, 209 F.2d 195.

With respect to aliens who come from abroad directly to designated stations for entry into the United States in order to accomplish an "entry", freedom from official restraint must be added to physical presence before "entry" is accomplished. *U. S. v. Vasilatos*, C.A.3 (Pa.) 1954, 209 F.2d 195.

Alien who rode sleeping car on trip from Buffalo to Detroit, without knowledge that route of train was through Canada, did not "enter" the United States when, asleep, he came into Detroit, so as to be subject to deportation under former § 155 of this title [now covered by § 1251 of this title] as an undesirable alien because of robbery conviction and prison sentence within five years after "entry". *Di Pasquale v. Karnuth*, C.C.A.2 (N.Y.) 1947, 158 F.2d 878.

In provision of prior immigration Act for the deportation of "any alien who shall be found * * * practicing prostitution after such alien shall have entered the United States," words "after such alien shall have entered the United States" should be construed as though they read "while such alien is in the United States," and provision

8 U.S.C.A. § 1101

applied to all alien women whether they came into United States at port of entry, or by annexation of land in which they lived, as in case of alien residents of Hawaii at time of its annexation. *U.S. v. Kimi Yamamoto*, C.C.A.9 (Hawai'i) 1917, 240 F. 390, 153 C.C.A. 316.

An alien paroled into the United States has not effected an "entry;" although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into the country. *Gonzalez v. Ashcroft*, D.N.J.2003, 278 F.Supp.2d 402. Aliens ⚡ 53.6(1)

Whether alien was free from official restraint, for purposes of determining whether he effected "entry" into United States, so as to be subject to deportation rather than exclusion proceedings, depended on whether, once he was physically within territorial limits of United States, conditions of official restraint existed continuously until he was taken into custody. *Xin-Chang v. Slattery*, S.D.N.Y.1994, 859 F.Supp. 708, reversed on other grounds 55 F.3d 732, certiorari denied 116 S.Ct. 1271, 516 U.S. 1176, 134 L.Ed.2d 217. Aliens ⚡ 53.6(1)

Alien had not effected "entry" into United States, so that alien was subject to exclusion proceedings and, thus, district court had jurisdiction over alien's habeas petition seeking review of denial of asylum, even though alien was physically present in United States; alien failed to show that he was ever free from official restraint. *Chen v. Carroll*, E.D.Va.1994, 858 F.Supp. 569, affirmed 48 F.3d 1331. Aliens ⚡ 54.3(1); Habeas Corpus ⚡ 617.1

Casual absence from United States might create entry subjecting alien, who did not have lawful resident status, to exclusionary proceedings; *Fleuti* doctrine, under which innocent, casual and brief excursion by resident alien outside country's borders may not have been intended as departure disruptive of resident alien status and therefore may not subject alien to consequences of "entry" into country on return applied only to lawful resident aliens. *Kasbati v. District Director of I.N.S.*, N.D.Ill.1992, 805 F.Supp. 619.

Aliens never gained "entry" into the United States and therefore were not improperly subjected to exclusion hearings, where, notwithstanding that they entered United States waters aboard ship and proceeded to port of New Orleans, they were at all times under lock and key detention by ship's master, and when ship docked in New Orleans, aliens were turned over to Immigration and Naturalization Service's inspection officials. *Edmond v. Nelson*, E.D.La.1983, 575 F.Supp. 532.

Issue of whether alien made "entry," and thus could be subject only to deportation, not exclusion, proceedings, may be litigated in exclusion hearing. *Application of Phelisna*, E.D.N.Y.1982, 551 F.Supp. 960.

Any coming of an alien to the United States from a foreign country is an "entry" within this chapter, and such an entry, if illegal, could constitute a basis for deportability. *Grubisich v. Esperdy*, S.D.N.Y.1959, 175 F.Supp. 445.

The terms "entry" and "lawful admission" are used in contradistinction to each other in immigration legislation. *Petition of Chow*, S.D.N.Y.1956, 146 F.Supp. 487.

Alien, who, to obtain passport to go from Hawaii to Guam, had impersonated a United States citizen, but who jumped bail in Guam and returned to Hawaii by Wake Island, was not guilty of falsely claiming United States citizenship when making an entry into United States at Honolulu, since false claim was not made in connection with an "entry" into the United States, and alien was not coming from a "foreign port or place or from an outlying possession." *U.S. v. Paquet*, D.C.Hawai'i 1955, 131 F.Supp. 32.

Alien failed to establish that the evidence compelled conclusion contrary to determination of Board of Immigration Appeals (BIA) that alien did not show that he had made entry into United States prior to exclusion hearing at which challenge was made to immigration court's jurisdiction, inasmuch as documents upon which alien relied to show that he was in United States could have been filed by his attorney, and thus did not prove that alien was physically

8 U.S.C.A. § 1101

present, and there was no evidence relating to whether alien was inspected and admitted, or, in the alternative, that he actually and intentionally evaded inspection. *Khera v. Ashcroft*, C.A.9 2003, 64 Fed.Appx. 638, 2003 WL 21085226, Unreported. Aliens ↪ 54.1(4.1)

45. ---- Crewmen, entry

Where alien seaman, who had obtained immunity from deportation, made round trip foreign voyage as member of crew of American vessel, his return constituted "entry" into United States within meaning of immigration law authorizing deportation. *U.S. ex rel. Stapf v. Corsi*, U.S.N.Y.1932, 53 S.Ct. 40, 287 U.S. 129, 77 L.Ed. 215.

Word "entry" by its own force implies coming from outside, there must be arrival from some foreign port or place and there is no such entry where one goes to sea on board American vessel from U.S. port and returns to same or another port of this country without having been in any foreign port or place. *U.S. ex rel. Claussen v. Day*, U.S.N.Y.1929, 49 S.Ct. 354, 279 U.S. 398, 73 L.Ed. 758.

A resident of United States beyond the draft age, who enlisted in the United States Maritime Service during the war and who participated with American Task Forces upon the high seas and entered foreign ports and who did not voluntarily elect a foreign destination, did not make an "entry" within the immigration laws when returning to the United States. *Carmichael v. Delaney*, C.A.9 (Cal.) 1948, 170 F.2d 239.

Alien seaman's landing at time of desertion from ship and temporary employment on Great Lakes did not constitute "legal entry." *U.S. ex rel. Anderson v. Karnuth*, W.D.N.Y.1930, 46 F.2d 689.

Alien cook on American ship was "seaman" and hence did not "re-enter" United States on ship's return from foreign waters so as to be subject to deportation on conviction of crime. *Ex parte Kogi Saito*, D.C.Wash.1927, 18 F.2d 116. Aliens ↪ 53.7

Alien re-entering United States after fishing trip in foreign waters on American vessel was not making original entry and was not subject to deportation as likely to become public charge. *Ex parte T. Nagata*, D.C.Cal.1926, 11 F.2d 178.

Alien seaman, who remained on board American ship, did not leave United States, and his status was not changed because he was permitted by captain to land for few hours in foreign port. *Weedin v. Banzo Okada*, C.C.A.9 (Wash.) 1924, 2 F.2d 321.

A seaman permitted to land on arrival from a foreign port makes an entry into the United States and has standing to apply for political asylum under § 1253(h) of this title. *U. S. ex rel. Szlajmer v. Esperdy*, S.D.N.Y.1960, 188 F.Supp. 491.

Where vessel, on which a once deported alien was seaman, first entered Port of Philadelphia from foreign country, an alien after examination by Immigration Inspector was permitted to land for limited period, such determination of admissibility constituted an "entry". *U. S. v. Vasilatos*, E.D.Pa.1953, 112 F.Supp. 111, affirmed 209 F.2d 195.

46. ---- Extradition as entry

Alien's parole into the United States did not constitute an "entry" into United States within meaning of this chapter so as to make the alien eligible for expulsion rather than exclusion proceedings. *Siu Fung Luk v. Rosenberg*, C.A.9 (Cal.) 1969, 409 F.2d 555, certiorari dismissed 89 S.Ct. 2151, 396 U.S. 801, 24 L.Ed.2d 58.

Alien did not effect an "entry" into the United States by reason of fact that, when his parole was revoked, no immediate action was taken with regard to him by the Immigration and Naturalization Service. *Siu Fung Luk v.*

8 U.S.C.A. § 1101


Rosenberg, C.A.9 (Cal.) 1969, 409 F.2d 555, certiorari dismissed 89 S.Ct. 2151, 396 U.S. 801, 24 L.Ed.2d 58.


A person brought into the United States by the authorities and then released on bond is considered as having never entered the United States and as being in a position analogous to one who was stopped at the border and kept there. U.S. ex rel. Ling Yee Suey v. Spar, C.C.A.2 (N.Y.) 1945, 149 F.2d 881.


Aliens extradited to United States from England to answer to charge of grand larceny committed on previous trip to United States, entered country within immigration laws and were subject to deportation proceedings. Blumen v. Haff, C.C.A.9 (Cal.) 1935, 78 F.2d 833, certiorari denied 56 S.Ct. 248, 296 U.S. 644, 80 L.Ed. 458.


Alien's admission to bail and trip to Florida with judge's consent before sentence on his plea of guilty of fraudulently obtaining passport by means of which he attempted to enter U.S, did not constitute entry into United States. U.S. ex rel. Metassarakis v. Reimer, S.D.N.Y.1934, 8 F.Supp. 82.


47. ---- Official restraint, entry

Alien was never free from official restraint for purposes of determining whether alien effected entry into United States, and thus alien was properly subjected to exclusion hearing, as opposed to deportation hearing; after alien's passport was stamped admitted, she was subjected to secondary inspection, and never left security area at airport. Sidhu v. Ashcroft, C.A.9 2004, 368 F.3d 1160, for additional opinion, see 98 Fed.Appx. 698, 2004 WL 1178717. Aliens  53.6(1)

Surveillance by law enforcement officials may be sufficient to establish constructive restraint of an alien, as will preclude alien from having effected an "entry" into the United States within meaning of Immigration and Nationality Act (INA). Nyirenda v. Immigration and Naturalization Service, C.A.8 2002, 279 F.3d 620. Aliens  53.4

Alien and her two minor children, who drove out of sight of immigration officials for approximately two miles after she had passed through border checkpoint without stopping, before she was ultimately pulled over, were free from official restraint, and thus effected an "entry" into the United States, within meaning of former statute which prohibited entry by an alien without inspection, even though alien never had an opportunity to leave highway on which vehicle was traveling before her vehicle was sighted. Nyirenda v. Immigration and Naturalization Service, C.A.8 2002, 279 F.3d 620. Aliens  53.4

Aliens who swam ashore from vessel grounded in United States territorial waters failed to satisfy burden that they were "free from official restraint" as required to find that they had "entered" United States; none of aliens ever left beach area, which was teeming with law enforcement activity soon after ship ran aground, and none of the aliens were free to go at large and mix with general population, but instead all were either apprehended shortly after coming ashore or brought into custody as result of immediate and intense law enforcement efforts. Yang v. Maugans, C.A.3 (Pa.) 1995, 68 F.3d 1540, rehearing and suggestion for rehearing in banc denied. Aliens  54.1(4.1)

Alien who swam ashore from smuggling ship that ran aground was free from official restraint for purposes of determining whether entry into United States had occurred, regardless of whether official restraint existed before he jumped overboard, where there was no evidence that he was officially restrained from jumping ship after grounding; opportunity to choose whether to jump overboard after grounding amounted to freedom from official restraint, regardless of when or even if it was exercised. Chung v. Reno, M.D.Pa.1995, 886 F.Supp. 1172, reversed 68 F.3d 1540, rehearing and suggestion for rehearing in banc denied. Aliens  53.6(1)

Radar tracking of vessel, helicopter surveillance, and cordoning off beach area adjacent to grounded ship constituted "official restraint," for purposes of determination of whether alien had effected "entry" of United States

8 U.S.C.A. § 1101

and whether alien was subject to exclusion or deportation proceedings. *Xin-Chang v. Slattery*, S.D.N.Y.1994, 859 F.Supp. 708, reversed on other grounds 55 F.3d 732, certiorari denied 116 S.Ct. 1271, 516 U.S. 1176, 134 L.Ed.2d 217. Aliens ↩ 53.6(1); Aliens ↩ 54(1)

48. ---- Original entry

Subsequent grant of parole to aliens whom defendant is charged with transporting illegally into country does not erase the original unlawful "entry." *U. S. v. Pierre*, C.A.11 (Fla.) 1982, 688 F.2d 724.

Lawful entry into the United States did not carry with it retroactive legality as to alien's prior illegal residence. *Martinez-Martinez v. Immigration and Naturalization Service*, C.A.5 (Tex.) 1973, 480 F.2d 117, certiorari denied 94 S.Ct. 573, 414 U.S. 1066, 38 L.Ed.2d 471.

Every entry into United States from foreign country is original entry. *Del Castillo v. Carr*, C.C.A.9 (Cal.) 1938, 100 F.2d 338.

49. ---- Reentry as entry

Congress did not intend to exclude aliens, who are longtime residents in United States after lawful entry, merely because they step across international border and return to the United States in a few hours. *Rosenberg v. Fleuti*, U.S.Cal.1963, 83 S.Ct. 1804, 374 U.S. 449, 10 L.Ed.2d 1000.

Provision of subsection (a)(13) of this section that alien having lawful permanent residence in United States shall not be regarded as making "entry" into United States for purposes of immigration laws if his departure to foreign place was not intended or reasonably to be expected by him should be read to protect resident aliens who are only briefly absent from United States. *Rosenberg v. Fleuti*, U.S.Cal.1963, 83 S.Ct. 1804, 374 U.S. 449, 10 L.Ed.2d 1000.

Alien, who had lawful permanent residence in United States, and who returned to United States after making trip to Mexico, did not make "entry" into United States for purposes of immigration laws, if, as shown by record, his trip to Mexico was merely visit for few hours. *Rosenberg v. Fleuti*, U.S.Cal.1963, 83 S.Ct. 1804, 374 U.S. 449, 10 L.Ed.2d 1000.

Alien made "entry" into United States when she returned to United States after brief trip to Canada while her legalization application was pending, and it thus was appropriate for her to be placed in exclusion rather than deportation proceedings when her parole was subsequently terminated. *Assa'ad v. U.S. Atty. Gen.*, C.A.11 2003, 332 F.3d 1321, rehearing and rehearing en banc denied 85 Fed.Appx. 194, 2003 WL 22417225, certiorari denied 125 S.Ct. 38, 543 U.S. 917, 160 L.Ed.2d 200, rehearing denied, rehearing denied 125 S.Ct. 958, 543 U.S. 1085, 160 L.Ed.2d 840. Aliens ↩ 53.6(2)

Alien with lawful permanent resident status had burden, on his petition for review of decision of the Board of Immigration Appeals upholding decision of immigration judge which found him excludable as illegally reentering the United States after a three-day trip to Mexico, to prove that he came within statutory exception to definition of "entry" such that he would not be excludable. *Lopez De Jesus v. I.N.S.*, C.A.5 2002, 312 F.3d 155. Aliens ↩ 54.1(2)

Permanent resident alien returning to the United states after three-day trip to Mexico did not come within statutory exception to definition of "entry" such that he would not be excludable, where, although he stated that his intent when he departed the United States was to visit his family and friends, he presented no evidence to this effect at exclusion hearing, and where the Immigration and Naturalization Service (INS) introduced substantial evidence at the hearing that his intent when he departed the United States was to illegally bring his girlfriend back from Mexico

8 U.S.C.A. § 1101

to the United States, and he acted on that plan. *Lopez De Jesus v. I.N.S.*, C.A.5 2002, 312 F.3d 155. Aliens 53.6(2)

Petitioner was properly excluded upon his return to United States from Mexico while decision was pending on his application for waiver of condition of exclusion in connection with his immigrant visa petition; his entry through ordinary parole procedures did not upgrade his status from excludable to deportable, and he was not permanent resident, as required to invoke *Fleuti* doctrine as exception to entry for innocent, casual and brief excursions by permanent resident aliens. *Baca-Prieto v. Guigni*, C.A.10 (N.M.) 1996, 95 F.3d 1006. Aliens 53.6(2)

Fleuti doctrine, that permanent resident who takes an innocent, casual and brief excursion abroad does not enter United States upon return, does not apply to permanent resident who, having left United States for whatever reason or duration, crosses border without inspection upon return and is threatened with deportation for entry without inspection. *Rosendo-Ramirez v. I.N.S.*, C.A.7 1994, 32 F.3d 1085. Aliens 53.4

Pending deportation proceedings against permanent resident alien, for his conviction of crime involving marijuana, did not establish as matter of law that his departure to Mexico for day trip was meaningful one, such that his return to the United States would qualify as "entry" and subject him to exclusion proceedings. *Molina v. Sewell*, C.A.5 (Tex.) 1993, 983 F.2d 676.

Resident alien does not effect an "entry," such that he may be excludable, when he returns from "innocent, casual, and brief excursion" outside the United States; rather, such alien effects entry only if he intended to depart in manner "meaningfully interruptive" of his permanent residence. *Molina v. Sewell*, C.A.5 (Tex.) 1993, 983 F.2d 676.

Resident alien's return to United States three months after leaving for Philippines to bring wife and children to United States was not "entry," so that effect of defendant's manslaughter conviction on permanent resident status should have been determined in deportation rather than exclusion proceeding, where alien left for Philippines with intent of winding up affairs and returning with family to United States, criminal charges were not pending at time alien left, alien returned to United States with knowledge that he had been indicted for manslaughter, and alien's arrangements prior to leaving United States had been to enable family to return with him to United States. *Jubilado v. U.S.*, C.A.9 (Hawaii) 1987, 819 F.2d 210.

Alien returning to the United States from trip abroad was effecting an "entry" within meaning of immigration statute [8 U.S.C.A. § 1101(a)(13)] defining entry, where alien did not merely venture few miles over border for few hours, but rather, was out of country for two months on planned and purposeful journey, travelled thousands of miles between three continents and had to procure visas for admission to two of the countries he visited. *Dabone v. Karn*, C.A.3 (Pa.) 1985, 763 F.2d 593.

Alien made "entry" into United States when, after living in United States, he made one-month trip into interior of Mexico and then returned, even though alien never intended to abandon United States residence, and alien could therefore be deported after he was found guilty of voluntary manslaughter within five years after such "entry." *Munoz-Casarez v. Immigration and Naturalization Service*, C.A.9 1975, 511 F.2d 947. Aliens 53.6(2)

Three major factors to be considered in determining whether a permanent resident alien's return to the United States following a leave therefrom constitutes an "entry", within meaning of the immigration laws, are: (1) length of absence, (2) purpose of the visit and (3) whether the alien had to procure any travel documents; other factors include the effect of the uprooting caused by deportation, that is, how long the alien has been a permanent resident, whether he has a wife and children living with him, whether he owns a business, home or other real estate in the United States, nature of the environment to which he would be deported and his relation to that environment. *Lozano-Giron v. Immigration and Naturalization Service*, C.A.7 1974, 506 F.2d 1073. Aliens 53.6(1)

8 U.S.C.A. § 1101

In determining whether a permanent resident alien's return to the United States from a foreign port constitutes an "entry," within meaning of the immigration laws governing judicial rules do not limit the searching out of the purpose for leaving the country to an illegal purpose ultimately formed, i.e., following departure or on the return trip. *Lozano-Giron v. Immigration and Naturalization Service*, C.A.7 1974, 506 F.2d 1073. Aliens ↪ 53.6(1)

Permanent resident alien's return to the United States from a 27-day trip to his native Colombia constituted an "entry" within meaning of the immigration laws where the alien, who had lived in the United States for almost nine years but had no property or employment ties with his country or any dangers awaiting him in Columbia, took such trip in unsuccessful effort to get married, had in excess of \$2,100 in currency with him on trip and who on return was found to be carrying counterfeit United States currency and shortly thereafter pled guilty to possessing, with intent to defraud, counterfeit obligations of the United States. *Lozano-Giron v. Immigration and Naturalization Service*, C.A.7 1974, 506 F.2d 1073. Aliens ↪ 53.6(2)

Brief departure from the United States should not give rise to grounds for deportation when the alien returns unless some element of his state of mind at the time of the departure subjects him to charge that he left the country with the intention of interrupting his residential status. *Vargas-Banuelos v. Immigration and Naturalization Service*, C.A.5 (Tex.) 1972, 466 F.2d 1371.

Return of permanent resident alien to the United States after his proposed trip to Israel would not constitute an "entry" within this chapter so as to subject him to possible exclusion, even though he had waived his eligibility for citizenship by exercising his right as Argentine national to claim exemption from United States Military Service, where purpose of the trip was to attend special three-week training course conducted by his employer. *Itzcovitz v. Selective Service Local Bd. No. 6, New York, N. Y.*, C.A.2 (N.Y.) 1971, 447 F.2d 888.

Where resident alien at time of visit to Canada had continuously maintained his status as resident alien for some 39 years in United States, and he was married to American citizen, had three minor children, who were born in United States, and who all were dependent on him for support, and he had residence and business in United States, and he took his family on vacation trip to Canada, his return to United States from Canada was not illegal "entry" within this section, and his status as resident alien was not impaired. *Zimmerman v. Lehmann*, C.A.7 (Ill.) 1965, 339 F.2d 943, certiorari denied 85 S.Ct. 1559, 381 U.S. 925, 14 L.Ed.2d 683.

A return from a foreign port or place following even a brief excursion is an "entry" within this section. *Pimental-Navarro v. Del Guercio*, C.A.9 (Cal.) 1958, 256 F.2d 877.

An alien entering the United States at Miami, Florida as a returning resident in possession of re-entry permit from Puerto Rico did not properly make an "entry" within this section. *U.S. ex rel Leon v. Murff*, C.A.2 (N.Y.) 1957, 250 F.2d 436.

Under § 1251 of this title providing any alien who "after entry" has been a member of, or affiliated with, Communist Party of the United States is deportable, each entry of alien, who had entered country in 1937 and had been admitted for permanent residence, and who had been permitted, as a returning alien resident, to enter in 1945 for permanent residence on a non-quota immigrant visa after staying out of the country too long on a trip abroad, was an "entry" within meaning of this section and alien was deportable even though he had not been found to have been a member of or affiliated with Communist Party since his entry in 1945. *United States ex rel. Belfrage v. Kenton*, C.A.2 (N.Y.) 1955, 224 F.2d 803.

In habeas corpus proceeding for alien's release from custody of District Director of Immigration and Naturalization for deportation because of his convictions of crimes involving moral turpitude before and after his entry into United States, evidence supported special inquiry officer's finding that relator entered United States from foreign country, voluntarily visited by him after his original entry from his native country, and hence was subject to deportation because of his conviction in United States for assault with intent to murder before such second entry.

8 U.S.C.A. § 1101

U. S. ex rel. Circella v. Sahli, C.A.7 (Ill.) 1954, 216 F.2d 33, certiorari denied 75 S.Ct. 525, 348 U.S. 964, 99 L.Ed. 752.

Where alien's visit to Mexico was the result of a willful and purposeful intent to depart from the United States for a pleasure trip, his return into the United States from such trip constituted a "reentry" and an "entry" within former § 155 of this title [now covered by § 1251 of this title] providing for deportation of an alien convicted or admitting commission of a felony involving moral turpitude prior to entry. Schoeps v. Carmichael, C.A.9 (Cal.) 1949, 177 F.2d 391, certiorari denied 70 S.Ct. 566, 339 U.S. 914, 94 L.Ed. 1340.

Where alien was admitted into United States for permanent residence in 1937 but he made last trip from Germany in 1939 and in 1940 returned from voyage on American vessel which visited foreign ports and he voluntarily landed and spent some time ashore at at least one of them, the returns in 1939 and in 1940 constituted "entries" within former chapter 6 of this title, and therefore conviction in 1939 for passing counterfeit money in June, 1938, justified deportation. U.S. ex rel. Schlimmgen v. Jordan, C.C.A.7 (Ill.) 1947, 164 F.2d 633.

The second coming of an alien from a foreign country into the United States was an "entry" within contemplation of former § 136(c) of this title. U.S. ex rel. Doukas v. Wiley, C.C.A.7 (Ind.) 1947, 160 F.2d 92.

Alien's return from brief visit to Canada was "entry" within former § 136 of this title authorizing deportation on ground that alien was afflicted with tuberculosis and likely to become public charge, irrespective of alien's previous status. Zurbrick v. Woodhead, C.C.A.6 (Mich.) 1937, 90 F.2d 991.

Where, upon return to United States under re-entry permit fraudulently obtained, immigrant, after order of exclusion following full hearing, was indicted for violation of law relating to fraudulent re-entry permits, released on bail, and subsequently served sentence in Federal detention prison, he never "entered" United States within former § 155 of this title [now covered by § 1251 of this title] and might be deported under original order without warrant of Secretary. U.S. ex rel. Pantano v. Corsi, C.C.A.2 (N.Y.) 1933, 65 F.2d 322.

Entry within former § 155 of this title [now covered by § 1251 of this title] included admittance on alien's return after visiting native country; the ban of said former § 155 attaching irrespective of previous residence or domicile in United States. Canciamilla v. Haff, C.C.A.9 (Cal.) 1933, 64 F.2d 875.

Alien's return from brief visit to Canada was "entry" though original entry was legal. Jackson v. Zurbrick, C.C.A.6 (Mich.) 1932, 59 F.2d 937.

Alien's going into Canada and return under bail pending deportation proceedings was new entry. Riley v. Howes, D.C.Me.1927, 17 F.2d 647, reversed on other grounds 24 F.2d 686.

Where alien of excluded classes, having been in U.S. more than 3 years, shortly before his arrest as alien not entitled to enter, while in Niagara Falls, passed from American to Canadian side to view falls, and, after staying there hour or more, came back to New York, and was shortly thereafter arrested, his return to U.S. after going into Canada constituted re-entry, after which he was subject to deportation under prior Act. U.S. v. Williams, S.D.N.Y.1911, 187 F. 470.

Brief trip abroad by alien, whose application for lawful temporary resident status was pending, created "entry" which subjected alien to exclusionary proceedings; under INS regulation, departure of such alien had to be authorized under advanced parole provisions to authorize reentry, even if absence could be deemed casual. Kasbati v. District Director of I.N.S., N.D.Ill.1992, 805 F.Supp. 619.

A resident alien seeking admission to the United States on his return from abroad is subject to all exclusion provisions of immigration laws, since each return of an alien from abroad is a new entry. U S ex rel Kwong Hai

8 U.S.C.A. § 1101

Chew v. Colding, E.D.N.Y.1951, 97 F.Supp. 592, affirmed 192 F.2d 1009, certiorari granted 72 S.Ct. 769, 343 U.S. 933, 96 L.Ed. 1341, reversed on other grounds 73 S.Ct. 472, 344 U.S. 590, 97 L.Ed. 576.

Where there was a departure from the United States even into foreign waters and a return into the United States without the vessel's having touched at a foreign port, no "entry" existed on the part of an alien entering or reentering into the United States but where a foreign port was touched even though involuntarily on the part of the alien, a return into the United States constituted an "entry", or a "reentry" within former § 155 of this title. Ex parte Delaney, S.D.Cal.1947, 72 F.Supp. 312, affirmed 170 F.2d 239.

That length of time during which alien remained in Canada on visit subsequent to passage of 1924 Immigration Act, after having entered country illegally in 1921, was very short was immaterial in determining whether alien thereby made a new entry subjecting him to deportation. U.S. ex rel. Drachmos v. Hughes, D.C.N.J.1938, 26 F.Supp. 192, affirmed 110 F.2d 662.

"Entry" as used in former § 155 of this title [now covered by § 1251 of this title] included any coming into this country of alien from foreign country, whether it were re-entry on permit or otherwise. U.S. ex rel. Pellegrino v. Karnuth, W.D.N.Y.1938, 23 F.Supp. 688.

Re-entry of alien after visit to foreign country, no matter how brief, was "entry" within former § 155 of this title [now covered by § 1251 of this title]. U.S. ex rel. Siegel v. Reimer, S.D.N.Y.1938, 23 F.Supp. 643, affirmed 97 F.2d 1020.

Second coming of alien from foreign country into United States was "entry," within former § 155 of this title [now covered by § 1251 of this title]. U.S. ex rel. Siegel v. Reimer, S.D.N.Y.1938, 23 F.Supp. 643, affirmed 97 F.2d 1020.

Alien lawfully in United States, who crossed Canadian territory in going from Boston to Detroit and back and who drove into Canadian territory for 25-minute visit, was not "immigrant," and his return into United States was not "entry" so as to permit deportation for crime involving moral turpitude committed within five years thereafter. Anello ex rel. Anello v. Ward, D.C.Mass.1934, 8 F.Supp. 797.

There was no new entry where alien pupil in state public school went with class, under teacher's direction, across Lake Erie to Canadian beach for day's picnic, returning same day with teacher and class. U.S. ex rel. Valenti v. Karmuth, N.D.N.Y.1932, 1 F.Supp. 370.

Legalization applicant's visit to Mexico qualified as brief, casual, and innocent exception to entry at border, and thus applicant was not excludable; applicant was not required to receive advance parole for her trip, rather, her trip qualified under exception in that, inter alia, it was short in duration, she obtained round trip ticket for purpose of caring for ailing aunt, and there was no evidence she had intention to meaningfully interrupt her application for legalization. Vejar v. Ashcroft, C.A.9 2004, 118 Fed.Appx. 283, 2004 WL 2943924, Unreported. Aliens 53.6(2)

50. Foreign state

It was not until 1934 Philippine Independence Act that the Philippines could be regarded as "foreign", for immigration purposes. Barber v. Gonzales, U.S.Cal.1954, 74 S.Ct. 822, 347 U.S. 637, 98 L.Ed. 1009.

Wake Island is not a port or place in a "foreign state" within this section defining quoted phrase. U.S. v. Paquet, D.C.Hawai'i 1955, 131 F.Supp. 32.

A "foreign state" within former § 17 of this title [now covered by § 1481 of this title] providing for expatriation of

8 U.S.C.A. § 1101

American citizen who was naturalized under laws of foreign state was a country which was not the United States, or its possession or colony, an alien country, other than our own. *Kletter v. Dulles*, D.C.D.C.1953, 111 F.Supp. 593, affirmed 268 F.2d 582, 106 U.S.App.D.C. 6, certiorari denied 80 S.Ct. 378, 361 U.S. 936, 4 L.Ed.2d 357.

Palestine, though under League of Nations mandate, was a "foreign state" within former § 17 of this title [now covered by § 1481 et seq. of this title] providing for expatriation of American citizen who was naturalized in any foreign state in view of most favored nations provision in treaties of commerce which recognized Palestine as a foreign state, and therefore person who was so naturalized became expatriated. *Kletter v. Dulles*, D.C.D.C.1953, 111 F.Supp. 593, affirmed 268 F.2d 582, 106 U.S.App.D.C. 6, certiorari denied 80 S.Ct. 378, 361 U.S. 936, 4 L.Ed.2d 357.

51. Good moral character--Generally

Provision of Nicaraguan Adjustment and Central American Relief Act (NACARA), allowing special rule cancellation of removal for an alien who was physically present in the United States for a continuous period of not less than 7 years immediately preceding the date of his application for relief from removal, and who was person of good moral character during such period, unambiguously required alien applying for special rule cancellation of removal to demonstrate good moral character during the 7-year period before the application for relief, and did not require alien to demonstrate good moral character after that period. *Cuadra v. Gonzales*, C.A.8 2005, 417 F.3d 947 . Aliens ↪ 53.10(2)

Statute which provided that alien did not have good moral character, for purposes of her application for cancellation of removal, because she had been removed from the United States and then sought admission within five years of the date of her removal was not absurd; there was nothing absurd about inclusion of already removed aliens in the class of those who were not entitled to relief. *Avendano-Ramirez v. Ashcroft*, C.A.9 2004, 365 F.3d 813. Aliens ↪ 53.10(2)

Board of Immigration Appeals should have looked back seven years from date of its decision, rather than date of alien's original application for suspension of deportation, in determining whether alien's prior incarceration fell within seven-year time period so as to preclude finding of good moral character required for such relief. *Cipriano v. I.N.S.*, C.A.5 1994, 24 F.3d 763. Aliens ↪ 53.5; Aliens ↪ 53.10(2)

Alien was statutorily precluded from proving good moral character as basis for suspension of deportation proceeding, in view of his previous Texas arrest and probation for transporting one pound of marijuana; even though alien had not been convicted under Texas law, immigration officer had reason to believe that he was illicit "trafficker" in narcotics within meaning of exclusion provision. *Nunez-Payan v. I.N.S.*, C.A.5 1987, 811 F.2d 264, rehearing denied 815 F.2d 384. Aliens ↪ 53.10(2)

Alien's driving while intoxicated (DWI) conviction, failure to accept responsibility for his past crimes, failure to establish his claim of rehabilitation, and lack of candor, taken together, precluded a finding of good moral character in accord with current moral conventions, as required for naturalization. *Rico v. I.N.S.*, E.D.N.Y.2003, 262 F.Supp.2d 6. Aliens ↪ 62(5)

Applicant for naturalization possessed good moral character; there was no evidence of previous criminal history prior to her arrival in country, since coming to the country, she had married, raised two children, instilled good values in her children, owned a family business and contributed to the community by regularly attending church, helping the poor and those in her neighborhood, assisting a Chicago police officer in a murder investigation, and presumably providing employment to workers. *Plewa v. I.N.S.*, N.D.Ill.1999, 77 F.Supp.2d 905. Aliens ↪ 62(5)

In reaching decision upon meaning of this chapter which requires good moral character for naturalization, the better view is to develop uniform federal standard and not rely upon patchwork of state laws. In re *Edgar*,

8 U.S.C.A. § 1101

E.D.Mich.1966, 253 F.Supp. 951.

Extenuating circumstances and palliative facts may be considered in determining whether alien has the good moral character required for naturalization. In re Edgar, E.D.Mich.1966, 253 F.Supp. 951.

It was not congressional intent to make good moral character, for purposes of naturalization law, dependent upon each state's legislative judgment of common conscience and standards of community but to develop uniform federal standard. In re Briedis, N.D.Ill.1965, 238 F.Supp. 149.

In applying test as to what constitutes "good moral character" under this chapter, judge must not assume that his own or the examiner's standards are those of community. Petition of Denessy, D.C.Del.1961, 200 F.Supp. 354.


Good moral character required of alien petitioning for naturalization must be established by him, for admission to citizenship is jealously guarded. Petition of Dobric, D.C.Minn.1960, 189 F.Supp. 638.


An alien who failed to support his two infant children who were retained in Italy by wife whom he divorced in United States after she declined to accompany him when he immigrated to United States did not meet standards of good moral character required as condition precedent to naturalization. Petition of Dobric, D.C.Minn.1960, 189 F.Supp. 638.


Under this chapter precluding naturalization of alien who "during the period for which good moral character is required to be established" was convicted "at any time" of murder, subsequent pardon of alien did not lift the bar to his naturalization on the theory that the pardon obviated the moral turpitude of the commission of the crime. Petition of De Angelis, E.D.N.Y.1956, 139 F.Supp. 779.

Test of "good moral character" of alien seeking naturalization is not the personal moral principles of individual judge or court before whom applicant may come but the decision is to be based on what court believes to be the ethical standards current at the time; and court must improvise the response that the ordinary man or woman would make if the question were put whether conduct was consistent with good moral character. In re Schmidt, N.Y.Sup.1968, 289 N.Y.S.2d 89, 56 Misc.2d 456.

Ethical standards current at time to be used to resolve issue of whether alien has "good moral character" means standards at the time of hearing before the court. In re Schmidt, N.Y.Sup.1968, 289 N.Y.S.2d 89, 56 Misc.2d 456.

Mexican national's role in his twin daughters' illegal reentry into the United States did not trigger per se moral character bar, so as to render him automatically ineligible for suspension of deportation. Carmona v. Gonzales, C.A.9 2005, 152 Fed.Appx. 599, 2005 WL 2673537, Unreported. Aliens  53.10(2)

Substantial evidence supported IJ's finding that alien engaged in alien smuggling by knowingly aiding and encouraging another to illegally enter the United States, and thus was unable to establish requisite good moral character for suspension of deportation. Garcia-Baez v. Gonzales, C.A.9 2005, 126 Fed.Appx. 867, 2005 WL 851281, Unreported. Aliens  54.1(5)

Substantial evidence supported finding that alien was statutorily precluded from showing good moral character, as required in his application for cancellation of removal, even though his conduct of paying a smuggler to bring his wife into the U.S. took place more than ten years prior to his filing of that application; conduct occurred less than ten years before alien was served with Notice to Appear. Reyes-Rivas v. Ashcroft, C.A.9 2004, 93 Fed.Appx. 117, 2004 WL 434035, Unreported. Aliens  53.10(1)

Strong evidence supported finding that alien understood the elements of his crime of moral turpitude-obtaining a benefit through false representation of a social security number-and was thus statutorily ineligible for cancellation

8 U.S.C.A. § 1101

of removal or voluntary departure; after statute was explained to alien, government asked if he understood it, and he replied, "Yes, I understand." *Garcia-Garcia v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 262, 2003 WL 23019161, Unreported. Aliens ↻ 53.10(1)

52. ---- Convictions, good moral character

Alien's incarceration for 365 days in county jail following his conviction for vehicular manslaughter qualified as confinement in "penal institution," within meaning of statute making him statutorily ineligible for cancellation of removal. *Gomez-Lopez v. Ashcroft*, C.A.9 2005, 393 F.3d 882. Aliens ↻ 53.10(1)

Even assuming that a disposition under the Federal First Offender Act (FFOA) would not constitute a conviction for purposes of statute rendering an alien convicted of a controlled substance offense inadmissible to United States for permanent residence, equal protection did not require extension of FFOA to alien's expunged Korean conviction for marijuana possession; FFOA's application only to federal convictions, and alien's two-year suspended sentence exceeding one-year maximum probationary period under FFOA provided rational basis for treating her conviction differently than FFOA disposition. *Elkins v. Comfort*, C.A.10 (Colo.) 2004, 392 F.3d 1159. Aliens ↻ 53.2(1); Constitutional Law ↻ 250.5

Immigration judge's finding that alien's single conviction for attempting to solicit for immoral purposes was a crime rendering alien per se lacking in good moral character and therefore statutorily ineligible for suspension of deportation was not unreasonable, and therefore entitled to *Chevron* deference. *Amador-Palomares v. Ashcroft*, C.A.8 2004, 382 F.3d 864, rehearing and rehearing en banc denied. Aliens ↻ 53.2(3)

Alien who was charged with being deportable for having entered the United States without inspection, and who was ultimately found to be deportable as charged, was not "deportable by reason of" his previously having been convicted of certain felonies, as enumerated in jurisdiction-stripping provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), though alien conceded before immigration judge that he had in fact been convicted of these felonies and though these felonies provided another potential basis for ordering him deported. *Hernandez-Barrera v. Ashcroft*, C.A.1 2004, 373 F.3d 9. Aliens ↻ 53.2(3)

State court sentence of deferred adjudication probation was final conviction, for purpose of determining whether offense could be used to enhance sentence upon subsequent conviction for illegal reentry. *U.S. v. Ramirez*, C.A.5 (Miss.) 2004, 367 F.3d 274, certiorari denied 125 S.Ct. 145, 543 U.S. 882, 160 L.Ed.2d 137. Sentencing And Punishment ↻ 786

Alien was not denied due process because immigration judge (IJ) ordered him removed on the basis of a conviction that he was still challenging on appeal; alien was "convicted" once court entered a formal judgment of guilt. *Montenegro v. Ashcroft*, C.A.7 (Ill.) 2004, 355 F.3d 1035. Aliens ↻ 53.2(1); Constitutional Law ↻ 274.3

Alien was "convicted" of possession of cocaine, such that Court of Appeals was without jurisdiction to review removal order predicated upon that conviction, notwithstanding that state court in which he entered his guilty plea, in recognition of his status as first-time offender, withheld adjudication of guilt and provided for dismissal of criminal proceeding against him if he successfully completed probationary term. *Gill v. Ashcroft*, C.A.7 2003, 335 F.3d 574. Aliens ↻ 53.2(1); Aliens ↻ 54.3(1)

Under parties' position that battered spouse amendment to the Immigration and Nationality Act reduced to three years period of time during which alien seeking suspension of deportation had to have good moral character, Board of Immigration Appeals's (BIA) consideration of alien's past, i.e., pre-statutory period, conduct in determining her present moral character was reasonable, and thus BIA did not err in considering alien's expunged convictions in its moral character determination; alien's past conduct was not sole basis for adverse finding on moral character element. *Ikenokwalu-White v. I.N.S.*, C.A.8 2003, 316 F.3d 798, rehearing denied. Aliens ↻ 54.1(3)

8 U.S.C.A. § 1101

Determination that alien had been convicted of a crime of moral turpitude, warranting deportation, rather than mere possession of a false driver's license, which is also proscribed by the statute of conviction, was supported by sentencing document which showed that he pled guilty to "using" a false motor vehicle document, and which also showed that there were related charges, continued without a finding, for illegally operating a motor vehicle without being duly licensed, from which the immigration judge (IJ) drew the sensible conclusion that the alien had used a false license in connection with operating the car, with attempt at deceit being inherent in the act. *Montero-Ubri v. I.N.S.*, C.A.1 2000, 229 F.3d 319. Aliens ↪ 54.1(5)

If alien "at any time" in his life has been convicted of aggravated felony, he cannot meet good character requirement for naturalization. *Castiglia v. I.N.S.*, C.A.9 (Cal.) 1997, 108 F.3d 1101. Aliens ↪ 62(5); Aliens ↪ 62(5)

Statute denying voluntary departure to alien convicted and confined to penal institution for as much as 180 days in previous five years is constitutional under fundamental and plenary power of Congress to expel or exclude aliens. *Fonseca-Leite v. I.N.S.*, C.A.5 1992, 961 F.2d 60. Aliens ↪ 53.10(1)

Naturalized citizen's certificate of citizenship could be revoked as illegally procured based on felonies committed during statutory qualifying period, which evidenced lack of good moral character, despite fact that defendant was not arrested or convicted of those felonies until after he became citizen. *U.S. v. Lekarczyk*, W.D.Wis.2005, 354 F.Supp.2d 883. Aliens ↪ 71(5)

Alien's 406 days of pretrial detention had to be added to the 4 1/4 years he served between his sentencing for manslaughter and deportation order; thus, alien was ineligible for discretionary relief from deportation under pre-AEDPA (Antiterrorism and Effective Death Penalty Act) law since he had been convicted of aggravated felony and had served a term of imprisonment of at least 5 years. *Gordon v. Ashcroft*, D.Mass.2003, 283 F.Supp.2d 435. Aliens ↪ 40; Aliens ↪ 53.10(1)

Naturalization applicant's prior convictions that occurred outside the five-year statutory period preceding his application were relevant and a proper subject of inquiry to determine whether he had in effect reformed, for purpose of determining whether he established the requisite good moral character. *Rico v. I.N.S.*, E.D.N.Y.2003, 262 F.Supp.2d 6. Aliens ↪ 68(5)

Deferred adjudication under the applicable Texas statute was a "conviction" for immigration purposes, thus constituting valid basis for deportation. *Garnica-Vasquez v. Reno*, W.D.Tex.1999, 40 F.Supp.2d 398, affirmed 210 F.3d 558. Aliens ↪ 53.2(1)

Alien who pleaded guilty in Guam to fourth-degree criminal sexual conduct was convicted of a crime involving moral turpitude, such that he was inadmissible, as an alien seeking admission, when he returned to the United States, even though he was a lawful permanent resident, and therefore his motion to terminate removal proceedings was properly denied; defendant engaged in sexual contact through force or coercion. *Pinzon v. Gonzales*, C.A.9 2006, 2006 WL 984911, Unreported. Aliens, Immigration, And Citizenship ↪ 233

Alien would be deemed as not having good moral character based on his controlled substance offense, and was thus not eligible for suspension of deportation even under a statute in effect at the time of his conviction. *Polanco v. I.N.S.*, C.A.2 (N.Y.) 2005, 148 Fed.Appx. 60, 2005 WL 2243800, Unreported. Aliens ↪ 53.10(2)

Alien's two convictions for California offense of abuse of a cohabitant constituted "crimes of moral turpitude," and therefore substantial evidence supported determination that alien did not have the requisite good moral character to qualify for suspension of deportation. *Frayre-Arreola v. Ashcroft*, C.A.9 2005, 128 Fed.Appx. 21, 2005 WL 348427, Unreported. Aliens ↪ 53.2(2)

8 U.S.C.A. § 1101

Denial of alien's application for naturalization on grounds that alien failed to prove, by a preponderance of the evidence, that he was person of "good moral character" was supported by alien's history of arrest for assault with weapon and criminal possession of weapon, alien's conviction for disposing of counterfeit certificate of arrival, and alien's conviction for aggravated felony of conspiracy to import cocaine, and therefore alien's removal was not improper on grounds that Immigration and Naturalization Service (INS) illegally denied his application for naturalization prior to his federal drug conviction. *Hyppolite v. Ashcroft*, E.D.N.Y.2003, 2003 WL 21056908, Unreported. Aliens ↩ 62(5)

Resident alien was "convicted" of controlled substance violation, for immigration purposes, even though he was only sentenced to one-year conditional discharge, with understanding that charge could later be expunged from his record. *Singh v. Ashcroft*, E.D.N.Y.2003, 2003 WL 1873624, Unreported. Aliens ↩ 53.2(3)

Alien failed to rebut the Immigration and Naturalization Service's (INS) evidence that he had been convicted in Ohio of complicity in trafficking marijuana, as would render him deportable by reason of having committed an aggravated felony, although he showed that there were seven other individuals with same name as his in Cleveland area, where "Record of Deportable/Inadmissible Alien" form prepared by INS established that a fingerprint check verified that alien had been convicted for complicity in the trafficking of marijuana. *Walker v. Ashcroft*, C.A.6 2002, 54 Fed.Appx. 438, 2002 WL 31890925, Unreported. Aliens ↩ 54.1(5)

53. ---- Murder, good moral character

War veteran's second-degree murder conviction after his honorable discharge from military precluded him from proving that he had good moral character required for naturalization. *Castiglia v. I.N.S.*, C.A.9 (Cal.) 1997, 108 F.3d 1101. Aliens ↩ 62(5); Aliens ↩ 62(5)

A pardon did not obviate the moral turpitude of the crime of second degree murder, so that petitioner was unable to establish good moral character for five years before filing of naturalization petition because of his second degree murder conviction, even though he had been granted a pardon 15 months before the petition for naturalization was filed. *Taylor v. U.S.*, C.A.5 (Fla.) 1956, 231 F.2d 856.

Alien was without good moral character and could not be naturalized where he had been convicted of second degree murder even though governor had given alien full and complete pardon and had restored his civil rights more than five years prior to filing of application for naturalization. *Petition for Naturalization of Quintana*, S.D.Fla.1962, 203 F.Supp. 376.

Alien's conviction of murder was a legal bar to his becoming a citizen notwithstanding the Governor had granted the alien a full and unconditional pardon, since the alien was not a "person of good moral character". *Petition of Salani*, N.D.Cal.1961, 196 F.Supp. 513.

Under subsection (f) of this section, and § 1427(a) of this title, an applicant for naturalization is required to show good moral character only during the five-year period immediately preceding the filing of his application, and aside from the special statutory provision that one who at any time has been convicted of murder shall not be regarded as a person of good moral character, misconduct beyond the five-year period is not a bar if the applicant has in fact reformed, but evidence of offenses committed prior to the five-year period should be received and considered with other evidence in determining whether the applicant has shown good moral character within the statutory period and at the time of the application. *Petition of Siacco*, D.C.Md.1960, 184 F.Supp. 803.

Under subsection (f)(8) of this section, no person can be found to be a person of good moral character who at any time has been convicted of the crime of murder, and such a conviction is a perpetual bar to naturalization. *Petition of Siacco*, D.C.Md.1960, 184 F.Supp. 803.

8 U.S.C.A. § 1101

Under subsection (f)(8) of this section and § 1427(a) of this title a conviction for the crime of murder is an absolute and perpetual bar to naturalization, despite a pardon, unless the pardon is based upon a finding that the defendant was improperly convicted at his original trial. *Petition of Siacco*, D.C.Md.1960, 184 F.Supp. 803.

54. ---- Theft, good moral character

Petit larceny was a crime involving "moral turpitude," for purpose of applying statute setting forth admission qualifications for aliens convicted of certain crimes, in determining whether alien had requisite moral character to qualify for naturalization. *Laryea v. U.S.*, E.D.Va.2004, 300 F.Supp.2d 404. Aliens ↪ 62(5)

Naturalized citizen's convictions of two crimes of petit theft during the statutory period in which he was required to maintain good moral character were crimes involving moral turpitude, and thus, he illegally procured his naturalization, and his citizenship would be revoked. *U.S. v. Samaei*, M.D.Fla.2003, 260 F.Supp.2d 1223. Aliens ↪ 71(5)

55. ---- Pleas, good moral character

Alien's guilty plea to two counts of child molestation and sentence to five years on each count, to be served concurrently, under Georgia's First Offender Act was a "conviction" under INA even though it was not accompanied by an actual adjudication of guilt. *Ali v. U.S. Atty. Gen.*, C.A.11 2006, 443 F.3d 804, rehearing and rehearing en banc denied 2006 WL 1662590. Aliens, Immigration, And Citizenship ↪ 53.2(1)

Alien's plea of guilty to third degree sexual conduct constituted a "conviction" under the Immigration and Nationality Act (INA) subjecting alien to removal, notwithstanding alien's designation and sentencing as a youthful trainee under Michigan's Youthful Trainee Act. *Uritsky v. Gonzales*, C.A.6 2005, 399 F.3d 728, certiorari denied 126 S.Ct. 359, 163 L.Ed.2d 66. Aliens ↪ 53.2(3)

Alien's *Alford* plea in Connecticut third-degree larceny case constituted a "conviction" under the Immigration and Nationality Act (INA) for purposes of final order of removal on basis of being an alien convicted of an aggravated felony; *Alford* plea had same effect as a plea in which guilt was expressly admitted. *Abimbola v. Ashcroft*, C.A.2 (N.Y.) 2004, 378 F.3d 173, certiorari denied 126 S.Ct. 734, 163 L.Ed.2d 577. Aliens ↪ 53.2(3)

For purposes of Immigration and Naturalization Act (INA), "conviction" encompassed a plea of *nolo contendere* in Pennsylvania state court to a charge of heroin possession, which was subsequently dismissed pursuant to Pennsylvania Controlled Substance Act provision allowing dismissal of charge after completion of probation without verdict; INA's definition of "conviction" did not implicitly incorporate Federal First Offenders Act (FFOA) providing for discretionary dismissal of federal drug charges upon first-time offender's successful completion of probation. *Acosta v. Ashcroft*, C.A.3 2003, 341 F.3d 218. Aliens ↪ 53.2(3)

A conviction pursuant to an *Alford* plea is a "conviction" for purposes of the Immigration and Nationality Act (INA). *Flores-Cordova v. Ashcroft*, D.Conn.2003, 279 F.Supp.2d 147. Aliens ↪ 53.2(3)

Alien was "convicted," as required to justify removal order, regardless of pending habeas petition, where alien pled guilty and sentence was imposed for conviction. *Plummer v. Ashcroft*, D.Conn.2003, 258 F.Supp.2d 43. Aliens ↪ 53.2(1)

Aliens' guilty plea, in their conviction, under California law, for welfare fraud, which stated that they "knowingly received public assistance...while employed and failed to report earnings," established requisite scienter element and thus constituted a crime of moral turpitude within the meaning of statute governing eligibility for cancellation of removal, and therefore aliens were ineligible for such relief. *Rodriguez v. Ashcroft*, C.A.9 2004, 95 Fed.Appx. 208, 2004 WL 515617, Unreported. Aliens ↪ 53.2(2); Aliens ↪ 53.10(1)

8 U.S.C.A. § 1101

56. ---- Vacation of conviction, good moral character

For purposes of determining whether it remained a "conviction" under INA, alien's Georgia child molestation conviction was not vacated on basis of procedural or substantive defect in underlying proceedings, where Georgia Superior Court had granted alien's extraordinary motion for new criminal trial "for good cause shown and by consent of the parties," without further explanation and had summarily granted State's *nolle prosequere* motion, which was based on "the circumstances of the case, the age of the case, the status of the defendant, and the total implications of a retrial"; it was pure speculation for alien's counsel to claim that Superior Court's reason for granting new trial and *nolle prosequere* motions was that alien was not adequately advised, prior to guilty plea, as to effect plea would have on his immigration status, and strongest inference was that conviction's effect on his immigration status was alien's principal motive underlying his attack on conviction. *Ali v. U.S. Atty. Gen.*, C.A.11 2006, 443 F.3d 804, rehearing and rehearing en banc denied 2006 WL 1662590. Aliens, Immigration, And Citizenship ↪ 53.2(1)

Immigration and Naturalization Service (INS) failed to satisfy its burden of proving, by clear and convincing evidence, that alien's earlier state court conviction for felony theft offense was such as to make him subject to removal, despite subsequent order of state trial court in which he was convicted purporting to vacate this felony conviction and reduce it to misdemeanor, on theory that trial court had not vacated prior felony conviction on merits but on rehabilitative or immigration-related grounds; while fact that order was entered on completion of alien's probation was indicative of rehabilitative purpose, order did not state that it was entered based on alien's completion of probation and state court cited Utah statute authorizing reduction when court finds that conviction is "unduly harsh" in light of "nature and circumstances of the offense" and "history and character of the defendant." *Cruz-Garza v. Ashcroft*, C.A.10 2005, 396 F.3d 1125. Aliens ↪ 54.1(5)

Alien's Wisconsin conviction for possession with intent to distribute tetrahydrocannabinol (THC) remained valid aggravated felony conviction for purposes of determining whether conviction was deportable offense, barring judicial review under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), even if such conviction was amended from felony to misdemeanor by state court; alien pleaded no contest to felony charges, alien was sentenced to three years probation and a three-month suspension of his license, and conviction was amended to misdemeanor to avoid deportation. *Ali v. Ashcroft*, C.A.7 2005, 395 F.3d 722. Aliens ↪ 53.2(3)

Alien's Missouri conviction for marijuana possession was "conviction" covered by statute depriving courts of jurisdiction to review removal orders against aliens who have committed certain criminal offenses, notwithstanding that such conviction had been expunged pursuant to Missouri law. *Resendiz-Alcaraz v. U.S. Atty. Gen.*, C.A.11 2004, 383 F.3d 1262. Aliens ↪ 54.3(1)

Alien's state-court narcotics trafficking conviction remained valid for purpose of determining deportability under Immigration and Nationality Act (INA) even though conviction had been vacated, and a new trial ordered, based on procedural and substantive flaws in underlying proceeding; thus, judicial review of removal order was unavailable. *Discipio v. Ashcroft*, C.A.5 2004, 369 F.3d 472, vacated on denial of rehearing en banc 417 F.3d 448. Aliens ↪ 53.2(1); Aliens ↪ 54.3(1)

Order of California state court which expunged permanent resident alien's state court misdemeanor conviction for carrying concealed weapon, after he successfully completed his probation, did not eliminate immigration consequences of conviction or prevent alien from being deported on that basis; even expunged conviction qualified as "conviction" under the Immigration and Nationality Act (INA), where conviction was not within scope of Federal First Offender Act and continued to qualify as "conviction" for some purposes under California law. *Ramirez-Castro v. I.N.S.*, C.A.9 2002, 287 F.3d 1172. Aliens ↪ 53.2(1)

Board of Immigration Appeals (BIA) did not err, in deportation proceeding, in finding that alien's prior California felony conviction for annoying or molesting a child under 18 qualified as a conviction for immigration purposes,

8 U.S.C.A. § 1101

even though conviction was expunged; expungement of conviction did not remove its immigration consequences. *Lazovic v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 660, 2004 WL 1157680, Unreported. Aliens ↪ 53.2(1)

57. ---- False testimony, good moral character

Immigration provision stating that a person should be deemed not to be of good moral character if he had given false testimony for the purpose of obtaining immigration or naturalization benefits did not contain a materiality requirement for false testimony; the primary purpose of the provision was to identify lack of good moral character, rather than to prevent false pertinent data from being introduced into the naturalization process. *Kungys v. U.S.*, U.S.N.J.1988, 108 S.Ct. 1537, 485 U.S. 759, 99 L.Ed.2d 839.

Alien who to facilitate his naturalization did not tell the truth when he gave negative answer to question as to whether he had ever been a member of, or in any way connected with, or associated with Communist Party was not a person of "good moral character" within provision of this section that no applicant may be found to be person of good moral character if within statutory period he has given false testimony for purpose of obtaining any benefits under this chapter. *Berenyi v. District Director, Immigration and Naturalization Service*, U.S.Mass.1967, 87 S.Ct. 666, 385 U.S. 630, 17 L.Ed.2d 656.

Immigration Judge (IJ) did not abuse its discretion in denying asylum to applicant, who was citizen of Yemen, based on his use of false representations to arrive in United States on tourist visa issued by Embassy of Saudi Arabia; applicant had left Yemen where he claimed he was persecuted and was living in Saudi Arabia when he obtained visa, applicant did not accuse Saudi Arabia of persecution, Saudi government had not been preparing to return applicant to Yemen, and applicant did not claim ignorance of option to apply for refugee visa. *Alsagladi v. Gonzales*, C.A.7 2006, 450 F.3d 700. Aliens, Immigration, And Citizenship ↪ 504

Finding that alien had acted for purpose of obtaining immigration benefits in testifying falsely before asylum officer, when she fabricated story on how she had allegedly been persecuted by communist party while working as newscaster in the Philippines, was supported by substantial evidence, including alien's testimony that she "just wanted to be able to work" in the United States; accordingly, alien was statutorily ineligible for suspension of deportation on ground that she lacked good moral character. *Medina v. Gonzales*, C.A.2 2005, 404 F.3d 628. Aliens ↪ 53.10(2); Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA's) construction of term "testimony," where it appears in section of the Immigration and Nationality Act indicating that alien is not of good moral character, and is thus ineligible for suspension of deportation, if alien gave false testimony with subjective intent of obtaining immigration benefits, as not limited only to statements uttered under oath in administrative or judicial proceedings, but as applying more broadly to statements that alien made under oath to asylum officer, was permissible construction of term, to which the Court of Appeals had to defer on alien's petition for review of denial of her application for suspension of deportation. *Medina v. Gonzales*, C.A.2 2005, 404 F.3d 628. Aliens ↪ 54.3(4)

Finding of Immigration Judge (IJ), that alien gave false testimony for purpose of obtaining immigration benefits, and that he thus lacked moral character required for voluntary departure, was supported by substantial evidence, including inconsistencies within his testimony, and contradictions of his account in his former wife's credible testimony. *Akinwande v. Ashcroft*, C.A.1 2004, 380 F.3d 517. Aliens ↪ 54.1(4.1)

Nonimmigrant visitor's testimony in his deportation proceeding that he lied under oath about his living arrangements to an immigration officer at his marriage interview after his wife, a United States citizen, filed a petition for alien relative, and that he did so out of fear that if he told the truth, he would be denied a green card, supported determination of the Board of Immigration Appeals (BIA) that he was statutorily ineligible from establishing good moral character for a suspension of deportation. *Opere v. U.S. I.N.S.*, C.A.1 2001, 267 F.3d 10. Aliens ↪ 53.10(2)

8 U.S.C.A. § 1101

Substantial evidence supported determination that alien had given false testimony to asylum officer for purposes of obtaining immigration benefits, and thus was ineligible for suspension of deportation on basis that she did not qualify as a person of good moral character, even though alien withdrew her asylum application, and later admitted to immigration judge (IJ) that she had been lying. *Ramos v. I.N.S.*, C.A.9 2001, 246 F.3d 1264. Aliens ⚡ 54.1(4.1)

Alien applying for registry as lawful permanent resident did not engage in conduct that involved the giving of "false testimony," such as would pretermitt any finding of his good moral character and prevent immigration judge from granting his application, simply because he had falsely claimed to be United States citizen on written employment verification form; term "testimony," as used in relevant statute, was limited to oral statements made under oath. *Beltran-Resendez v. I.N.S.*, C.A.5 2000, 207 F.3d 284. Aliens ⚡ 51.5

Alien's false statements made under oath during naturalization examination, that he was single and not married prior to immigrating to United States, constituted "false testimony" precluding finding that alien was person of good moral character and was statutorily eligible for suspension of deportation or voluntary departure. *Bernal v. I.N.S.*, C.A.9 1998, 154 F.3d 1020. Aliens ⚡ 53.10(1); Aliens ⚡ 53.10(2)

Immigrant had good moral character required for suspension of deportation, though immigration judge found that his testimony lacked credibility, where finding that his testimony lacked credibility was not equivalent to finding that he had given false testimony, his conviction for transporting aliens did not prevent finding of good moral character, and, in granting voluntary departure, immigration judge made implicit finding of good moral character. *Rodriguez-Gutierrez v. I.N.S.*, C.A.5 1995, 59 F.3d 504. Aliens ⚡ 53.10(2)

Alien's testifying falsely under oath to protect his status under immigration law was encompassed by statute denominating a person to be of bad moral character on account of having given false testimony if he has told even most immaterial of lies with subjective intent of obtaining immigration or naturalization benefits, and thus, alien was not entitled to voluntary departure. *Liwanag v. I.N.S.*, C.A.5 1989, 872 F.2d 685, rehearing denied 878 F.2d 1435. Aliens ⚡ 53.10(1)

In denaturalization proceedings, finding that alien lacked good moral character because he made a false statement is applicable only to false testimony concerning material facts so that alien's misstatement concerning an arrest was not material and did not show he was not of good moral character, as the charges against the alien were eventually dismissed, and thus did not provide a basis for denial of citizenship. *U.S. v. Sheshtawy*, C.A.10 (Okla.) 1983, 714 F.2d 1038.

Test for determining materiality for purposes of section 1101 (f)(6) of this title, providing that one who has given false testimony for the purpose of obtaining any benefits under this chapter cannot be found to be a person of good moral character is the same as the test of materiality for denaturalizing a person on the basis of a false statement. *U.S. v. Sheshtawy*, C.A.10 (Okla.) 1983, 714 F.2d 1038. Aliens ⚡ 71(5); Aliens ⚡ 71(7)

False testimony relied upon to establish lack of good moral character on part of alien seeking naturalization need not be material to final merits of naturalization to justify denial of naturalization petition, i.e., government need not show that truthful answers would have barred granting of the petition. *In re Kovacs*, C.A.2 (N.Y.) 1973, 476 F.2d 843.

In proceeding on application for termination of deportation proceedings wherein alien contended that his failure to register with Attorney General in two successive years was reasonably excusable in that he believed he had been born in the United States rather than in Italy, evidence sustained finding that the alien had given false testimony and did not possess good moral character. *Bufalino v. Holland*, C.A.3 (Pa.) 1960, 277 F.2d 270, certiorari denied 81 S.Ct. 103, 364 U.S. 863, 5 L.Ed.2d 85.

8 U.S.C.A. § 1101

Under this section providing that no person should be regarded as of good moral character during period for which good moral character is required to be established if he has given false testimony for purpose of obtaining any benefits under immigration statutes, where alien in filing petition for naturalization had made false statements therein, alien's later withdrawal of petition did not absolve alien from having committed act of giving false testimony for purpose of obtaining benefit under statute. *Orlando v. Robinson*, C.A.7 (Ill.) 1959, 262 F.2d 850, certiorari denied 79 S.Ct. 898, 359 U.S. 980, 3 L.Ed.2d 929.

Discrepancies between alien's account of his conduct underlying guilty plea to misdemeanor sexual battery, as related to Immigration and Naturalization Service (INS), and account of same incident contained in police report, did not amount to "false testimony" and thus did not warrant denial of alien's naturalization petition on moral character grounds; crime, which involved minor child, had occurred 15 years earlier, alien reasonably stated in INS interview that he no longer remembered details of incident, there was no indication that alien had omitted details in hopes of improving his chances of gaining citizenship, there was evidence of remorse and rehabilitation, and fears of recidivism were speculative. *Cacho v. Ashcroft*, D.Hawai'i 2004, 403 F.Supp.2d 991. Aliens 62(5)

False oral testimony for purpose of obtaining immigration benefit, which prevents finding that permanent resident alien seeking naturalization has good moral character necessary for citizenship, need not relate to material fact; even most immaterial of lies with subjective intent of obtaining immigration or naturalization benefits will justifiably prevent finding of good moral character. *Aboud v. I.N.S.*, S.D. Ohio 1994, 876 F.Supp. 938. Aliens 62(5)

Permanent resident alien seeking naturalization failed to establish good moral character necessary for citizenship, where he gave false testimony three times, and he gave false testimony to obtain naturalized citizenship. *Aboud v. I.N.S.*, S.D. Ohio 1994, 876 F.Supp. 938. Aliens 62(5)

Alien, who had formerly been married to an American citizen, did not establish good moral character necessary for naturalization; alien had given false testimony under oath in denying that he had ever been an illicit trafficker in narcotic drugs or marijuana and his conviction for violations of Georgia Controlled Substances Act also demonstrated his lack of good moral character. *U.S. v. Abdulghani*, N.D. Ga. 1987, 671 F.Supp. 754.

By reason of false testimony given by defendant to obtain benefits under immigration and national laws, i.e., visa and naturalization, defendant lacked the good moral character required for citizenship. *U. S. v. Koziy*, S.D. Fla. 1982, 540 F.Supp. 25, affirmed 728 F.2d 1314, certiorari denied 105 S.Ct. 130, 469 U.S. 835, 83 L.Ed.2d 70.

An alien will not be permitted through concealment and misrepresentation to perpetrate a fraud upon court naturalizing him. *U. S. v. Wisdom*, E.D. Tenn. 1970, 320 F.Supp. 286.

Alien who concealed his membership in East German Communist Party and related organizations procured his visa by fraud or by wilful misrepresentation of material fact and for that reason was deportable. *Langhammer v. Hamilton*, D.C. Mass. 1961, 194 F.Supp. 854, affirmed 295 F.2d 642.

Under provisions that alien who has given false testimony for the purpose of obtaining benefits under this chapter does not possess good moral character necessary to be eligible for voluntary deportation, what is "testimony" is narrowly construed and does not include a certificate of acceptance sworn to by the alien and attached to application to extend time of temporary stay, so that false statements included therein will not preclude an alien from establishing his good moral character. *Sharaiha v. Hoy*, S.D. Cal. 1959, 169 F.Supp. 598.

Substantial evidence supported IJ's finding that alien made false statements in his testimony, and thus did not qualify for finding of good moral character required for suspension of deportation; alien testified inconsistently regarding his absence from an earlier scheduled deportation due to health problems, giving varying accounts about

8 U.S.C.A. § 1101

when and whether he visited a doctor and whether he had health insurance at the time he failed to appear for the hearing. *Almaraz v. I.N.S.*, C.A.9 2004, 112 Fed.Appx. 643, 2004 WL 2496723, Unreported. Aliens 54.1(4.1)

Alien made false statements under oath to asylum officer for Immigration and Naturalization Service (INS), and therefore statute precluded finding by immigration judge that alien established good moral character in support of his application for suspension of deportation and voluntary departure, when alien, upon being questioned about asylum interview in which he orally confirmed statements he knew to be false, answered affirmatively to question asking whether he had decided to swear under oath and lie. *Lejarde v. Ashcroft*, C.A.9 2004, 92 Fed.Appx. 526, 2004 WL 595096, Unreported. Aliens 53.10(2)

Alien's false oral testimony under oath before an immigration officer, that answers contained in her naturalization application were true, prevented a showing of good moral character, as required in her request for cancellation of removal. *Ansah v. Ashcroft*, C.A.5 2004, 88 Fed.Appx. 687, 2004 WL 231295, Unreported. Aliens 53.10(1)

In light of alien's admittedly perjurious prior asylum application, any reliance on an adverse credibility determination, in finding that alien was not entitled to asylum, was appropriate. *Ahmed v. Ashcroft*, C.A.6 2004, 86 Fed.Appx. 827, 2004 WL 74652, Unreported. Aliens 54.1(4.1)

Substantial evidence supported the Board of Immigration Appeals (BIA) determination that alien testified falsely in order to obtain a good faith hardship waiver of requirement that alien and citizen spouse file joint application for removal of residency conditions, warranting denial of aliens applications for suspension of deportation, voluntary departure, and misrepresentation waiver; alien gave inconsistent testimony regarding whether she notified her husband of her arrival plans and the reasons that she did not live with her husband after she arrived in the United States. *Freeman v. Ashcroft*, C.A.9 2004, 85 Fed.Appx. 595, 2004 WL 74625, Unreported. Aliens 54.1(4.1)

Denial of alien's petition for voluntary departure was not an abuse of discretion; alien was statutorily ineligible due to his false testimony to the court. *El-Himri v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 30, 2004 WL 42387, Unreported. Aliens 53.10(1)

Substantial evidence supported IJ's finding that alien was precluded from showing good moral character required for suspension of deportation due to alien's involvement in alien smuggling and false testimony at his hearing. *Jdahim v. Ashcroft*, C.A.9 2003, 75 Fed.Appx. 644, 2003 WL 22137303, Unreported. Aliens 54.1(4.1)


Board of Immigration Appeals (BIA) correctly concluded that alien lacked good moral character, and thus was ineligible for suspension of deportation; alien gave false statements under oath to an asylum officer. *Kaur v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 286, 2003 WL 21995196, Unreported. Aliens 53.10(2)

Alien's statement during his naturalization interview that he was married on date of his religious ceremony was not false, and thus alien was not ineligible for suspension of deportation on ground that he had given false testimony, even though he had been married two years earlier in civil ceremony. *Junio v. I.N.S.*, C.A.9 2003, 71 Fed.Appx. 721, 2003 WL 21782654, Unreported. Aliens 53.10(2)

Alien who knowingly made false statements under oath during asylum interview regarding when he entered United States for first time was not of "good moral character," and thus was not entitled to suspension of deportation, despite alien's contentions that he was misled by individual to whom he paid to procure work permit and that his interpreter crafted his answers during his asylum interview. *Arriaga-Garcia v. I.N.S.*, C.A.9 2002, 52 Fed.Appx. 915, 2002 WL 31761723, Unreported. Aliens 53.10(2)

Alien who had given false testimony during asylum hearing, and submitted fraudulent application for a work visa, could not show that he was a person of good moral character, as would potentially make him eligible for

8 U.S.C.A. § 1101

suspension of deportation. *Patel v. I.N.S.*, C.A.8 2000, 242 F.3d 376, Unreported, certiorari denied 122 S.Ct. 43, 534 U.S. 816, 151 L.Ed.2d 15. Aliens  53.10(2)

58. ---- Homosexuality, good moral character

Duty of court confronted with petition for naturalization which was opposed on ground that the applicant, a homosexual, was not of good moral character was to make an independent factual determination of good moral character, limited only by the explicit prohibitions of this section. In re *Brodie*, D.C.Or.1975, 394 F.Supp. 1208.

In order to grant petition for citizenship filed by alien homosexual, court was not required to find that the alien's behavior conformed to the preferences of the majority but only that it did not so offend that an ordinary person would think it immoral. In re *Brodie*, D.C.Or.1975, 394 F.Supp. 1208.

Alien's admitted homosexual practices which were confined to her home and which were with persons with whom she lived within five years preceding filing of her petition for naturalization were not consistent with "good moral character" as the ordinary man or woman would see it, and she was not entitled to naturalization. In re *Schmidt*, N.Y.Sup.1968, 289 N.Y.S.2d 89, 56 Misc.2d 456.

59. Immigrant or nonimmigrant status--Generally

Status referred to in subsection (a)(20) of this section defining person lawfully admitted for permanent residence is acquired when an alien satisfies any numerical limitation on entry of immigrants, requirements as to qualitative matters such as health, morals and economic status and the need for an immigrant visa; applicant must also state whether he plans to remain in United States permanently but statute does not declare or suggest that the status will be denied if he does not intend to reside permanently here. *Saxbe v. Bustos*, U.S.Dist.Col.1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

Subsection (a)(15)(H) of this section relating to one category of alien nonimmigrants which is composed of aliens having residence in a foreign country which they have no intention of abandoning and are coming temporarily to United States to perform temporary services if unemployed persons capable of performing services cannot be found in United States is intended to confer nonimmigrant status on aliens who are needed in American labor force but who, unlike commuters, would be unable to achieve admittance under immigrant status. *Saxbe v. Bustos*, U.S.Dist.Col.1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

Under former § 203 of this title [now covered by this section], a reasonable connotation of word "departed" in the definition of immigrant was that alien had taken leave from the terminus a quo with purpose of going to the terminus ad quem. U.S. ex rel. *Bradley v. Watkins*, C.C.A.2 (N.Y.) 1947, 163 F.2d 328.

Burden of proof is on individual alien to establish eligibility for an H-1 visa, which is granted to nonimmigrant alien having residence in foreign country and who is temporarily in United States to perform services of exceptional nature. *Bodeux v. U.S. I.N.S.*, D.Kan.1987, 668 F.Supp. 1452.

For purposes of this section allowing a firm or corporation or other legal entity to petition for the granting of nonimmigrant status to employees which it wishes to transfer to corporate posts in the country, the legal status of the petitioning business is not a dispositive consideration, and therefore, regional commissioner erred in denying a petition for the granting of nonimmigrant status on the ground that the petitioning business was a sole proprietorship and not a corporation or other business entity having a separate legal existence. *Johnson-Laird, Inc. v. Immigration and Naturalization Service*, D.C.Or.1981, 537 F.Supp. 52.

Entry into the United States by aliens is a matter of congressional discretion, and Congress has not given minor children born in the United States due to their parents' decision to reside there the ability to confer immigration

8 U.S.C.A. § 1101

benefits on their parents. *Dimaren v. Immigration and Naturalization Service*, S.D.N.Y.1974, 398 F.Supp. 556.

Congress' authority to prescribe conditions and terms by which aliens may come into the United States as immigrants is plenary and unfettered. *Faustino v. Immigration and Naturalization Service*, S.D.N.Y.1969, 302 F.Supp. 212, affirmed 432 F.2d 429, certiorari denied 91 S.Ct. 909, 401 U.S. 921, 27 L.Ed.2d 824.

Former § 203 of this title [now covered by this section], as amended, classifying certain parties as nonimmigrants, which was a carefully worded expression of law as it had been applied by courts both before and after date of amendment, would be viewed, not as change of law, but as clarification of the law. *Petition of Yee Shee Dong*, E.D.Mich.1952, 104 F.Supp. 123.

An alien's intention to remain permanently in United States does not make it unlawful for him to have entered the United States as a nonimmigrant. *Cocron v. Cocron*, N.Y.Sup.1975, 375 N.Y.S.2d 797, 84 Misc.2d 335.

60. ---- Adjustment of status, immigrant or nonimmigrant status

Statute providing for deportation of aliens who commit crime of moral turpitude "within five years" after "date of admission" did not reach alien whose crime occurred six years after his physical entry but less than five years after his status was adjusted to lawful permanent resident; Board of Immigration Appeals (BIA) did not provide rationale supporting decision to apply "admission" to change in legal status rather than initial physical entry in context of statute or for its assumption that every new "admission" reset clock. *Abdelqadar v. Gonzales*, C.A.7 2005, 413 F.3d 668. Aliens ↪ 53.2(2)

Although State Department regulation directs consular officials to warn an alien of marriageable age to whom visa has been issued on basis of his or her status as child that he or she will be ineligible for admission to United States if he or she marries prior to entering United States, such regulation is directed to consular officials outside United States, not to Immigration and Naturalization Service officials handling applications for adjustment of status, and regulation imposes no duty upon such officials to warn applicants for adjustment of status that marriage will alter their preference classification for immigration visas. *Bae v. I.N.S.*, C.A.8 1983, 706 F.2d 866. Aliens ↪ 44; *Estoppel* ↪ 62.2(4)


Alien who entered the United States for the first time as a nonimmigrant visitor, then traveled outside United States pursuant to a grant of advance parole while his application for adjustment of status was pending, could be classified as an "arriving alien" for purposes of removal upon his return, although the advance parole document explicitly permitted alien to resume his application for adjustment of status upon his return to the United States. *Diarra v. Gonzales*, C.A.5 2005, 137 Fed.Appx. 627, 2005 WL 1317057, Unreported. Aliens ↪ 53.6(2)

Amendments to Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied to alien's request for an adjustment of status, which was filed four years after he was ordered deported; status application was separate and distinct from his exclusion proceeding, alien, who did not move to reopen prior proceedings, neglected to mention existence of the earlier proceeding or deportation order in his application, and alien was illegally present in the United States, but he was not in any exclusion or deportation proceedings on effective date of amendments. *Omogiate v. I.N.S.*, C.A.7 (Ill.) 2003, 61 Fed.Appx. 258, 2003 WL 1466525, Unreported. Aliens ↪ 40



61. ---- Adopted child of citizen, immigrant or nonimmigrant status

Neither plain language rule nor failure by Congress to exclude preferences for natural siblings after adoption indicated that Congress clearly intended that natural sibling relationship survive adoption for immigration purposes; although Congress did not expressly address preferences for natural siblings, full meaning must be given to its clear intention to prevent natural parents from gaining benefits through adopted child. *Young v. Reno*, C.A.9

8 U.S.C.A. § 1101

(Hawai'i) 1997, 114 F.3d 879. Aliens  51.5



The adopted child of an American-born Chinese coming to the United States to be with its parent was an immigrant within former § 203 of this title [now covered by this section]. *Siw Oi v. Nagle*, C.C.A.9 (Cal.) 1926, 12 F.2d 769.

United States citizen, who initiated adoption proceedings for alien under statutory age of 16 years old, but was mistakenly granted tutelage, rather than adoption, became legally adoptive mother of alien from date of initial order, and, thus, adoptive daughter was entitled to "immediate relative" status for immigration purposes, where citizen was granted adoption nunc pro tunc from date of initial order. *Allen v. Brown*, N.D.Ohio 1997, 953 F.Supp. 199. Adoption  14; Aliens  51.5

Even though a person may be validly adopted under state law, he still may not qualify for classification as an adopted "child" for immigration purposes unless he is under the age of 14 years at the time of adoption and has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. *Pascual v. O'Shea*, D.C.Hawai'i 1976, 421 F.Supp. 80.

Under this section the two-year legal custody must be after adoption. *Pascual v. O'Shea*, D.C.Hawai'i 1976, 421 F.Supp. 80.

62. ---- Aliens in transit, immigrant or nonimmigrant status

Attorney general's determination that aliens who have obtained admission without a visa as being in immediate and continuous transit through the United States should not be eligible to apply for adjustment of status to that of an alien lawfully admitted for permanent residence under section 1255 of this title is reasonably related to statutory scheme and enforcement of regulations with respect to such aliens who are accorded the privilege of admission on so fleeting a basis for the purpose of facilitating international travel. *Fook Hong Mak v. Immigration and Naturalization Service*, C.A.2 1970, 435 F.2d 728. Aliens  44; Aliens  53.10(2)

Where alien who had become a British subject in Canada came to the United States in 1924 where she resided until 1932 when she returned to Canada, and alien was employed there until 1934 when she returned to the United States and in 1939 went to Canada for short visit, such alien upon re-entering the United States in 1939 was not a non-immigrant so as to be exempt from requirement of head tax or possession of unexpired visa. *Gagliardo, U S ex rel v. Karnuth*, W.D.N.Y.1945, 66 F.Supp. 969, affirmed 156 F.2d 867.

63. ---- Alien commuters, immigrant or nonimmigrant status

Aliens having homes in Canada or Mexico who commute daily to places of employment in United States and others who do so on a seasonal basis are not nonimmigrants under subsection (a)(15)(H) of this section relating to certain aliens needed in American labor force who come to the United States to perform temporary services for which there are no unemployed persons in United States capable of performing such services, and commuters are immigrants by virtue of section 1184 of this title presuming that every alien is an immigrant until he establishes that he is entitled to nonimmigrant status. *Saxbe v. Bustos*, U.S.Dist.Col.1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

Aliens who had their homes in Canada or Mexico and commuted daily or on a seasonal basis to places of employment in this country in accordance with a practice permitted by the Immigration and Naturalization Service, were immigrants who were lawfully admitted for permanent residence within meaning of this section and could be viewed as returning from temporary visits abroad, and thus they differed from those aliens who could be admitted only on certification by Secretary of Labor. *Saxbe v. Bustos*, U.S.Dist.Col.1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

8 U.S.C.A. § 1101

Requirement that foreign worker live in a country contiguous to the United States in order to obtain alien commuter status does not violate equal protection, since policy considerations supported special treatment for commuters from Canada and Mexico who are employed in United States. *Alvarez v. District Director of U. S. Immigration and Naturalization Service*, C.A.9 (Cal.) 1976, 539 F.2d 1220, certiorari denied 97 S.Ct. 1334, 430 U.S. 918, 51 L.Ed.2d 597.

Alien commuters, who have been admitted into the United States for permanent residence, but who choose to keep a home in Canada or Mexico and to cross daily or seasonally into the United States to work, are not "nonimmigrants" under this section defining one kind of nonimmigrant as an alien having a residence in a foreign country which he has no intention of abandoning or who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in the United States. *Gooch v. Clark*, C.A.9 (Cal.) 1970, 433 F.2d 74, certiorari denied 91 S.Ct. 2170, 402 U.S. 995, 29 L.Ed.2d 160.

64. ---- Crewmen, immigrant or nonimmigrant status

Where petitioner who was citizen of Philippines enlisted and served in the United States Army in the Philippines and Okinawa for a period of slightly less than three years and then after lapse of approximately five years enlisted as a seaman in United States Navy, and while serving in Navy entered United States on a United States warship, fact that Navy at any time could have removed him for service elsewhere showed absence of Congressional intent that petitioner's coming in under Navy orders made him an immigrant admitted for permanent residence, as regards petitioner's right to naturalization through active duty service in armed forces. *Dela Cena v. U.S.*, C.A.9 (Hawai'i) 1957, 249 F.2d 341.

An alien seaman, who obtained admission to the United States temporarily as a nonimmigrant with intention to remain here permanently, if possible, did not lawfully enter the United States as a bona fide nonimmigrant, and hence he was not thereafter entitled to adjustment of his immigration status under Displaced Persons Act, 50 App. § 1953, or to relief under Refugee Relief Act, 50 App. § 1971 et seq. *United States v. Shaughnessy*, C.A.2 (N.Y.) 1955, 221 F.2d 262, certiorari denied 76 S.Ct. 49, 350 U.S. 822, 100 L.Ed. 735.

Intention of alien seaman, when admitted to the United States temporarily as a nonimmigrant, to remain here permanently, if possible, rendered his entry illegal. *United States v. Shaughnessy*, C.A.2 (N.Y.) 1955, 221 F.2d 262, certiorari denied 76 S.Ct. 49, 350 U.S. 822, 100 L.Ed. 735.

Alien seaman by entering coastwise trade abandoned status as nonimmigrant. *U.S. ex rel. Anderson v. Karnuth*, W.D.N.Y.1930, 46 F.2d 689.

German seaman, discharged and intending to make his home here, was an "alien" and "immigrant" subject to deportation. *Ex parte Sturm*, S.D.N.Y.1929, 38 F.2d 272.

Alien seamen shipping on various American vessels in foreign service and thereafter shipping coastwise on Great Lakes and continuing in coastwise trade, whenever able to obtain employment, abandoned their status as nonimmigrants. *U.S. ex rel. Bardakos v. Mudd*, D.C.Md.1929, 33 F.2d 334.

Alien seaman shipping in United States and returned to port of departure at end of voyage was not an immigrant. *Pan-American Petroleum & Transport Co. v. U.S.*, D.C.La.1928, 28 F.2d 386.

Alien residents, who had been such for a period of more than three years prior to shipping as seamen on an American vessel for a complete voyage, to end on the coast of their departure, intending at no time to remain away from the United States or to become inhabitants of any foreign country, did not relinquish their right to remain in this country. The court said: "Petitioners do not come within the class known as immigrants, defined in section 3

8 U.S.C.A. § 1101

of the Immigration Act of 1924." *Petition of Hersvik*, S.D.Cal.1924, 1 F.2d 449.

Seamen were not "immigrants," and immigration laws did not apply to them, in absence of express provisions to that effect. *New York & Cuba Mail S S Co v. U S*, C.C.A.2 (N.Y.) 1924, 297 F. 158, certiorari granted 44 S.Ct. 638, 265 U.S. 578, 68 L.Ed. 1188, reversed on other grounds 46 S.Ct. 114, 269 U.S. 304, 70 L.Ed. 281.

Alien seaman, returning to United States after trip to Canada, came as "immigrant" required to have unexpired immigration visa. *U.S. ex rel. Williams v. Karnuth*, W.D.N.Y.1933, 2 F.Supp. 316.

65. ---- Distinguished merit and ability, immigrant or nonimmigrant status

Immigration and Naturalization Service did not abuse its discretion by failing to classify as a professional and eligible for temporary worker status, an alien employed as translator. *Occidental Engineering Co. v. I.N.S.*, C.A.9 (Cal.) 1985, 753 F.2d 766.

Requirement of "exceptional ability" for permanent residence, within § 1153 of this title pertaining to classification as a preference quota immigrant, is more stringent than requirement of "distinguished merit and ability" for a temporary visit, within this section pertaining to classification as a nonimmigrant. *Dong Yup Lee v. U. S. Immigration and Naturalization Service*, C.A.9 (Cal.) 1969, 407 F.2d 1110.

Immigration and Naturalization Service's (INS) denial of temporary worker status to graphic designer of Chinese language newspaper, on ground that newspaper failed to establish that duties of graphic designer required services of member of professions, was arbitrary, capricious, and abuse of discretion; INS erroneously focused on size of newspaper, amount of proffered salary, and absence of prior record of hiring professionals for position, and INS failed to consider actual responsibilities of position. *Young China Daily v. Chappell*, N.D.Cal.1989, 742 F.Supp. 552.

Alien, whom domestic company sought to employ as its president and chief executive officer, was a "professional" and the position was a "profession" within meaning of Immigration and Nationality Act, and thus, alien was entitled to visa as temporary worker of distinguished merit and ability; even though position did not require academic degree, position of company president could be considered a profession based on complexity of duties, and there was testimony that alien had at least the equivalent of an MBA through his experience. *Hong Kong T.V. Video Program, Inc. v. Ilchert*, N.D.Cal.1988, 685 F.Supp. 712.

66. ---- Enemy alien, immigrant or nonimmigrant status

Where alien was brought to United States from Guatemala at outbreak of World War II as an alien enemy, but after the war his status as an internee was terminated and he was given opportunity to depart voluntarily in lieu of deportation but failed to do so, subsequent presence of alien in United States was "voluntary" and he would be regarded as having made an "entry", and as being subject to deportation as an "immigrant". *U. S. ex rel. Sommerkamp v. Zimmerman*, C.A.3 (Pa.) 1949, 178 F.2d 645.

67. ---- Expatriated citizen, immigrant or nonimmigrant status

Person born in United States who, after becoming 21 years old, enlisted in Polish army and took oath of allegiance to Poland, thereby became expatriated, and hence was subject to deportation because of entry into United States without a visa but upon passport obtained through false representations. *U.S. ex rel. Wrona v. Karnuth*, W.D.N.Y.1936, 14 F.Supp. 770.

68. ---- Fiancé, immigrant or nonimmigrant status

8 U.S.C.A. § 1101

Alien whose fiancé had died while she was traveling to United States to be married was not eligible for discretionary waiver of deportation under waiver statute requiring alien to have immigrant visa or equivalent document at time of entry, where alien had entered United States pursuant to nonimmigrant fiancé visa. *Caddali v. I.N.S.*, C.A.9 1992, 975 F.2d 1428. Aliens ↪ 53.10(2)

69. ---- Foreign officials, immigrant or nonimmigrant status

Where alien withdrew appeal from portions of decision upholding exclusion order and denying her claim for a visa as dependent of United Nations employee, alien was deprived of right to further contest validity of exclusion order and her claim to such visa. *Menon v. Esperdy*, C.A.2 (N.Y.) 1969, 413 F.2d 644.

This chapter providing for admission, as nonimmigrants, of officers or employees of certain international organizations and members of their immediate families does not confer right to visa but only provides basis for issuance of visa upon request or certification by appropriate international organization and, if an international organization concludes grant of such visa is not needed to facilitate its operations, court will not require United States to grant such status. *Menon v. Esperdy*, C.A.2 (N.Y.) 1969, 413 F.2d 644.

Where alien wife and daughter of United Nations employee had not lived with employee for 13 years, there was no prospect that they would do so in future and employee had not been stationed in United States 6 years, wife and daughter who sought admission as immediate family of United Nations employee pursuant to statute did not "reside regularly" in employee's household within regulation defining immediate family as close relatives, by blood, marriage, or adoption, who will reside regularly in household of principal alien and wife and daughter were therefor not "immediate family" of employee. *Menon v. Esperdy*, C.A.2 (N.Y.) 1969, 413 F.2d 644.

It is proper for United States to refuse to issue visas to members of families of officers or employees of international organization unless and until requested to do so by the organization. *Menon v. Esperdy*, C.A.2 (N.Y.) 1969, 413 F.2d 644.

Alien's intention to remain permanently in United States did not make it unlawful for him to enter United States as a non-immigrant on being duly admitted as an accredited official of a foreign government. *Brownell v. Gutnayer*, C.A.D.C.1954, 212 F.2d 462, 94 U.S.App.D.C. 90.

Grant embodied in this chapter excluding from term "immigrant" alien members of immediate family of officers or employees of international organizations within § 288 et seq. of Title 22 is matter of legislative grace involving foreign relations of United States with certain international organizations. *Menon v. Esperdy*, S.D.N.Y.1965, 248 F.Supp. 261, affirmed 413 F.2d 644.

Fact that alien was spouse of a United Nations employee did not as of right entitle her, for purpose of invalidating exclusion order, to come within this section excepting from term "immigrant," alien members of immediate family of officers or employees of certain international organizations where United Nations had rejected her claim, and court could not inquire into reason for rejection. *Menon v. Esperdy*, S.D.N.Y.1965, 248 F.Supp. 261, affirmed 413 F.2d 644.

70. ---- Spouse of citizen, immigrant or nonimmigrant status

The "K visa" provision was added to this section so as to allow alien fiancee or fiance to enter United States to marry United States citizen, and, underlying purpose being to facilitate formation of marital relationships, relevant inquiry is whether parties have bona fide intent to marry after alien enters. *Moss v. Immigration and Naturalization Service*, C.A.5 1981, 651 F.2d 1091. Aliens ↪ 51.5

8 U.S.C.A. § 1101

No citizen can, by the individual action of contracting matrimony in a foreign jurisdiction with an alien, deprive the United States of as fundamental an act of sovereignty as is the determination of what aliens may enter its territory. *Hermina Sague v. U. S.*, D.C.Puerto Rico 1976, 416 F.Supp. 217.

Citizen spouse, who voluntarily chooses to marry an alien outside the jurisdiction of the United States, has no constitutional right to have her alien spouse enter the United States. *Hermina Sague v. U. S.*, D.C.Puerto Rico 1976, 416 F.Supp. 217.

Alien who remained in United States beyond visa expiration date was deportable, even though he married U.S. citizen while deportation proceeding was pending, once wife's petition to prioritize alien's application for permanent resident status was denied. *Haddad v. I.N.S.*, C.A.6 2001, 7 Fed.Appx. 420, 2001 WL 302048, Unreported. Aliens ↪ 53.4

Alien was not party to legal union of any kind, so as to qualify as "spouse" under Defense of Marriage Act (DOMA), which precluded her eligibility for cancellation of removal based on purported hardship to her same-sex partner that allegedly would result, and therefore alien lacked standing to assert due process and equal protection challenges to definition of "spouse" in Immigration and Nationality Act (INA), due to its failure to recognize same-sex relationships. *Matthews v. Gonzales*, C.A.9 2006, 171 Fed.Appx. 120, 2006 WL 620910, Unreported. Constitutional Law ↪ 42.2(2)

71. ---- Student, immigrant or nonimmigrant status

Finding that alien violated his nonimmigrant status by ceasing to be full-time student was supported by alien's admission that he had stopped attending school full time, due to marital and other responsibilities, and that he eventually stopped attending school entirely, due to poor grades, even though Immigration and Naturalization Service (INS) presented no additional evidence of alien's violation of his nonimmigrant status. *Khano v. I.N.S.*, C.A.7 1993, 999 F.2d 1203. Aliens ↪ 54.1(4.1)

Nigerian national who failed to maintain student status required by his visa was "illegal alien" prior to date that he was actually ordered deported; thus, he could be convicted of making false statement in connection with acquisition of firearm for stating in firearm purchase form, prior to deportation, that he was not "illegally in the United States." *U.S. v. Igbatayo*, C.A.5 (Tex.) 1985, 764 F.2d 1039, certiorari denied 106 S.Ct. 177, 474 U.S. 862, 88 L.Ed.2d 147.

Purpose of this section governing alien nonimmigrant students was to foster cultural interchanges because of the importance assigned to interchange of students under foreign policy and benefits from pursuit of such policy. *Mashi v. Immigration and Naturalization Service*, C.A.5 1978, 585 F.2d 1309. Aliens ↪ 40

Within subsection (a)(15)(F) of this section providing for entry of nonimmigrant alien students for study at approved institutions of learning, which institutions are required to report to the Attorney General termination of attendance of each nonimmigrant student, provision that if institution "fails to make reports promptly the approval shall be withdrawn" does not mandate withdrawal for any and all delicts; agency has discretion as to what constitutes prompt reporting, what deviations might be deemed reasonable, what kind of opportunity will be allowed for correction, and whether institution had reasonable notice of standard adopted. *Blackwell College of Business v. Attorney General*, C.A.D.C.1971, 454 F.2d 928, 147 U.S.App.D.C. 85.

Alleged interests of the government, under subsection (a)(15)(F) of this section requiring withdrawal of approval of institution of learning as place of study for nonimmigrant alien students if institution fails to report termination of studies by such students, in protecting the interest of bona fide nonimmigrant students, proper enforcement of immigration laws, and formation of better relations with other countries are not so urgent that the private interest of the institution of learning in protecting its approval should not be accorded procedures consistent with due process.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Blackwell College of Business v. Attorney General, C.A.D.C.1971, 454 F.2d 928, 147 U.S.App.D.C. 85.

Before withdrawing approval of institution of learning as place of study for nonimmigrant alien students, the Immigration and Naturalization Service should give notice in reasonable detail of the particular instances of failure to report termination of studies by students, afford hearing before official other than the one upon whose investigation the Service relies, afford institution opportunity to confront and cross-examine persons who have supplied hearsay evidence not subject to some accepted exception to the hearsay rule, and afford institution representation and participation by counsel. *Blackwell College of Business v. Attorney General*, C.A.D.C.1971, 454 F.2d 928, 147 U.S.App.D.C. 85.

Formless and essentially ex parte proceedings whereby approval of business college as place of study for nonimmigrant alien students was withdrawn, involving, inter alia, interview without counsel to refute case already built up ex parte, drawing of conclusions from college's files, after the interview, without meaningful hearing with opportunity to refute the conclusions or even notice as to what items in files had been relied upon, and decision of the case by the same official who had notified college of intention to withdraw approval, constituted denial of due process. *Blackwell College of Business v. Attorney General*, C.A.D.C.1971, 454 F.2d 928, 147 U.S.App.D.C. 85.

Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, and Declaratory Judgment Act, § 2201 et seq. of Title 28, gave court jurisdiction to entertain action for declaratory judgment that petition submitted by college to Attorney General of United States through Vermont District Director of Immigration and Naturalization Service for approval as institution in which foreign students may study while enjoying nonimmigrant alien status under this section should be granted. *Royalton College, Inc. v. Clark*, D.C.Vt.1969, 295 F.Supp. 365.

District Director and Regional Commissioner of Immigration and Naturalization Service did not unreasonably interpret Attorney General's regulations defining criteria for approval of schools attended by foreign students having nonimmigrant alien status. *Royalton College, Inc. v. Clark*, D.C.Vt.1969, 295 F.Supp. 365.

Attorney General's regulations defining criteria for approval of schools attended by foreign students having nonimmigrant alien status were not defective because regulations were strict and made it difficult for new schools to receive approval or because they made it easier for public schools to obtain approval than for private schools. *Royalton College, Inc. v. Clark*, D.C.Vt.1969, 295 F.Supp. 365.

Evidence supported immigration service finding that alien was not a bona fide nonimmigrant student when he applied for admission. *Application of Malimali*, D.C.Hawai'i 1967, 264 F.Supp. 308.

72. ---- Temporary United States visitors, immigrant or nonimmigrant status


Before alien can be classified as a nonimmigrant under subsec. (a)(15)(H) of this section relating to aliens having residence in foreign country which he has no intention of abandoning and is temporarily coming to United States to perform temporary labor if unemployed persons capable of performing such labor cannot be found, alien's prospective employer must submit a petition on his behalf and after Immigration and Naturalization Service approval alien must apply for nonimmigrant status and demonstrate that he in fact qualifies for that status. *Saxbe v. Bustos*, U.S.Dist.Col.1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.


Mother, in the United States under temporary visitor statute, who filed petition for relief under Hague Convention on the Civil Aspects of International and Child Abduction, which Congress implemented through International Child Abduction Remedies Act (ICARA), lacked requisite intent to move permanently to Hawaii, where abductor lived, to establish domicile in Hawaii instead of Canada, even though mother had moved to Hawaii, bought house in Hawaii, and sold house in Canada, and thus petition was not moot; temporary visitor statute precluded mother from establishing domicile in United States. *Gaudin v. Remis*, C.A.9 (Hawai'i) 2004, 379 F.3d 631, transferred to 415 F.3d 1028. Child Custody ↩ 814


8 U.S.C.A. § 1101

Immigration and Naturalization Service (INS) properly considered relevant factors in denying petition to change from visitor status to intracompany transferee status nonimmigrant classification of president of Washington Bureau of Republic of Transkei, "homeland" created by Republic of South Africa; INS ruled that Bureau had submitted insufficient evidence to demonstrate president's earlier position was primarily executive or managerial in nature, failed to establish that his duties in Bureau would be primarily executive or managerial, and found that there was insufficient showing that Bureau required full-time executive or managerial direction. *Republic of Transkei v. I.N.S.*, C.A.D.C.1991, 923 F.2d 175, 287 U.S.App.D.C. 352.

Immigration and Naturalization Service abused its discretion in denying alien's request for extension of treaty investor status; showing that alien had written on form that he wanted extension for "four more years till I get my citizenship" which alien then crossed out and that he had written he came to United States to immigrate and go in business was insufficient evidence to support conclusion that alien did not intend to depart on termination of temporary stay. *Lauvik v. I.N.S.*, C.A.9 (Wash.) 1990, 910 F.2d 658.

In order to establish his bona fide nonimmigrant status and thereby qualify for such a visa, a nonimmigrant is required to demonstrate to the satisfaction of the immigration authorities that he has a foreign residence which he has no intention of abandoning and that he will depart voluntarily at the end of his authorized stay. *Jain v. Immigration and Naturalization Service*, C.A.2 1979, 612 F.2d 683, certiorari denied 100 S.Ct. 2155, 446 U.S. 937, 64 L.Ed.2d 789. Aliens  44

Nature of business activities may be highly probative of intended duration; however, alien who enters United States with intention of remaining temporarily in order to establish business and then return to his permanent residence abroad is entitled to "nonimmigrant" status and thus intent to open business is not determinative on issue whether alien is immigrant subject to deportation because at time of his application for admission he was not in possession of valid unexpired immigrant visa. *Pereira-Diaz v. Immigration and Naturalization Service*, C.A.9 1977, 551 F.2d 1149. Aliens  53.4

It is possible for aliens to possess a lawful domicile in the United States without being admitted for permanent residence. *Lok v. Immigration and Naturalization Service*, C.A.2 1977, 548 F.2d 37. Aliens  3

Alien commuters, who have been admitted into United States for permanent residence, but who choose to keep a home in Canada or Mexico and to cross daily or seasonally into the United States to work, are not visiting the United States "temporarily for business" under this chapter. *Gooch v. Clark*, C.A.9 (Cal.) 1970, 433 F.2d 74, certiorari denied 91 S.Ct. 2170, 402 U.S. 995, 29 L.Ed.2d 160.




"A desire or purpose or intent" by an alien to take advantage of an opportunity afforded him by the laws of the United States to remain here if such an opportunity should offer itself is not inconsistent with lawful nonimmigrant status, where no such intent to remain was present on his initial entry. *Brownell v. Stjepan Bozo Carija*, C.A.D.C.1957, 254 F.2d 78, 102 U.S.App.D.C. 379.

Former §§ 203 and 213 of this title [now covered by this section and § 1181 of this title, respectively] regulating admission of immigrants did not apply to an alien coming to the United States as a temporary visitor, since he was not an "immigrant." *U.S. ex rel. Di Mieri v. Uhl*, C.C.A.2 (N.Y.) 1938, 96 F.2d 92.

Aliens coming to country for purpose of working for hire, intending to return after six months, were "immigrants," not entitled to admission as nonimmigrants. *Lampert & Holt v. Elting*, S.D.N.Y.1931, 51 F.2d 1057, reversed on other grounds 64 F.2d 93.

Regulatory scheme for annual certification of employers to hire aliens with H-2B temporary work visas did not violate due process or equal protection rights of employers of summertime seasonal workers, even if it placed them at comparative disadvantage to employers of wintertime seasonal workers due to combined effect of limited

8 U.S.C.A. § 1101

number of visas available, certification on first-come, first-serve basis, and requirement that employers could not file application for certification earlier than 120 days before beginning of period of proposed employment; there was no indication any preference for winter seasonal hirers over summer seasonal hirers was intended, and each component part of the regulatory scheme had a rational basis. *Daylily Farms, Inc. v. Chao*, D.Mass.2005, 357 F.Supp.2d 356. Aliens  51.5; Constitutional Law  250.5; Constitutional Law  274.3

In order to be qualified as a nonimmigrant temporary worker on a nonimmigrant H-1 visa, it must be shown that position sought to be filled requires services of a professional or of someone who is prominent, renowned, or preeminent in his field. *Hird/Blaker Corp. v. Slattery*, S.D.N.Y.1991, 764 F.Supp. 872.

Immigration and Naturalization Service's interpretation of temporary worker statute, focusing on nature of need for duties to be performed in determining whether job is temporary, was consistent with concern that American labor should be protected by limiting length of stay of nonimmigrant alien laborers. *Volt Technical Services Corp., a Div. of Volt Information Sciences Inc. v. I.N.S.*, S.D.N.Y.1986, 648 F.Supp. 578.

Refusal to grant alien extension of his intracompany transferee status, due to alien's failure to establish that his services were needed on a temporary basis only, was neither arbitrary nor capricious, where several extension petitions of other aliens were also denied due to a failure to support a statement of temporary need. *International Auto Exchange, Inc. v. Attorney General*, D.D.C.1986, 643 F.Supp. 616.

Alien should have known that, as nonimmigrant exchange visitor, he was barred from applying either for permanent residence or for change in his status without first returning to his home country for two years from plain language of form he signed requesting appropriate visa and, therefore, Immigration and Naturalization Service was acting within its discretion in giving less consideration to those elements of hardship to alien's wife which arose as result of actions taken by alien and wife after his arrival in this country on "temporary" basis, for purposes of determining whether two-year home country residency requirement should be waived, notwithstanding alleged failure of American consul to confer with alien about conditions of visa. *Al-Khayyal v. U.S. I.N.S.*, N.D.Ga.1986, 630 F.Supp. 1162, affirmed 818 F.2d 827.

Denial of parents' petition to have alien classified as nonimmigrant temporary worker to care for their child based on their purported failure to establish that prospective employment was "temporary" was arbitrary, capricious and an abuse of discretion where Department of Labor and Immigration and Naturalization Service relied on factors which had no bearing on duration of parents' need for live-in child care. *Wilson v. Smith*, D.C.D.C.1984, 587 F.Supp. 470.

Fact that aliens, who had come to the United States pursuant to nonimmigrant L-1 intracompany transfer visas, had already been in the United States for three years, was not a proper basis for the Immigration and Naturalization Service's denial of their applications for further extensions of their L-1 status. *Chavan v. Drysdale*, N.D.N.Y.1981, 513 F.Supp. 990.

Test of temporary nature of work under provisions permitting entry of certain nonimmigrant aliens temporarily to perform temporary work is whether likelihood is greater that services will be temporary rather than permanent. *Hess v. Esperdy*, S.D.N.Y.1964, 234 F.Supp. 909.

73. ---- Lawfully admitted for permanent residence, immigrant or nonimmigrant status

Subsection (a)(20) of this section defining persons lawfully admitted for permanent residence as those with the "status of having been lawfully accorded privilege of residing permanently in United States as an immigrant" means a status which was a change from immigrant lawfully admitted for permanent residence to the status of a non-immigrant pursuant to section 1257 of this title relating to adjustment of status of certain resident aliens. *Saxbe v. Bustos*, U.S. Dist. Col. 1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Status of having been lawfully admitted for permanent residence carries several important privileges in that the alien may remain in the United States indefinitely, he may work in this country, he may return to the United States after a temporary absence abroad and he may establish a permanent residence in the United States. *Saxbe v. Bustos*, U.S. Dist. Col. 1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

Subsec. (a)(20) of this section which defines persons lawfully admitted for permanent residence as those with the "status of having been lawfully accorded privilege of residing permanently in United States as an immigrant" is descriptive of a status or a privilege which need not be reduced to a permanent residence to be satisfied, so long as the status has not changed. *Saxbe v. Bustos*, U.S. Dist. Col. 1974, 95 S.Ct. 272, 419 U.S. 65, 42 L.Ed.2d 231.

Alien who was granted permanent resident status despite his prior state drug conviction, which legally barred him from obtaining such status, was not "lawfully admitted for permanent residence" as would render alien eligible for discretionary relief from removal under former INA provision permitting such relief, since his admission was due only to administrative inadvertence or error. *Savoury v. U.S. Atty. Gen.*, C.A.11 2006, 449 F.3d 1307. Aliens, Immigration, And Citizenship ↻ 322

Alien's lawful permanent resident (LPR) status could be lost without formal removal proceedings before the Board of Immigration Appeals (BIA) or filing of form indicating alien's abandonment of that status. *U.S. v. Yakou*, C.A.D.C.2005, 428 F.3d 241, 368 U.S.App.D.C. 162. Aliens ↻ 54(5)

Determination by Immigration Judge (IJ), that alien abandoned his permanent resident status by returning to Canada, and then traveling to his native Iran, after having been in United States for only three months, was supported by substantial evidence, including evidence that alien owned no property in United States, that he seldom saw his two brothers who lived in United States, and that he established or resumed significant ties with Canada by, inter alia, pursuing Canadian citizenship application. *Katebi v. Ashcroft*, C.A.1 2005, 396 F.3d 463. Aliens ↻ 54.1(4.1)

Alien's lawful permanent resident (LPR) status could be lost without formal removal proceedings before the Board of Immigration Appeals (BIA) or filing of form indicating alien's abandonment of that status. *U.S. v. Yakou*, C.A.D.C.2005, 393 F.3d 231, 364 U.S.App.D.C. 208, republished at 428 F.3d 241, 368 U.S.App.D.C. 162. Aliens ↻ 54(5)

Alien's status as "lawful, permanent resident" comes to an end with entry of final administrative order of deportation. *Perez-Rodriguez v. I.N.S.*, C.A.7 1993, 3 F.3d 1074. Aliens ↻ 3; Aliens ↻ 54.2(1)

That alien is subject to deportation proceedings does not affect his status as permanent resident alien; permanent resident alien's status terminates only when order of deportation is affirmed by Board of Immigration Appeals (BIA) or otherwise becomes administratively final. *Molina v. Sewell*, C.A.5 (Tex.) 1993, 983 F.2d 676.

Alien's membership in class action challenging implementation of amnesty program did not confer lawful permanent resident status on him, where relief merely provided that class members who had applied for temporary legal residency would be treated in accordance with Immigration and Naturalization Act, such that applicant would not be deported and would be issued work authorization permits. *Kasbati v. District Director of I.N.S.*, N.D.Ill.1992, 805 F.Supp. 619.

Alien who was nonimmigrant temporary worker was not "citizen" of Alabama for diversity purposes, even though alien resided in Alabama, since alien was not admitted to United States for permanent residence. *Miller v. Thermarite Pty. Ltd.*, S.D.Ala.1992, 793 F.Supp. 306.

Alien abandoned his lawful permanent residence in the United States, and thus could not gain re-entry as returning lawful permanent resident after his 23- month trip to Fiji, where alien surrendered his alien registration card and

8 U.S.C.A. § 1101

executed INS Form I-407, "Abandonment By Alien Of Status As Lawful Permanent Resident," requested a non-immigrant visitor's visa, closed his bank accounts and left no property behind, and then did not return to the United States once his task of hiring of "trainee" was accomplished. *Singh v. Ashcroft*, C.A.9 2004, 100 Fed.Appx. 628, 2004 WL 1041755, Unreported. Aliens 53.6(2)

Substantial evidence supported finding that alien abandoned his permanent resident status and thus was not entitled to be readmitted into the United States; alien had been issued a multiple-entry reentry permit by the Immigration and Naturalization Service (INS) which was valid for two years, but alien, instead of returning to the United States within that two year period, remained in his native country for 12 years, where he lived and worked, got married, established a home, owned property, and had five children. *Ahmed v. I.N.S.*, C.A.6 2003, 85 Fed.Appx. 426, 2003 WL 23156636, Unreported. Aliens 46

An expatriated citizen may not, under subsec. (a)(20) of this section, be regarded as an alien lawfully admitted for permanent residence. 1977 (Counsel-Inf.Op.) 1 Op.O.L.C. 34.

74. ---- Specialized knowledge, immigrant or nonimmigrant status

Immigration and Naturalization Service's (INS) definition of "specialized knowledge" that would justify temporary visa for employee of multinational business was reasonable and within Congressional parameters; INS defined specialized knowledge to mean knowledge possessed by individual whose advanced level of expertise and proprietary knowledge of business' product, service, research, equipment, techniques, management, or other interests of employer are not readily available in United States labor market and not to include persons whose general knowledge or expertise merely enables them to produce product or provide service. *1756, Inc. v. Attorney General of U.S.*, D.D.C.1990, 745 F.Supp. 9.

75. ---- Specialty occupation, immigrant or nonimmigrant status

For purposes of visa petition for alien to be classified as special immigrant religious worker, Immigration and Naturalization Service (INS) did not explain its determination that alien did not have two years of continuous experience in relevant occupation in light of evidence in the record, requiring remand; employer had submitted letter explaining that alien had undergone significant religious training and had been employed for two years. *Soltane v. U.S. Dept. of Justice*, C.A.3 (Pa.) 2004, 381 F.3d 143. Aliens 54.3(6)

Immigration and Naturalization Service (INS) requirement that entities actually employing foreign nurses, rather than employment agency that brought nurses to United States for jobs, have requirement that nurses have bachelor's degrees was reasonable interpretation of statute and regulations pertaining to temporary admission of nonimmigrant aliens to perform services in specialty occupation requiring attainment of bachelor's or higher degree. *Defensor v. Meissner*, C.A.5 (Miss.) 2000, 201 F.3d 384. Aliens 51.5

Determination by Administrative Appeals Office (AAO) of United States Citizenship and Immigration Services (USCIS) that Thai citizen was not entitled to H-1B visa renewal, because his proffered job position as restaurant manager did not qualify as "specialty occupation" and because Attorney General had determined that he had entered into a marriage with purpose of circumventing immigration laws, was supported by substantial evidence and relied upon proper understanding of applicable law; AAO found that job duties and responsibilities for restaurant manager were that of a "food services manager" as defined by the United States Department of Labor's Occupational Outlook Handbook, which provided that position of food services manager did not require an educational degree. *Royal Siam Corp. v. Ridge*, D.Puerto Rico 2006, 424 F.Supp.2d 338. Aliens, Immigration, And Citizenship 51.5

United States Citizenship and Immigration Services (USCIS) abused its discretion in determining that alien did not meet requirements for hire into specialty occupation of accountant, and thus was not entitled to H-1B

8 U.S.C.A. § 1101

nonimmigrant visa classification, in that USCIS failed to make determination whether United States equivalency of alien's foreign degree in business administration qualified as degree required by specialty occupation of accounting, and USCIS's determination was not based on consideration of relevant factors and evidence in administrative record, inasmuch as Administrative Appeals Office (AAO) merely stated that it did not agree with alien's evidence of her ability to qualify. *Button Depot, Inc. v. U.S. Dept. of Homeland Sec.*, C.D.Cal.2005, 386 F.Supp.2d 1140. Aliens ↪ 51.5

Employer submitted sufficient evidence to demonstrate that alien was employed in a "specialty occupation," and therefore authorized to stay in the United States as a nonimmigrant worker in a "specialty occupation;" alien's 's position was comparable to the "marketing research analyst" position described in the Handbook, and there was a requirement of specialized study for alien's position, which he satisfied by obtaining a degree in business administration with a concentration in marketing. *Unical Aviation Inc. v. U.S. I.N.S.*, C.D.Cal.2002, 248 F.Supp.2d 931. Aliens ↪ 51.5

Immigration and Naturalization Service (INS) committed an abuse of discretion by denying interior design firm's application for an H-1B visa for its showroom manager, who possessed bachelor's degree in business or marketing in addition to specialized design experience; INS's position, that bachelor's requirement of "specialty occupation" included only those positions where a specific bachelor's degree was offered, was contrary to the regulatory language providing that needs of a specialty occupation could be met through education, experience, or some combination of the two. *Tapis Intern. v. I.N.S.*, D.Mass.2000, 94 F.Supp.2d 172. Aliens ↪ 51.5

Immigration and Naturalization Service (INS) did not abuse its discretion in concluding that alien who possessed a degree in business administration but had no previous experience in field of restaurant management was not qualified to perform services in a specialty occupation, and thus did not qualify for a nonimmigrant H-1B visa. *Shanti, Inc. v. Reno*, D.Minn.1999, 36 F.Supp.2d 1151. Aliens ↪ 51.5

Even if job duties of public relations consultant in the shipping and courier industry were complicated enough to require someone with a B.A., strong academic credentials and job experience, Immigration and Naturalization Service (INS) did not abuse its discretion in determining that such position did not qualify as "specialty occupation," and denying alien's application for H-1B visa, notwithstanding that alien had been previously afforded H-1B visa status for job as public relations consultant for television broadcast company. *All Aboard Worldwide Couriers, Inc. v. Attorney General*, S.D.N.Y.1998, 8 F.Supp.2d 379. Aliens ↪ 51.5

The legislative history of this section allowing a firm or corporation or other legal entity to petition for the granting of nonimmigrant status to employees which it wishes to transfer to corporate posts in the country makes plain that the terms "firm" and "legal entity" were added to the preexisting term "corporation" in order to broaden the range of businesses eligible to petition; an interpretation which ignores the amendment, or construes it as surplusage, is clearly erroneous. *Johnson-Laird, Inc. v. Immigration and Naturalization Service*, D.C.Or.1981, 537 F.Supp. 52. Aliens ↪ 53.10(1)

76. ---- Treaty traders, immigrant or nonimmigrant status

A treaty merchant entering the United States since the effective date of former chapter 6 of this title did not enter as an immigrant. *U. S. v. Kwan Shun Yue*, C.A.9 (Cal.) 1952, 194 F.2d 225.

Where Chinese national entered the United States in 1924 on certificate as treaty merchant when there had been in effect former chapter 6 of this title, the Chinese did not enter as a immigrant entitled to take up permanent residence and could not be nationalized in 1951. *U. S. v. Kwan Shun Yue*, C.A.9 (Cal.) 1952, 194 F.2d 225.

Provisions giving nonimmigrant status to "aliens entitled to enter United States solely to carry on trade" authorized admission of Chinese merchants. *U.S. ex rel. To Ming v. Commissioner of Immigration*, S.D.N.Y.1931, 52 F.2d

8 U.S.C.A. § 1101

791.

Right to enter as nonimmigrant under treaty was not confined to those engaged in foreign commerce unless treaty contained such limitation. *Shizuko Kumanomido v. Nagle*, C.C.A.9 (Cal.) 1930, 40 F.2d 42.

Editor of Japanese newspaper distributed locally, not proprietor or publisher, was engaged in trade entitling him and wife to enter as nonimmigrants. *Shizuko Kumanomido v. Nagle*, C.C.A.9 (Cal.) 1930, 40 F.2d 42.

Immigration and Naturalization Service has responsibility for deciding whether status of nonimmigrant alien may properly be changed, after his arrival in United States, to that of treaty trader in order to extend his stay in United States and foreign employer itself may not confer that status upon any employee it chooses. *Nippon Exp. U.S. A., Inc. v. Esperdy*, S.D.N.Y.1966, 261 F.Supp. 561.

Decision of District Director of Immigration and Naturalization Service that Japanese national who worked as bookkeeper for Japanese firm did not possess "special qualifications" within state department regulation authorizing classification of alien as nonimmigrant treaty trader if he is employed in minor capacity but has special qualifications that will make his services essential to efficient operation of employer's enterprise was not arbitrary or capricious. *Nippon Exp. U.S. A., Inc. v. Esperdy*, S.D.N.Y.1966, 261 F.Supp. 561.

77. ---- Investors, immigrant or nonimmigrant status

Majority owner of United States company, by contractually ceding all managerial control to another party, thereby loses ability to "develop and direct" that company, as required for him to obtain treaty investor visa; accordingly, indictment charging attorney with visa fraud for falsely representing that clients were qualified treaty investors did not misstate law, though it did not track precisely with language of statute, by stating that majority stock ownership alone would not qualify one for treaty investor status. *U.S. v. Matsumaru*, C.A.9 (Hawai'i) 2001, 244 F.3d 1092. Aliens ↻ 51.5; Aliens ↻ 59

Alien in United States as treaty investor managing mobile home trailer park provided sufficient evidence that he acted primarily to direct, manage, and protect his investment so that his performance of menial tasks to help maintain park did not negate treaty investor status. *Lauvik v. I.N.S.*, C.A.9 (Wash.) 1990, 910 F.2d 658.

Immigration and Naturalization Service (INS) abused its discretion in denying alien's request for change in classification from alien visiting United States temporarily for business to alien in the United States solely to develop and direct operations of enterprise in which he has invested substantial amount of capital; factual premise that INS gave for denying change, that alien had originally obtained visa to visit United States "for pleasure," was in error. *Garavito v. U.S.I.N.S.*, C.A.1 (Puerto Rico) 1990, 901 F.2d 173.

Immigration Naturalization Service could require that alien seeking investor status prove that he was partially at risk with respect to investment in car wash and that, in view of irregularities surrounding \$25,000 check drawn on a foreign bank, signed by his wife, and used to make investment, conclude that the proof was insufficient and that alien thus was not entitled to treaty investor status. *Nice v. Turnage*, C.A.9 (Wash.) 1985, 752 F.2d 431.

Immigration and Naturalization Service abused its discretion in not expressly considering existence of alien's assets and explaining, in its decision denying extension of alien's status as nonimmigrant treaty investor, what impact, if any, assets had on alien's request for extension. *Dong In Chung v. U.S. I.N.S.*, W.D.Wash.1987, 662 F.Supp. 474.

78. Immigration laws--Generally

Statute setting forth offense of transferring false identification documents was not "immigration law" for purposes

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

of Sentencing Guideline providing that sentence for being illegal alien found in United States following conviction and deportation could be enhanced if the prior conviction was not a felony involving violation of immigration laws, notwithstanding that green cards and social security cards that alien sold were probably used to abet immigration fraud. *U.S. v. Pineda-Garcia*, C.A.9 (Cal.) 1999, 164 F.3d 1233, certiorari denied 119 S.Ct. 1485, 526 U.S. 1079, 143 L.Ed.2d 567. Aliens ↻ 59

Definition of "immigration laws" in "Aliens and Nationality" Title of United States Code, which would occasionally encompass laws other than those found in that title, is still extremely narrow, reaching no criminal conduct beyond that necessarily committed in connection with admission or exclusion of aliens. *U.S. v. Sotelo-Carrillo*, C.A.7 (Ill.) 1995, 46 F.3d 28. Aliens ↻ 55.1

With regard to section of the Immigration and Nationality Act providing that an alien is judged to be lawfully entitled to enter or reside in the United States "under the terms of this chapter or any other law relating to the immigration or expulsion of aliens," the term "other law" does not include the United Nations protocol relating to the status of refugees. *U.S. v. Aguilar*, C.A.9 (Ariz.) 1989, 883 F.2d 662, certiorari denied 111 S.Ct. 751, 498 U.S. 1046, 112 L.Ed.2d 771.

Former § 223 of Title 22 providing that when there was a national emergency proclaimed by the President, or a state of war, the President might proclaim additional restrictions and prohibitions as to entry into, or the departure from the United States by aliens, was an "immigration law" within meaning of former § 232 of this title permitting admission to United States of alien spouses of veterans, if otherwise admissible under "immigration laws". *U.S. ex rel. Knauff v. Watkins*, C.A.2 (N.Y.) 1949, 173 F.2d 599, certiorari granted 69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117, affirmed 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317.

"Immigration laws" means all laws, conventions, and treaties relating to the immigration, exclusion, or expulsion of aliens." *Ex parte Palo*, D.C.Wash.1924, 3 F.2d 44, affirmed 8 F.2d 607.

79. ---- Laborers, immigration laws

Board of Immigration Appeals' (BIA's) denial of Cameroon native's application for asylum was supported by reasonable, substantial and probative evidence, and would not be disturbed on petition for review, based on his failure to present credible corroborating evidence that should have been readily available to him either of his membership in opposition political party or of his uncle's alleged murder based on his active role in this political party; letters that alien presented to corroborate his membership in opposition party were not typed on official letterhead of that party but on plain white paper and were both typed on same machine, despite having allegedly been sent from two separate officials with offices located 40 miles apart. *Eta-Ndu v. Gonzales*, C.A.8 2005, 411 F.3d 977, rehearing and rehearing en banc denied. Aliens ↻ 54.1(4.1)

Asylum applicant satisfied burden of showing that persecution that he experienced at hands of Indian police was motivated, at least in part if not entirely, by separatist political opinions which police had imputed to applicant on account of his father's political activities, though police, in taking applicant and his father into custody, had informed father that they had information that he had guns and ammunition in his home, where applicant credibly testified that, during beating of father and applicant at stationhouse, officers had repeatedly mentioned father's activities in support of separatist political party, and that neither applicant nor father was ever questioned about these alleged firearms. *Singh v. Gonzales*, C.A.3 2005, 406 F.3d 191. Aliens ↻ 54.1(4.1)

Alleged harshness in requiring farm employers to give work or wages to alien farm workers hired under H-2 visa program for at least three fourths of the period for which they were to be employed was no reason to permit the employers to avoid Department of Labor regulation setting forth labor standards for such workers; any harshness of the requirement ought to have been put before the Immigration and Naturalization Service, which ultimately issued the visas. *Salazar-Calderon v. Presidio Valley Farmers Ass'n*, C.A.5 (Tex.) 1985, 765 F.2d 1334, certiorari

8 U.S.C.A. § 1101

denied 106 S.Ct. 1245, 475 U.S. 1035, 89 L.Ed.2d 353.

Regulation promulgated by Department of Labor establishing methodology for determining annual percentage changes in wage rate required to be paid by agricultural employers who import temporary foreign workers was not arbitrary and capricious where reasoned explanation for the regulation was set forth which responded to alleged defects noted by commentors and where alternatives were considered. *Shoreham Co-op. Apple Producers Ass'n, Inc. v. Donovan*, C.A.2 (Vt.) 1985, 764 F.2d 135.

Department of Labor's "50% rule," which requires employers petitioning the Immigration and Naturalization Service for seasonal foreign labor to give written assurance that they will hire available domestic workers for same jobs until 50% of foreign workers' contract has elapsed is not inconsistent with statutory and INS authority by either contradicting the Immigration and Nationality Act's basic policy of providing viable means to obtain supplementary labor or by going beyond the Department of Labor's authorized role. *Virginia Agr. Growers Ass'n, Inc. v. U.S. Dept. of Labor*, C.A.4 (Va.) 1985, 756 F.2d 1025.

Since estimated time to complete installation was less than one month and since practically all issues were purely legal ones, foreign corporation's contract to install offshore platform in December, 1982, created controversy of "sufficient immediacy and reality" to render ripe for adjudication union's action to compel Attorney General and Immigration and Naturalization Service to enforce this chapter on the outer continental shelf. *Piledrivers' Local Union No. 2375 v. Smith*, C.A.9 (Cal.) 1982, 695 F.2d 390.

District director of Immigration and Naturalization Service has no discretion to deny alien's application for employment authorization under 8 C.F.R. § 274a.12(c)(9) & (10) once eligibility requirements are met, including economic need to work but director does have discretion to deny applications submitted under 8 C.F.R. § 274a.12(c)(13). *Gomez-Arauz v. McNary*, W.D.Okla.1991, 762 F.Supp. 310.

Department of Labor has statutory duty to certify that qualified persons in the United States are not available and that employment of alien will not adversely affect wages or working conditions of workers in United States, or else must give to the employer notice that such a certification cannot be made so that work permit may not be issued; in reaching the decision, Department of Labor may consider the employer's attempts to recruit workers and that appropriateness of the wages and working conditions. *Blumenfeld v. Attorney General of U.S.*, D.Conn.1991, 762 F.Supp. 24.

Department of Labor was required, under its own regulations, to publish annually rates at which Department of Labor would require growers to pay all of their farm workers before Department would allow them to import alien labor, and rule, through which Department of Labor attempted to exempt certain states from requirements of its regulations, failed because it was contrary to this chapter. *NAACP, Jefferson County Branch v. Donovan*, D.C.D.C.1983, 566 F.Supp. 1202.

80. Managerial capacity

Both the "good and sufficient cause" language contained in immigration statute allowing Attorney General to revoke approval of petition for immigrant visa and the definition of "managerial capacity" upon which Immigration and Naturalization Service (INS) relied in making visa revocation decision furnished legal criteria for testing whether approval of alien's visa petition was properly revoked, and therefore court retained jurisdiction to review that decision. *ANA Intern., Inc. v. Way*, C.A.9 (Or.) 2004, 393 F.3d 886. Aliens ↻ 51.5; Aliens ↻ 54.3(1)

Rational basis supported denial by Immigration and Naturalization Service (INS) of employer's petition to classify employee as multinational manager for purposes of obtaining priority employment-based visa, based on finding that her former duties as senior software consultant and prospective duties as team manager were not primarily

8 U.S.C.A. § 1101

managerial in nature; only 60% to 65% of employee's former duties were managerial, fact that employee directly supervised seven employees in former role supported that she was merely performing functions of employer rather than managing company, and it was reasonable to infer that employee's prospective duties as team manager were not primarily managerial because job included tasks that could be designated nonmanagerial, office responsibilities could gravitate toward employee even if she directly supervised between five and 14 employees, and employer did not provide detailed projection of time employee would allocate to various duties. *Q Data Consulting, Inc. v. I.N.S.*, D.D.C.2003, 293 F.Supp.2d 25. Aliens ↻ 51.5

Restaurant manager did not qualify for preference visa as a "functional manager" where employer failed to document what proportion of manager's duties would be managerial/executive functions and what proportion would be nonmanager/nonexecutive. *IKEA US, Inc. v. U.S. Dept. of Justice* I.N.S., D.D.C.1999, 48 F.Supp.2d 22, affirmed 1999 WL 825420. Aliens ↻ 51.5

Restaurant manager did not qualify for preference visa as an "activity" manager where employer failed to document what proportion of manager's duties would be managerial/executive functions and what proportion would be nonmanager/nonexecutive. *IKEA US, Inc. v. U.S. Dept. of Justice* I.N.S., D.D.C.1999, 48 F.Supp.2d 22, affirmed 1999 WL 825420. Aliens ↻ 51.5

Substantial evidence supported adverse credibility finding in asylum proceeding; alien testified inconsistently regarding the time between his first and second arrest, the length of his detention, and the alleged nature of his torture, and his documentary evidence failed to compel a contrary conclusion sufficient to overcome the special deference accorded to credibility determinations. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 375, 2005 WL 844892, Unreported. Aliens ↻ 54.1(4.1)

81. Nationality--Generally

Person may become a United States national only by birth or by completing the naturalization process. *Omolo v. Gonzales*, C.A.5 2006, 452 F.3d 404. Aliens, Immigration, And Citizenship ↻ 654

Remand was necessary in asylum proceedings involving alien born in India to Tibetan refugee parents, even though Board of Immigration Appeals (BIA) concluded that alien did not have well-founded fear of persecution in either India or China, where immigration judge (IJ) and BIA applied erroneous legal standards in determining whether alien had well-founded fear of persecution in China. *Wangchuck v. Department of Homeland Security*, Immigration, C.A.2 2006, 448 F.3d 524. Aliens, Immigration, And Citizenship ↻ 626

In ruling on asylum application by alien born in India to Tibetan refugee parents, Board of Immigration Appeals (BIA) was required, as threshold matter, to determine alien's nationality. *Wangchuck v. Department of Homeland Security*, Immigration, C.A.2 2006, 448 F.3d 524. Aliens, Immigration, And Citizenship ↻ 581

Native of the Dominican Republic could not, by voluntarily enlisting in the United States Army and serving for eight years, by swearing his allegiance to the U.S. Constitution, by registering for the Selective Service, and by completely immersing himself in American society, qualify as non-citizen national of the United States, such as could not be removed following his conviction of narcotics offense. *Marquez-Almanzar v. I.N.S.*, C.A.2 2005, 418 F.3d 210. Citizens ↻ 2

Alien who was native of Hong Kong and entered United States on British passport identifying him as British Dependent Territories Citizen from Hong Kong was not entitled to relief from deportation under executive order directing deferral of deportation for certain nationals of People's Republic of China (PRC), even though he had obtained PRC passport; executive order's reference to "Nationals of the Peoples' Republic of China" did not include Hong Kong residents. *Wong v. Ilchert*, C.A.9 (Cal.) 1993, 998 F.2d 661.

8 U.S.C.A. § 1101

"Nationality" is a term denoting a relationship between an individual and a nation involving a duty of obedience or allegiance by the subject and protection by the state. *Cabebe v. Acheson*, C.A.9 (Hawai'i) 1950, 183 F.2d 795.

A native pure-blooded Filipino was a "national", not an "alien," and hence not prohibited by Alien Land Act, Gen.Laws 1937, Act 261, §§ 1, 2, from acquiring and possessing land in state, though ineligible for citizenship of United States. *Alfajara v. Fross*, Cal.1945, 159 P.2d 14, 26 Cal.2d 358.

Alien was not rendered stateless by his failure to apply for citizenship that was available to him. *Abramian v. Ashcroft*, C.A.1 2004, 108 Fed.Appx. 644, 2004 WL 2059558, Unreported. Aliens ¶ 53.10(3)

82. ---- Dual nationality

A person who is claimed as a subject or citizen by two states is said to possess dual nationality. *Tomasicchio v. Acheson*, D.C.D.C.1951, 98 F.Supp. 166.

83. ---- United States, nationality

Petitioner who was ordered removed as an alien convicted of an aggravated felony was not a United States national not subject to removal, despite her claim that she had objectively demonstrated her allegiance to the United States prior to her conviction, where petitioner was not born in the United States and had not completed the naturalization process. *Omolo v. Gonzales*, C.A.5 2006, 452 F.3d 404. Aliens, Immigration, And Citizenship ¶ 654

Mexican native could not establish United States citizenship by demonstrating his permanent allegiance to the United States through longtime residence, registration with the Selective Service, application for naturalization, and signing oath of allegiance to the United States. *Tovar-Alvarez v. U.S. Atty. Gen.*, C.A.11 2005, 427 F.3d 1350 . Citizens ¶ 10(4)

Provision of the Immigration and Nationality Act (INA), in defining a national of United States as either a citizen or person who, though not a citizen, owes a permanent allegiance to the United States, does not provide alternative means through which an alien may become a United States national, either by being naturalized as citizen or by swearing permanent allegiance to the United States; rather, provision merely describes an attribute possessed by those limited categories of persons who, while not citizens, are nonetheless United States nationals as, for example, having been born in outlying possession of United States. *Marquez-Almanzar v. I.N.S.*, C.A.2 2005, 418 F.3d 210. Citizens ¶ 2

Native Haitian's honorable service in the United States military during foreign conflict was not itself sufficient to make him a United States "national," such as could not be removed following his conviction of aggravated felony. *Theagene v. Gonzales*, C.A.9 2005, 411 F.3d 1107. Aliens ¶ 53

Even if he registered with the Selective Service and had taken an oath of allegiance, alien, whose petition for naturalization was denied, did not demonstrate permanent allegiance to the United States, and thus attain national status. *Alwan v. Ashcroft*, C.A.5 2004, 388 F.3d 507. Aliens ¶ 3

Service in the armed forces of the United States, along with the taking of the standard military oath, did not alter petitioner's status to that of a "national of the United States" within the meaning of the Immigration and Nationality Act (INA), and thus petitioner, a native and citizen of Mexico, was subject to removal as an alien convicted of an aggravated felony, given that the oath promised allegiance for the duration of military service, rather than permanently, and the oath did not include a renunciation of foreign allegiances. *Reyes-Alcaraz v. Ashcroft*, C.A.9 2004, 363 F.3d 937. Aliens ¶ 1; Aliens ¶ 53.2(1)

Bangladeshi citizen was not "national" of United States, so as to be nonremovable for having committed

8 U.S.C.A. § 1101

aggravated felony, even if he had subjectively declared allegiance to United States, where he could not complete his application process and become citizen of United States due to his conviction of aggravated felony. *Salim v. Ashcroft*, C.A.3 2003, 350 F.3d 307. Aliens ↪ 53.2(3); Aliens ↪ 62(4)

Permanent resident alien, simply by completing application for naturalization in which he gave statement of allegiance to United States, did not thereby become a "national of the United States," such as could not be removed based on his conviction of aggravated felony. *Perdomo-Padilla v. Ashcroft*, C.A.9 2003, 333 F.3d 964, certiorari denied 124 S.Ct. 1041, 540 U.S. 1104, 157 L.Ed.2d 887. Aliens ↪ 1; Aliens ↪ 53.2(3)

Petitioner who was orphaned and adopted by two United States citizens when he was four years old was not a national of the United States, as would prevent his removal for having committed an aggravated felony, where he was not born in a United States territory, and at no time during his 40 years of residency in the United States did he attempt to apply for citizenship; fact that Poland did not consider him to be a citizen of Poland was not material because it did not demonstrate an affirmative allegiance to the United States. *Hughes v. Ashcroft*, C.A.9 2001, 255 F.3d 752. Aliens ↪ 1; Citizens ↪ 9

Native of the Philippine Islands was a national of the United States but after the Philippine Independence Act of 1934, he was required to be treated for the purposes of this title, as if he were an alien, and the Philippine Islands as foreign territory. *Madrona Banez v. Boyd*, C.A.9 (Or.) 1956, 236 F.2d 934.

Though all nationals of United States are not citizens thereof, all citizens of United States are nationals thereof. *Law Don Shew v. Dulles*, C.A.9 (Cal.) 1954, 217 F.2d 146. See, also, *Brownell v. Lee Mon Hong*, C.A.Cal.1954, 217 F.2d 143; *Chow Sing v. Brownell*, C.A.Cal.1954, 217 F.2d 140. Citizens ↪ 10.1

A "national" of the United States, for purpose of former chapter 6 of this title, did not include an alien. *Scholz v. Shaughnessy*, C.A.2 (N.Y.) 1950, 180 F.2d 450.



Alien who had not yet attained citizenship could not show permanent allegiance to the United States within statutory definition of a "national," and thus alien was not insulated from removal, notwithstanding alleged permanent allegiance as demonstrated by his living in United States for long period of time and his filing application for naturalization. *Beckles v. Attorney General of U.S.*, E.D.Pa.2004, 347 F.Supp.2d 198. Aliens ↪ 53.1

Haitian national who challenged order of removal was not "national" of United States under Immigration and Nationality Act (INA), as would protect him from removal, where national failed to present any evidence that he was erroneously informed of citizenship status by Immigration and Naturalization Service (INS), and national had merely applied for naturalization. *Louis-Martin v. Ridge*, M.D.Pa.2004, 322 F.Supp.2d 556. Aliens ↪ 53.1

Native and citizen of the Dominican Republic, who had been admitted to the United States more than 40 years earlier, and who, as enlisted member of the Marine Corps, had signed oath of enlistment whereby he professed his loyalty to the United States, did not thereby qualify as individual who owed "permanent allegiance to the United States," so as to be a United States "national" not subject to removal; petitioner did not even allege that he had ever applied for citizenship to the United States, but merely declared his subjective intent to owe permanent allegiance to the United States. *Gomez v. Bureau of Immigration and Customs Enforcement's Interim Field Office Director for Detention and Removal for Philadelphia Dist.*, M.D.Pa.2004, 315 F.Supp.2d 630. Aliens ↪ 3


Petitioner sufficiently demonstrated permanent allegiance to the United States to qualify as a national under the Foreign Sovereign Immunities Act (FSIA); petitioner had filed notice that he intended to apply for United States citizenship, an application for citizenship that was denied as premature and that he continued to pursue with an Immigration and Naturalization officer, and an oath of allegiance to the United States. *Asemani v. Islamic Republic of Iran*, D.D.C.2003, 266 F.Supp.2d 24. International Law ↪ 10.31


8 U.S.C.A. § 1101


Petitioner, who was born in Hong Kong, demonstrated his allegiance through his application for naturalization and his registration for Selective Service, and was thus a national, and consequently not subject to deportation on the basis of his conviction for mail fraud; petitioner had been a permanent resident for nearly 30 years, entered the United States as a child, and had never lived anywhere else since, was married to a United States citizen, had two citizen children, and both of his parents were naturalized citizens. *Lee v. Ashcroft*, E.D.N.Y.2002, 216 F.Supp.2d 51, transferred to court of appeal 268 F.Supp.2d 150, order vacated on reconsideration 2003 WL 21310247. Aliens  1; Aliens  53.2(1)


Prior to effective date of Philippine Independence Act, the Philippines were islands under the jurisdiction of the United States and citizens of such islands were United States nationals for purposes of the immigration laws. *Vallejos v. Barber*, N.D.Cal.1956, 146 F.Supp. 781.


One who was born in 1910 in the Philippine Islands and who since 1930 resided permanently in Hawaii was a national of the United States until 1946 and upon the creation of the Republic of the Philippines, became an alien as to the United States and a citizen of the Republic of the Philippines. *Cabebe v. Acheson*, D.C.Hawai'i 1949, 84 F.Supp. 639, affirmed 183 F.2d 795.


Alien who was a citizen of Trinidad and Tobago, and who never obtained United States citizenship, was not a U.S. national for purposes of removal proceedings, even though he had been in the U.S. for many years and apparently had applied for naturalization; application was never approved. *Jameson v. Bureau of Immigration & Customs Enforcement*, C.A.3 2006, 2006 WL 1316952, Unreported. Aliens, Immigration, And Citizenship  654

Alien who allegedly served in the U.S. Air Force, and who allegedly thereafter filed an application for naturalization, was not a national of the United States. *Carrillo-Torres v. Gonzales*, C.A.9 2006, 173 Fed.Appx. 571, 2006 WL 565686, Unreported. Aliens, Immigration, And Citizenship  654

Haitian citizen who had not completed the naturalization process was neither a citizen nor a national, even though he had applied for naturalization and had registered for the Selective Service; he was an alien removable for having committed enumerated offenses. *Belizaire v. Atty. Gen. of U.S.*, C.A.3 2005, 152 Fed.Appx. 258, 2005 WL 2840244, Unreported. Citizens  2

Alien could not become noncitizen national by demonstrating permanent allegiance to United States. *Lee v. Ashcroft*, C.A.2 (N.Y.) 2005, 142 Fed.Appx. 503, 2005 WL 1865423, Unreported. Aliens  3

Substantial evidence supported finding, in asylum proceeding, that alien was not credible; alien's application and testimony contained material omissions and inconsistencies regarding, inter alia, the identity of the people who harassed her, whether she had applied for Latvian citizenship, and whether she sought protection from officials. *Smolanaja v. I.N.S.*, C.A.2 2005, 131 Fed.Appx. 744, 2005 WL 1130487, Unreported. Aliens  54.1(4.1)

Adverse credibility finding in asylum proceeding was not supported by substantial evidence; finding was improperly based on alien's false statements under oath to immigration officers about the countries through which he traveled to reach the United States, a minor inconsistency in his explanation of why he told that lie, his presentation, on arrival, of a re-entry permit that did not belong to him, Immigration Judge's (IJ) nonspecific conclusions as to alien's demeanor, fact that alien's lower lip trembled during his testimony, and the weakness of alien's corroborating evidence. *Mohamed v. Gonzales*, C.A.9 2005, 132 Fed.Appx. 126, 2005 WL 1127007, Unreported. Aliens  54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's testimony was internally inconsistent, contradictory, and inconsistent with his application and written declaration concerning, inter alia, his police contacts, political associations, and reasons for leaving India, and his documentary evidence was insufficiently compelling to overcome special deference accorded to Immigration Judge's (IJ) credibility

8 U.S.C.A. § 1101

determination. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 370, 2005 WL 844730, Unreported. Aliens 54.1(4.1)

Immigration judge's conclusions that alien's entire claim lacked credibility and that alien failed to demonstrate credible fear of persecution if his application for asylum was denied were supported by substantial evidence, including that testimony from forensic document examiner who testified that identification card submitted by alien was a forgery, that alien's own testimony indicated that a number of his acquaintances had returned to Mauritania safely, and that State Department and United Nations had documented improved conditions in Mauritania for former refugees. *Gueye v. U.S. I.N.S.*, C.A.2 2005, 127 Fed.Appx. 526, 2005 WL 743070, Unreported. Aliens 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien's testimony that he had been arrested in India three times was contradicted by evidence he had never been arrested, and he provided inconsistent dates of arrest, confused dates he was in college and involved with the All India Sikh Student Federation, gave wrong birth date at hearing, and, despite opportunity to do so, failed to obtain any documentation corroborating his testimony. *Saini v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 82, 2005 WL 665093, Unreported. Aliens 54.1(4.1)

Alien who was born abroad did not become a national of the United States merely by completing application for naturalization and then expressing his allegiance to the United States. *Nasrallah v. Ashcroft*, C.A.5 2004, 86 Fed.Appx. 23, 2004 WL 57723, Unreported, certiorari denied 124 S.Ct. 2881, 542 U.S. 924, 159 L.Ed.2d 784. Aliens 60.2

Alien could not be considered United States national, on allegation that he took oath of allegiance as part of his application for naturalization, and, therefore, transfer of alien's nationality claim to Court of Appeals was not in interest of justice; alien remained citizen of Dominican Republic absent successful completion of naturalization process and acquisition of citizenship. *Marino Cabreja v. U.S. Immigration Service*, S.D.N.Y.2003, 2003 WL 22697957, Unreported. Aliens 54.3(1); Aliens 62(2)

Alien did not obtain U.S. nationality through, inter alia, his extended stay in the U.S., his application for naturalization, his oath of loyalty, and his many recitations of the Pledge of Allegiance and Boy Scout Oath, and therefore he was an alien who could be subject to an order of removal. *Chant v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 731, 2003 WL 21782679, Unreported. Aliens 53

Immigration and Naturalization Service (INS) could conclude that individual was not non-citizen national of United States when individual was born in Haiti and neither of individual's parents was United States citizen. *Hyppolite v. Ashcroft*, E.D.N.Y.2003, 2003 WL 21056908, Unreported. Citizens 2

84. Naturalization

Government established that changed country conditions in Yugoslavia rebutted presumption of future persecution after asylum applicant, who was Muslim and ethnic Albanian, refused to join Yugoslavian army; applicant's prospective fears were not related to institutionalized persecution from national military, but instead on general harassment of ethnic Albanians, and nationalistic Serb domination of Kosovo had ended. *Islami v. Gonzales*, C.A.2 2005, 412 F.3d 391. Aliens 54.1(2)

The Nationality Act of 1940, former § 501 of this title, and subsection (a)(23) of this section and §§ 1401 (a)(3, 4, 7), 1433 of this title, which define the term "naturalization" as the conferring of nationality of a state upon a person after birth, and which deal comprehensively with the general subject of nationality, citizenship and naturalization, were not reliable guides in determining whether R.S. § 1993, enacted in 1900 and providing that all children hereafter born out of the limits and jurisdiction of the United States, whose fathers were at the time of their birth

8 U.S.C.A. § 1101

citizens thereof, are declared to be citizens of the United States, was a naturalization law within former § 385 of this title, under the principle of "in pari materia." *Wong Kam Wo v. Dulles*, C.A.9 (Hawai'i) 1956, 236 F.2d 622.

"Naturalization" was said to be act of adopting alien and clothing him with privileges of citizenship. *In re Bishop*, D.C.Wash.1927, 26 F.2d 148.

Standards for exclusion of aliens from the country are not congruent with those for naturalization. *In re Brodie*, D.C.Or.1975, 394 F.Supp. 1208.

The term "naturalization" has application broadly to the whole process of the quest and acquisition of citizenship, but chiefly and especially to the final judicial act whereby the applicant is accepted and admitted to the taking of the oath of allegiance. *Petition for Naturalization of Noland*, D.C.Neb.1960, 185 F.Supp. 948.

Substantial evidence supported Board of Immigration Appeals' (BIA) findings that alien's asylum hearing testimony about past persecution in Albania was not credible, and that he did not establish well-founded fear of future persecution based on his political affiliations; testimony regarding dates and events of alleged past persecution were inconsistent and conflicting in substance and chronology with documents submitted in support of asylum, alien offered no credible evidence that events were motivated by his political affiliations, and he was subsequently able to live for several years in Albania without incident. *Bregu v. Attorney General of U.S.*, C.A.3 2005, 127 Fed.Appx. 622, 2005 WL 858022, Unreported. Aliens ↩ 54.1(4.1)

85. Officer

Asylum applicant, who was Muslim, ethnic Albanian, and who formerly resided in Kosovo, established past persecution based on fear of retribution for his refusal to join Yugoslavian army; service in Yugoslavian army would likely require applicant's participation in military campaigns widely condemned by international community as contrary to basic rules of human conduct and campaigns were directed at members of applicant's religion and ethnic group. *Islami v. Gonzales*, C.A.2 2005, 412 F.3d 391. Aliens ↩ 53.10(3)

A United States naturalization examiner is an "officer of the United States" and the holder of a public office, the salary of which is an incident of the office, payable, not to those who do the work, but to the one who holds the office. *Borak v. U.S.*, Ct.Cl.1948, 78 F.Supp. 123, 110 Ct.Cl. 236, certiorari denied 69 S.Ct. 43, 335 U.S. 821, 93 L.Ed. 375, rehearing denied 69 S.Ct. 129, 335 U.S. 864, 93 L.Ed. 410. Aliens ↩ 68(1)

86. Profession

Applicant, who was Sunni Moslem born to Palestinian parents in Lebanon, failed to establish threat of persecution warranting withholding of removal, where he omitted alleged incidents of abuse or torture from his asylum application, and thus claimed for first time in his testimony that he had been shot and detained for weeks on end, and discrimination against Palestinians in Lebanon, as indicated by State Department report, did not in itself compel finding of persecution. *Sharari v. Gonzales*, C.A.1 2005, 407 F.3d 467. Aliens ↩ 54.1(4.1)

Decision by Immigration and Naturalization Service to deny "professional" preference visa to general manager of business catering to living needs of workers at geophysical drilling and mining camps in remote regions was not supported by sufficient evidence; although determination that manager and catering business fell short of specific degree requirements was reasonable, INS failed to recognize uniqueness and complexity of manager's position. *Arctic Catering, Inc., on Behalf of MacMillan v. Thornburgh*, D.Colo.1991, 769 F.Supp. 1167.

Prerequisite for third preference classification applicant's occupation to be considered a "profession" is usually acquisition of baccalaureate degree for academic study in specific discipline or narrow range of disciplines; however, not every person who has degree from accredited college or university is qualified as a professional.

8 U.S.C.A. § 1101

Omni Packaging, Inc. v. U.S. I.N.S., D.Puerto Rico 1990, 733 F.Supp. 500.

Alien employee of American employee was entitled to third preference visa as a "member of the professions," although he did not possess baccalaureate degree; position alien would occupy in the United States, vice-president for international operations, required knowledge in a number of administrative and technical areas, and alien's education, training and experience was at least equivalent to a degree in international industry or management. Augat, Inc. v. Tabor, D.Mass.1989, 719 F.Supp. 1158.

In context of subsec. (a)(32) of this section according third preference to members of the professions and those with exceptional ability in the sciences or the art, term "professions" includes architects, engineers, lawyers, physicians, and teachers, and while other callings could be included in term, job of mechanic and tool maker cannot. Buckley v. Gibney, S.D.N.Y.1971, 332 F.Supp. 790, affirmed 449 F.2d 1305, certiorari denied 92 S.Ct. 946, 405 U.S. 919, 30 L.Ed.2d 789.

Alien who was a mechanic and tool maker came within the sixth preference category of "skilled labor" rather than the third preference category of professionals or one with an "exceptional ability in the arts or sciences." Buckley v. Gibney, S.D.N.Y.1971, 332 F.Supp. 790, affirmed 449 F.2d 1305, certiorari denied 92 S.Ct. 946, 405 U.S. 919, 30 L.Ed.2d 789.

Failure of Immigration and Naturalization Service to equate combination of formal education of alien, who sought and was refused third preference classification visa as an elementary school teacher and who had completed equivalent of at least two years study, including attendance in courses ordinarily taught in United States as part of the college curriculum in education, prior to receiving elementary teacher's certificate and 18 years of proficient teaching in the English language with an American bachelor's degree, constituted clear abuse of discretion. Guinto v. District Director of U. S. Immigration and Naturalization Service, C.D.Cal.1969, 303 F.Supp. 1094.

Substantial evidence supported finding that alien seeking asylum was not persecuted on account of a statutorily protected ground; even if robberies at issue amounted to persecution, IJ concluded that robberies were motivated by pecuniary gain, not ethnic hatred, since attackers never mentioned alien's ethnic status and state department report stated that there was no evidence that individuals of alien's ethnic background were specific targets of police abuse or other mistreatment. Asaduzzaman v. Gonzales, C.A.9 2005, 131 Fed.Appx. 607, 2005 WL 1154339, Unreported. Aliens § 54.1(4.1)

Aliens' testimony detailing some discrimination against Chinese ethnics, including requirement of carrying identification documents and limitations on education and governmental employment, together with testimony regarding vandalization of their home, two robberies, and incident in which female alien was accosted and threatened, was insufficient to establish persecution required for withholding of removal. Go v. Gonzales, C.A.3 2005, 131 Fed.Appx. 389, 2005 WL 1140728, Unreported. Aliens § 53.10(3)

Substantial evidence supported decision to deny alien's claim for asylum and withholding of removal, even if he was a stateless Palestinian; alien failed to establish that he suffered past persecution or had a well-founded fear of future persecution. Abauaelian v. Gonzales, C.A.9 2005, 132 Fed.Appx. 121, 2005 WL 1126983, Unreported. Aliens § 53.10(3)

87. Residence

Aliens holding a "G-4 visa," i.e., a nonimmigrant visa granted to officers or employees or international treaty organizations and members of their immediate families, have the legal capacity to change domicile, since Congress expressly required that an immigrant seeking admission under certain nonimmigrant classifications maintain a permanent residence abroad which he has no intention of abandoning, but did not impose this restriction on G-4 aliens, and since the conclusion was inescapable that Congress' failure to impose such restriction was deliberate

8 U.S.C.A. § 1101

and manifested a willingness to allow G-4 aliens to adopt the United States as their domicile. *Elkins v. Moreno*, U.S.Md.1978, 98 S.Ct. 1338, 435 U.S. 647, 55 L.Ed.2d 614, certified question answered 397 A.2d 1009, 284 Md. 425.

Alien seaman, who entered United States in January 1940, who was ordered deported from United States in 1942, who left United States in October 1942 as crewman on Yugoslavian vessel for round trip voyage to Chile, and who returned to United States in December 1942, was "deported" in October 1942 so that he did not have continuous "residence" in United States. *Mrvica v. Esperdy*, U.S.N.Y.1964, 84 S.Ct. 833, 376 U.S. 560, 11 L.Ed.2d 911.

Being accorded permanent resident status as immigrant does not by itself establish domicile in United States, nor is it prerequisite for becoming lawful domiciliary. *White v. I.N.S.*, C.A.5 1996, 75 F.3d 213. Aliens ↩ 53.10(2)

For purpose of eligibility for discretionary relief from deportation, aliens could become lawful domiciliaries without first obtaining lawful permanent residence status. *Castellon-Contreras v. I.N.S.*, C.A.7 1995, 45 F.3d 149. Aliens ↩ 53.10(2)

"Domiciliaries" are those who have fixed, permanent and principal home to which they always intend to return, but "residency" means established abode that is permanent for time for personal or business reasons. *Rosario v. I.N.S.*, C.A.2 1992, 962 F.2d 220. Domicile ↩ 2

"Residence" within this chapter is not equivalent of domicile and is not determined by that concept. *Chan Wing Cheung v. Hamilton*, C.A.1 (R.I.) 1962, 298 F.2d 459.

Under former § 601 of this title [now covered by § 1401 of this title] term residence was entitled to a broad and liberal construction and it implied no requirement of physical presence. *Acheson v. Yee King Gee*, C.A.9 (Wash.) 1950, 184 F.2d 382.

"Residence" within meaning of immigration laws is not synonymous with physical presence which may but need not be factually present to constitute residence. *In re Olan*, S.D.Cal.1966, 257 F.Supp. 884.

This section, stating that intention is not to be considered in determining residence does not prevent government from showing intention on part of alien to establish residence, based on his actions. *Leong Leun Do v. Esperdy*, S.D.N.Y.1961, 197 F.Supp. 604, reversed on other grounds 309 F.2d 467.

This section's definition of "residence" as place of general abode, meaning principal, actual dwelling place, applied to all sections of this title, in which quoted word was used, and ruling of Supreme Court, defining quoted word as used in § 1482 of this title, consistently with this section's definition, was binding on district court in determining whether citizen parent had met residence requirement of statute relating to citizenship of children born outside the United States to parents one of whom was a United States citizen and the other an alien. *Grauert v. Dulles*, D.C.D.C.1955, 133 F.Supp. 836, affirmed 239 F.2d 60, 99 U.S.App.D.C. 240, certiorari denied 77 S.Ct. 666, 353 U.S. 917, 1 L.Ed.2d 664.

While naturalized United States citizen remained in Ethiopia under contracts with Ethiopian government for performance of certain duties in that country, his place of general abode and hence his "residence" was in Ethiopia for purposes of former § 804(c) of this title. *Talbot v. Acheson*, D.C.D.C.1951, 110 F.Supp. 182.

The term, "place of general abode," defined in former § 504 of this title [now covered by subsec. (a)(33) of this section] as place of residence for purposes of former § 601 of this title [now covered by § 1401 of this title] was synonymous with "principal dwelling place," which was fact question. *Toy Teung Kwong v. Acheson*, N.D.Cal.1951, 97 F.Supp. 745.

8 U.S.C.A. § 1101

"Actual residence" was not synonymous with physical presence and sojourn abroad, however transient or for whatever purpose, did not forfeit domestic residence, but fact issue remained. *Toy Teung Kwong v. Acheson*, N.D.Cal.1951, 97 F.Supp. 745.

The word "residence" as used in former § 601 of this title [now covered by § 1401 of this title], was entitled to broad and liberal construction, and need not be actual or continuous, and did not require physical presence during full statutory period. *Wong Gan Chee v. Acheson*, N.D.Cal.1951, 95 F.Supp. 816.

Alleged detention of alien by Iraqi police until he agreed to sign away his family's liquor business did not render alien a refugee entitled to asylum, as alleged acts of secret police involved extortion, rather than qualifying persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. *Yusif v. Ashcroft*, C.A.6 2005, 130 Fed.Appx. 797, 2005 WL 1279458, Unreported. Aliens ↩ 53.10(3)

88. Special immigrant--Generally

District Director of Immigration and Naturalization Service (INS) did not act arbitrarily and capriciously in denying an alien's request to have his dependency status determined by a state juvenile court in connection with his application for special immigration juvenile status; District Director withheld consent on the ground that alien was too old to be eligible for a dependency order, and thus did not satisfy one of the statutory eligibility requirements. *M.B. v. Quarantillo*, C.A.3 (N.J.) 2002, 301 F.3d 109. Aliens ↩ 44

To fit within the definition of a special immigrant, alien must show that she was lawfully admitted for permanent residence and is returning from a temporary visit abroad. *Alvarez v. District Director of U. S. Immigration and Naturalization Service*, C.A.9 (Cal.) 1976, 539 F.2d 1220, certiorari denied 97 S.Ct. 1334, 430 U.S. 918, 51 L.Ed.2d 597.

In order for alien who has been lawfully admitted for permanent residence to exercise privilege of leaving temporarily, alien must have a United States residence on return, and if alien chooses not to have permanent residence he cannot leave temporarily and enter as a special immigrant. *Alvarez v. District Director of U. S. Immigration and Naturalization Service*, C.A.9 (Cal.) 1976, 539 F.2d 1220, certiorari denied 97 S.Ct. 1334, 430 U.S. 918, 51 L.Ed.2d 597.

Where alien previously admitted for permanent residence in the United States spent more than 11 months each year in the Philippines, was employed there, was not returning from a temporary visit abroad on her arrival in the United States and was entering United States for a visit from her permanent residence in Philippines, she was not entitled to enter United States as a special immigrant with only her green alien registration card. *Alvarez v. District Director of U. S. Immigration and Naturalization Service*, C.A.9 (Cal.) 1976, 539 F.2d 1220, certiorari denied 97 S.Ct. 1334, 430 U.S. 918, 51 L.Ed.2d 597.

Refusal to recognize as valid a Mexican divorce which alien had secured from his wife immediately before marrying Argentine national, and conclusion that alien was not the latter woman's spouse so as to make alien a special immigrant entitled to adjustment of status and to preference priority, was not error. *Montemurro v. Immigration and Naturalization Service*, C.A.9 (Cal.) 1969, 409 F.2d 832.

Fact that Haitian national, who was a qualified alien under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and who was classified as a Special Immigrant Juvenile (SIJ) under the Immigration and Nationality Act (INA), was deemed paroled into the United States as an SIJ, also constituted "parole" as required for classification as a "Cuban-Haitian entrant" under the Refugee Education Assistance Act of 1980 (REAA), and thus, she was eligible for Supplemental Security Income (SSI) benefits, if appropriate, following a disability determination. *Joubert v. Barnhart*, S.D.Fla.2005, 396 F.Supp.2d 1320. Social Security And Public Welfare ↩ 140.5

8 U.S.C.A. § 1101

Imposition of fines against air carriers who transported lawful permanent resident aliens who were returning from abroad, i.e., "special immigrants," who failed to present certain reentry documents was arbitrary, capricious, and an abuse of discretion, since stated intent of the Attorney General in promulgating regulation requiring special immigrants to present reentry documents was to confer benefits on persons affected by regulation; the Immigration and Naturalization Service (INS) first sought to impose fines 22 years after regulation was promulgated in an effort to maximize revenues. *Air India v. Brien*, E.D.N.Y.2003, 261 F.Supp.2d 134. Aliens ↻ 44

Employees of nonappropriated fund instrumentalities of the United States abroad are eligible for classification as "special immigrants" under subsec. (a)(27)(D) of this section. 1977 (Counsel-Inf.Op.) 1 Op.O.L.C. 258.

89. --- Returning resident, special immigrant

Incident about which Cameroon native testified when, based on his membership in opposition political party, he was allegedly detained on one occasion for over three hours of questioning by Cameroon authorities, after being shoved to the ground and kicked, did not rise as matter of law to level of past "persecution," such as would give rise to presumption of future persecution in asylum case. *Eta-Ndu v. Gonzales*, C.A.8 2005, 411 F.3d 977, rehearing and rehearing en banc denied. Aliens ↻ 54.1(2)

Colombian businessman who regularly traveled to the United States and who, after becoming indebted to alleged drug trafficker, had refused to assist drug trafficker in his drug trafficking activities failed to show that persecution to which he was exposed was on account of any imputed political opinion, as required to support his asylum or withholding-of-removal claims. *Ochoa v. Gonzales*, C.A.9 2005, 406 F.3d 1166. Aliens ↻ 53.10(3)

Asylum applicant's credible testimony that both he and his father, a known member of political party advocating a separate Sikh state in India, had been taken into custody by Indian police, and that, during beating of father and applicant by police officers, they had repeatedly mentioned father's activities in support of this political party, was sufficient to compel conclusion that police had imputed father's separatist political opinions to applicant. *Singh v. Gonzales*, C.A.3 2005, 406 F.3d 191. Aliens ↻ 54.1(4.1)

Alien did not abandon her lawfully admitted permanent resident (LPR) status by spending majority of her time in Iraq for purpose of ensuing safety of her family while awaiting their immigration visas, notwithstanding that her job, real property, and immediate family were all located in Iraq and she never worked, procured bank account, or driver's license in United States, where she returned to her bank job in Iraq to prevent the regime's henchmen from harming her family members because of her absence and to help out with her terminally ill mother-in-law. *Hana v. Gonzales*, C.A.6 2005, 400 F.3d 472, rehearing denied. Aliens ↻ 53.6(2)

Alien, who had permanent resident status when he left the United States nearly three years after being laid off from work, and spent nine years abroad, lacked intent to return to the United States within a relatively short period when he left, and thus, did not qualify as a "returning resident"; although he applied for a reentry permit prior to his departure from the United States and tried after he left to secure a duplicate copy of his reentry, he accepted a position with the Bahrain Police Department and kept this job for the next eight years, and while abroad, traveled a number of times to Yemen, where he had family, property, and business ties, and did not maintain ties with his relatives in the United States, or own property or assets in this country. *Ahmed v. Ashcroft*, C.A.2 2002, 286 F.3d 611. Aliens ↻ 53.6(2)

An alien voluntarily leaving country was subject to all provisions of former chapter 6 of this title whenever he sought to return. *Del Castillo v. Carr*, C.C.A.9 (Cal.) 1938, 100 F.2d 338.

Alien returning to United States after eight years' absence in native country, during which time he had no home in United States and no distinct intent to return, was a quota immigrant. *U S ex rel Alther v. McCandless*, C.C.A.3 (Pa.) 1931, 46 F.2d 288.

8 U.S.C.A. § 1101

The provisions of subdivision (b) of former § 204 of this title were not exclusive of those of subdivision (p) of former § 136 of this title, relating to admission of aliens returning to unrelinquished domicile. *Hurst v. Nagle*, C.C.A.9 (Cal.) 1929, 30 F.2d 346, certiorari denied 49 S.Ct. 419, 279 U.S. 861, 73 L.Ed. 1001.

Former § 204(b) of this title, relating to aliens previously lawfully admitted to the United States returning from temporary visit abroad, was intended to be administered on equitable principles, and should be so interpreted. In re *Spinnella*, D.C.N.Y.1924, 3 F.2d 196.

Alien failed to establish that at time of his deportation, he was returning resident immigrant eligible for discretionary waiver of inadmissibility, despite his contention that he did not leave United States voluntarily but was induced to do so by misinformation provided to him by Immigration and Naturalization Service (INS), where alien testified that he left United States with no intention of returning and returned to United States with fraudulent passport and tourist visa, and where any failure of INS to afford alien notice of deportation hearing did not rise to level of affirmative representation upon which alien could reasonably have relied. *Diosa-Ortiz v. Ashcroft*, D.Mass.2004, 334 F.Supp.2d 27. Aliens ↪ 53.10(1)

There seemed to be no legislative history of former § 204 of this title to indicate that Congress was intentionally adding to or changing the prior law as to the status of an alien returning from a temporary visit abroad; on the contrary it seemed reasonable to infer that the phrase as used in the 1921 Act had the same meaning as that expressly given in former § 204 of this title. *U.S. v. Parisi*, D.C.Md.1938, 24 F.Supp. 414.

Substantial evidence supported IJ's finding that incidents alien testified to, including bombing of hotel where alien had helped organize a political meeting, bombing of home of one of alien's relatives who was involved in political organization, shooting at convoy of cars which was returned from political meeting, and car-jacking, did not constitute past political persecution required for asylum; at time bombings and shooting occurred, country was in virtual state of anarchy in which violence abounded, and there was not sufficient evidence of motive or identity of perpetrators in shooting at convoy or car-jacking. *Ndreu v. Gonzales*, C.A.3 2005, 128 Fed.Appx. 295, 2005 WL 1122658, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding involving Indian citizen, where there were inconsistencies regarding his alleged arrests and his involvement in Sikh politics. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 369, 2005 WL 844725, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence did not support adverse credibility determination in asylum proceeding; Immigration Judge (IJ) incorrectly stated that alien testified inconsistently as to how long it took him to research the political documents he authored, alien's testimony that he had never been convicted of a crime was not intended to reflect fact that he had been convicted in absentia for political crimes, and IJ engaged in speculation and conjecture by stating that it was "hard to believe" the Gambian government would wait as long as it did to file criminal charges against alien. *Jassey v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 19, 2005 WL 327682, Unreported. Aliens ↪ 54.1(4.1)

90. ---- Juvenile, special immigrant

Department of Homeland Security (DHS) abused its discretion in denying alien minor's requests for specific consent to pursue special immigrant juvenile (SIJ) status under the Immigration and Nationality Act (INA) in state court; minor's father neglected minor when he shipped minor to the United States via international smugglers in order to relieve father's tax burden, arranging for minor to be responsible for paying for the \$60,000 bill for his journey, father had publicly disowned minor, and DHS offered no evidence, other than letter regarding minor's credibility, to refute minor's claims of abandonment and neglect or to support a denial of consent. *Zheng v. Pogash*, S.D.Tex.2006, 416 F.Supp.2d 550. Aliens, Immigration, And Citizenship ↪ 54.3(1)

8 U.S.C.A. § 1101

II. REFUGEE

<Subdivision Index>

Admissibility of evidence 194
Amnesty, changed conditions 183
Appeals 207
Application for asylum 189
Arrest and detention, persecution 120
Arson 130
Assistance of counsel 190
Asylum 112
Burden of proof 192
Changed conditions 182, 183
 Changed conditions - Generally 182
 Changed conditions - Amnesty 183
Child soldiers 133
Civil strife 134
Coercive population control 131-132, 154, 200
 Coercive population control - Generally 131
 Coercive population control - Credibility 200

 Coercive population control - Marriage 132
 Coercive population control - Political opinion 154
Conscription, persecution 121
Corroboration 203
Corruption, political opinion 155
Credibility 196-202
 Credibility - Generally 196
 Credibility - Fraudulent evidence 199
 Credibility - Inconsistency 197
 Credibility - Miscellaneous cases 202
 Credibility - Political opinion 201
 Credibility - Speculation 198
Crime 135
Criminal prosecution 136
Criminal record 117
Degree of persecution, fear 176
Deportation, persecution 122
Desertion, political opinion 156
Detention, persecution 120
Discrimination 139
Discussion 204

Drug trafficking, political opinion 157
Economic hardship 137
Education, persecution 123
Employment, persecution 124
Ethnicity 147
Evidence, fear 174
Evidence generally 193

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Extortion 138
Family members, political opinion 158
Fear 172-179
 Fear - Generally 172
 Fear - Degree of persecution 176
 Fear - Evidence 174
 Fear - Miscellaneous cases fear not well founded 179
 Fear - Miscellaneous cases fear well founded 178
 Fear - Presumption 173
 Fear - Subjective fear 175
 Fear - Time passage 177
Financial advantage, political opinion 163
Findings and discussion 204
Fraudulent evidence, credibility 199

Future persecution 126
Genital mutilation 140
Government employees, political opinion 159
Governmental persecution 128
Guerilla groups 141
Guerilla groups, political opinion 160
Homosexuality 148
Imputed political opinion 151
Inconsistency, credibility 197
Judicial review 208
Low level individuals, political opinion 152
Marriage, coercive population control 132
Military personnel 171
Military personnel, political opinion 162
Military service, persecution 121
Miscellaneous cases, credibility 202
Miscellaneous cases fear not well founded 179
Miscellaneous cases fear well founded 178
Miscellaneous cases, persecution 127
Miscellaneous cases persecution not shown, political opinion 166
Miscellaneous cases persecution shown, political opinion 165

Motive, persecution 119
Nationality 146
Neutrality, political opinion 153
Nongovernmental persecution 142
Officials 169
Parole 116
Particularized or individualized treatment 129
Persecution 118-127
 Persecution - Generally 118
 Persecution - Arrest and detention 120
 Persecution - Deportation 122
 Persecution - Education 123
 Persecution - Employment 124
 Persecution - Future persecution 126

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

- Persecution - Military service 121
- Persecution - Miscellaneous cases 127
- Persecution - Motive 119
- Persecution - Threats 125
- Persecutors 187
- Personal conflicts, political opinion 164
- Police officer 170

- Police officer, political opinion 161
- Political opinion 150-166, 201
 - Political opinion - Generally 150
 - Political opinion - Coercive population control 154
 - Political opinion - Corruption 155
 - Political opinion - Credibility 201
 - Political opinion - Desertion 156
 - Political opinion - Drug trafficking 157
 - Political opinion - Family members 158
 - Political opinion - Financial advantage 163
 - Political opinion - Government employees 159
 - Political opinion - Guerilla groups 160
 - Political opinion - Imputed political opinion 151
 - Political opinion - Low level individuals 152
 - Political opinion - Military personnel 162
 - Political opinion - Miscellaneous cases persecution not shown 166
 - Political opinion - Miscellaneous cases persecution shown 165
 - Political opinion - Neutrality 153
 - Political opinion - Personal conflicts 164
 - Political opinion - Police officer 161
- Presumption, fear 173

- Presumptions 191
- Race 149
- Rape 143
- Reconsideration 205
- Refugee generally 111
- Relatives, political opinion 158
- Religion 167
- Relocation 184
- Remaining in country 180
- Remand 210
- Resettlement 185
- Return to country 181
- Reversal 209
- Singling out 129
- Social group membership 168
- Social groups generally 145
- Speculation, credibility 198
- Statelessness 114
- Stay 206
- Subjective fear 175
- Sufficiency of evidence 195

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Threats, persecution 125

Time passage 186

Time passage, fear 177

Torture 115

Waiver 188

War 144

Withholding of deportation 113

111. Refugee generally

Alien will be considered "refugee," eligible for asylum, if she has suffered persecution in past on account of race, religion, nationality, membership in particular social group, or political opinion, or if she can show objectively reasonable fear of such persecution in future. *Angoucheva v. I.N.S.*, C.A.7 1997, 106 F.3d 781. Aliens 53.10(3)

Factors to be considered in determining whether to grant asylum include whether alien passed through any other countries or arrived in the United States directly; whether orderly refugee procedures were in fact available to help alien in any country he or she passed through; whether alien made any attempts to seek asylum before coming to the United States; length of time alien remained in third country; living conditions, safety and potential for long-term residency in third country; relatives legally living in or other personal ties to the United States; ties to any other countries where alien does not fear persecution; whether alien engaged in fraud to circumvent orderly refugee procedures and seriousness of fraud; and general humanitarian considerations such as alien's age and health. *Farbakhsh v. I.N.S.*, C.A.8 1994, 20 F.3d 877. Aliens 53.10(3)

Alien who entered United States without inspection, and who was seeking asylum, could establish his refugee status on one of two bases: (1) actual past persecution on account of his political opinions or his membership in particular social group, or (2) well-founded fear of future persecution on account of his political opinions or his membership in particular social group. *Osorio v. I.N.S.*, C.A.2 1994, 18 F.3d 1017.

For purposes of determining alien's eligibility for asylum, standard is whether alien is "refugee" which is defined as any person unable to return to his country of origin because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in social group or political opinion. *Huaman-Cornelio v. Board of Immigration Appeals*, C.A.4 1992, 979 F.2d 995. Aliens 53.10(3)

To establish eligibility for asylum based on past persecution, alien must show that past persecution was so severe that repatriation would be inhuman. *Baka v. I.N.S.*, C.A.10 1992, 963 F.2d 1376. Aliens 53.10(3)

Under section of Refugee Act providing for asylum for aliens with well-founded fear of prosecution [8 U.S.C.A. § 1158(a)], "refugee" is person who has well-founded fear of persecution on account of race, religion, nationality, membership in a particular group, or political opinion. *Del Valle v. I.N.S.*, C.A.9 1985, 776 F.2d 1407. Aliens 53.10(3)

To be eligible for asylum, alien must show either persecution or well-founded fear of persecution in particular country on account of his or her race, religion, nationality, membership in particular social group, or political opinion. *Singh v. Ilchert*, N.D.Cal.1992, 801 F.Supp. 313.

Status as "refugee" for purposes of asylum is not precluded on ground that one has gone beyond openly espousing anti-government views and has made politically motivated attempt to overthrow by violent means a government which has no procedures for peaceful change, regardless of whether individual has expressed political opinions critical of the regime prior to coup attempt or whether punishment is pretextual or its severity is heightened by reason of person's race, religion, nationality, social group or political opinion. *Dwomoh v. Sava*, S.D.N.Y.1988,

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

696 F.Supp. 970.

An alien can establish his status as a refugee for purposes of asylum eligibility in three ways: (1) by showing he has a well-founded fear of future persecution; (2) by showing that he endured past persecution that gives rise to a presumption of a well-founded fear of future persecution, unless the Immigration and Naturalization Service (INS) rebuts this presumption; or (3) by establishing eligibility for humanitarian asylum. *Aliou v. Gonzales*, C.A.10 2005, 140 Fed.Appx. 22, 2005 WL 1649182, Unreported. Aliens ↩ 54.1(2)

112. Asylum, refugee

Finding that alien is a refugee as defined in Refugee Act does no more than establish that alien may be granted asylum in discretion of Attorney General. *I.N.S. v. Cardoza-Fonseca*, U.S.1987, 107 S.Ct. 1207, 480 U.S. 421, 94 L.Ed.2d 434. Aliens ↩ 53.10(3)

In order to qualify for "asylum," which permits alien to remain in United States, alien must demonstrate well founded fear of persecution if returned to his country of origin. *Cepero v. Board of Immigration Appeals*, D.Kan.1995, 882 F.Supp. 1575. Aliens ↩ 53.10(3)

Asylum applicant first must demonstrate that he is refugee within meaning of Immigration Act, which defines "refugee" as one who is unable or unwilling to return to his country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in particular social group, or political opinion. *Dong v. Slattery*, S.D.N.Y.1994, 870 F.Supp. 53, motion to amend denied 1995 WL 758569, affirmed 84 F.3d 82. Aliens ↩ 53.10(3)

Applicant for asylum may establish his or her eligibility if he or she can prove either past persecution by objective documentation or well-founded fear of persecution. *Mohammad v. Slattery*, S.D.N.Y.1994, 842 F.Supp. 1553, motion to vacate denied 857 F.Supp. 1050.

Immigration Judge's (IJ's) discretionary denial of asylum status to Somali alien who repeatedly failed to disclose that he already had received asylum in South Africa was not abuse of discretion, notwithstanding that alien had credible claim of past persecution and well-founded fear of future persecution in Somalia, particularly where IJ granted alien's request for withholding of removal to Somalia. *Aden v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 852, 2004 WL 2445279, Unreported. Aliens ↩ 53.10(3)

113. Withholding of deportation, refugee

Alien who was not entitled to asylum due to her failure to establish that she had well-founded fear of persecution if she were deported to El Salvador was not entitled to withholding of deportation based on clear probability of persecution. *Ipina v. I.N.S.*, C.A.1 1989, 868 F.2d 511. Aliens ↩ 53.10(3)

Inability of foreign national who was citizen of Cameroon to show refugee status in order to establish eligibility for asylum precluded his ability to meet more stringent standard to receive withholding of deportation, based on showing of clear probability of persecution. *Kenlak v. Ashcroft*, C.A.4 2004, 88 Fed.Appx. 562, 2004 WL 260995, Unreported. Aliens ↩ 53.10(3)

114. Statelessness, refugee

Stateless Palestinian born in Kuwait was not precluded from seeking asylum from Kuwait by fact that Kuwait would not accept her if she were to attempt to return. *Ouda v. I.N.S.*, C.A.6 2003, 324 F.3d 445. Aliens ↩ 53.10(3)

8 U.S.C.A. § 1101

Board of Immigration Appeals' denial of asylum to applicant from Ogaden region, between Ethiopia, and Somalia because of his failure to establish single clear nationality was not based on substantial evidence, where nationality was not required for establishing refugee status and BIA failed to address whether applicant established well-founded fear of future persecution if he returns to Ethiopia or Somalia; BIA effectively punished applicant because of his misfortune to be born in country from which he had to flee and because he did not appear to have recognized rights in any other country. *Dulane v. I.N.S.*, C.A.10 1995, 46 F.3d 988. Aliens ↪ 54.1(4.1)

Statelessness alone does not warrant asylum; stateless individuals must demonstrate the same well-founded fear of persecution as those with nationalities. *Faddoul v. I.N.S.*, C.A.5 1994, 37 F.3d 185. Aliens ↪ 53.10(3)

Substantial evidence supported finding that neither alien's status as a stateless native of Lebanon, nor his inability to obtain Lebanese citizenship for himself or his family, amounted to persecution on account of a protected ground which would entitle him to asylum. *Bozoian v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 309, 2005 WL 78918, Unreported. Aliens ↪ 53.10(3)

Although Immigration Judge (IJ) determined that statelessness of alien of Palestinian ethnicity did not amount to past persecution, IJ failed to reach issue of whether alien was eligible for asylum or withholding of removal based on well-founded fear of future persecution; IJ failed to properly consider State Department Country Reports and reports from United Nations High Commissioner for Refugees regarding treatment of Palestinians in both Israel and Egypt, the two designated countries of removal. *Ghazal v. Ashcroft*, C.A.9 2004, 111 Fed.Appx. 479, 2004 WL 2203860, Unreported. Aliens ↪ 54(3.1); Aliens ↪ 54.1(4.1)

Alien's statelessness alone did not demonstrate his entitlement to asylum. *El Bitar v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 179, 2004 WL 2030106, Unreported. Aliens ↪ 53.10(3)

115. Torture, refugee

Applicant, who was Sunni Moslem born to Palestinian parents in Lebanon, was not entitled to relief under Convention Against Torture (CAT), inasmuch as he failed to refute adverse credibility determination which undermined his evidence of physical abuse, and he failed to show that Amal militia, which allegedly abused him in mid-1980s, operated with acquiescence of government or would be likely to still be doing so. *Sharari v. Gonzales*, C.A.1 2005, 407 F.3d 467. Aliens ↪ 53.10(3); Aliens ↪ 54.1(4.1); Treaties ↪ 8

Board of Immigration Appeals' (BIA's) error, in applying wrong standard in assessing Colombian nationals' claim for relief under the Convention Against Torture (CAT), by requiring them to prove not just that government was aware of and had done nothing to stop the torturous activity to which they likely would be subjected by drug traffickers but that Columbian government was willfully accepting of such torturous activities, necessitated remand to the BIA for reassessment of aliens' CAT claim under correct standard. *Ochoa v. Gonzales*, C.A.9 2005, 406 F.3d 1166. Aliens ↪ 54.3(6)

Immigration judge's finding that citizen of the Democratic Republic of Congo (DRC) had not established that it was more likely than not that he would be tortured or persecuted if removed to the DRC was supported by substantial evidence, notwithstanding alien's credible testimony as to his family's association with former ruling regime, where none of alien's remaining family members in the DRC have been physically harmed following change in government, and where State Department reported that it was "not aware of family members of former [regime] being mistreated by the [new] government"; accordingly, immigration judge's denial of alien's applications for withholding of removal and protection under the Convention Against Torture (CAT) would not be disturbed. *Mompongo v. Gonzales*, C.A.8 2005, 406 F.3d 512, certiorari denied 126 S.Ct. 425, 163 L.Ed.2d 323. Aliens ↪ 54.1(4.1)

Physical abuse to which Eritrean national was subjected by members of his military unit for speaking up against

8 U.S.C.A. § 1101

war, when he was bound naked in desert sun in "helicopter" position, with his arms and legs tied in back of him while he rested on his stomach, and repeatedly slapped or whipped with belt over period of 25 days until the flesh on his back and the soles of his feet was ripped open, during which time he was also deprived of adequate food and water and forced to urinate and defecate in this bound position, plainly rose to level of "torture," such as might warrant relief under Convention Against Torture (CAT). *Nuru v. Gonzales*, C.A.9 2005, 404 F.3d 1207. Aliens ⚡ 53.10(3); Treaties ⚡ 8

Showing by Eritrean national that he had been "tortured" for speaking up against war, in support of his claim for relief under the Convention Against Torture (CAT), necessarily established past "persecution," for purpose of asylum claim. *Nuru v. Gonzales*, C.A.9 2005, 404 F.3d 1207. Aliens ⚡ 53.10(3)

Alien failed to establish that he was entitled to protection under Convention Against Torture (CAT), since immigration judge found that his testimony at removal proceedings in support of CAT claim was not credible. *Jamal-Daoud v. Gonzales*, C.A.7 2005, 403 F.3d 918. Aliens ⚡ 54.1(4.1); Treaties ⚡ 8

Immigration Judge's (IJ) adverse findings warranting denial of asylum and withholding of removal, and supported by substantial evidence on administrative record as a whole, warranted denial of relief under Convention Against Torture (CAT) as well, where applicant presented same factual basis for all three claims. *Alemu v. Gonzales*, C.A.8 2005, 403 F.3d 572. Aliens ⚡ 54.1(4.1); Treaties ⚡ 8

Alien failed to demonstrate that it was more likely than not that she would be tortured if she were removed to Guinea, so as to warrant relief under the Convention Against Torture (CAT), despite her claimed fear of female genital mutilation (FGM); report of an international organization indicated that FGM was illegal in Guinea, that the Guinean Supreme Court was working to propose a constitutional amendment prohibiting FGM, and that several high-level government officials had spoken out against FGM. *Toure v. Ashcroft*, C.A.1 2005, 400 F.3d 44. Aliens ⚡ 53.10(3); Treaties ⚡ 8

The protection provided by the Convention Against Torture (CAT) is in some aspects broader, but narrower in others, than withholding of removal; although both require alien to meet the more-likely-than-not standard, it is for different purposes, withholding of removal requires proof of persecution on account of a protected class, whereas CAT is not concerned with the reasoning of the persecution, just whether the persecution arises to the level of torture. *Chaib v. Ashcroft*, C.A.10 2005, 397 F.3d 1273. Aliens ⚡ 53.10(3); Treaties ⚡ 8

Chinese applicant was not eligible for relief under Convention Against Torture (CAT) based on her opposition to forced sterilization, where she failed to establish well-founded fear of persecution making her eligible for asylum, she relied on same facts to support her asylum and CAT claims, and she merely argued it was more likely than not that she would be tortured by Chinese government if she returned. *Lau May Sui v. Ashcroft*, C.A.8 2005, 395 F.3d 863. Aliens ⚡ 53.10(3); Treaties ⚡ 8

Immigration judge's determination that Chinese national was not eligible for relief under the Convention Against Torture was supported by substantial evidence; though evidence showed that alien's parents had been arrested and forced to write self-criticism letters because they were involved in same spiritual movement as alien, and though alien's brother had been given two-year sentence at a reeducation-through-labor camp, such persecution of alien's family members and evidence that police had identified alien as member of this same spiritual movement compelled finding only that it was likely that alien would be persecuted, not that he would be tortured, if returned to Mainland China. *Zhang v. Ashcroft*, C.A.9 2004, 388 F.3d 713. Aliens ⚡ 54.1(4.1); Treaties ⚡ 8

To show a likelihood of being tortured upon his removal, as prerequisite to obtaining relief under the United Nations Convention Against Torture (CAT) as adopted into law by the Foreign Affairs Reform and Restructuring Act (FARRA), and by Justice Department's implementing regulations, alien had to show a likelihood that he would suffer severe pain and suffering inflicted with specific intent to cause such pain and suffering, although not with

8 U.S.C.A. § 1101

specific intent to torture; "torture," within meaning of the CAT, requires specific intent. *Thelemaque v. Ashcroft*, D.Conn.2005, 363 F.Supp.2d 198. Aliens 53.10(3); Treaties 8

Substantial evidence supported immigration judge's determination that alien's testimony in support of asylum application was not credible; in alien's first asylum application he professed membership in Sri Lankan rebel group Tamil Tigers, but he made no such claim in second application or in his testimony, and his testimony that nothing happened to his body while he was detained contradicted his statement in application that he was physically tortured during detention. *Fernando v. Atty. Gen. of U.S.*, C.A.3 2006, 2006 WL 1327811, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported conclusion by Board of Immigration Appeals (BIA) that alien's speculation that she would be forcibly sterilized if returned to her native country was insufficient to establish that it was more likely than not that she would be tortured if returned, as required to show eligibility for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). *Peiyong v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 131, 2005 WL 79034, Unreported. Aliens 54.1(4.1); Treaties 8

Alien did not establish that it was more likely than not that she would be tortured if removed to Mexico, as required to support her claim for relief under Convention Against Torture (CAT); although alien received frightening threats against her and against her children, neither she nor her family was ever attacked, kidnapped, or injured. *Gonzalez Castro v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 35, 2005 WL 23424, Unreported. Aliens 53.10(3); Treaties 8

Evidence that alien was threatened with harm or death by certain political party officials in Nicaragua, if he did not lend his expertise in videotaping and other skills to help the party with various political intrigues, was insufficient to warrant a grant of relief under the Convention Against Torture (CAT), where no actual harm was done to alien or his family. *Chamorro v. Ashcroft*, C.A.5 2004, 119 Fed.Appx. 608, 2004 WL 2980369, Unreported. Aliens 53.10(3); Treaties 8

Failure by father of alien, seeking withholding of removal and relief under Convention Against Torture (CAT) to mention in his affidavit that he was arrested by authorities after they were unable to locate alien was not pertinent to alien's credibility, as would support Immigration Judge's (IJ) adverse credibility finding; rather, father's sworn affidavit was entirely consistent with alien's testimony, and corroborated dates and events central to alien's claim of persecution. *Parhar v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 129, 2004 WL 2711302, Unreported. Aliens 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) decision that claims by alien, seeking asylum, withholding of removal, Convention Against Torture (CAT) protection, failed for insufficiency of evidence; IJ made specific references to vague, inconsistent, and at times implausible testimony that was material to alien's claims regarding his actual involvement with political organization, his alleged arrests, and alleged abuse by Indian police, including his variously claiming to have been arrested zero, two, three, and four times, and IJ's alternative finding that alien could relocate safely within India was supported by evidence, including evidence that alien had moved to Delhi after alleged abuse and had lived there unharmed for significant period. *Singh v. Ashcroft*, C.A.9 2004, 112 Fed.Appx. 570, 2004 WL 2381105, Unreported. Aliens 54.1(4.1)

Substantial evidence supported the finding that asylum applicant failed to show that it was more likely than not that he would face torture if removed to Ethiopia, or that a clear probability of persecution entitled him to withholding of removal. *Aboye v. Ashcroft*, C.A.4 2004, 104 Fed.Appx. 927, 2004 WL 1719480, Unreported. Aliens 54.1(4.1)

Alleged official neglect, by the Mexican government, of the peasantry, did not constitute an infliction of suffering on the basis of race, religion, or political opinion, and therefore alien did not have a well-founded fear of

8 U.S.C.A. § 1101

persecution, as required in his applications for asylum, withholding of removal, and relief under Convention Against Torture (CAT). *Navarrete v. Ashcroft*, C.A.9 2004, 97 Fed.Appx. 97, 2004 WL 886342, Unreported. Aliens ↪ 53.10(3); Treaties ↪ 8

116. Parole, refugee

Ample evidence, including parole authorization forms, a series of arrival-departure cards documenting yearly extensions of parole, and repeated statements by aliens, supported finding, in asylum proceeding, that aliens were paroled into the United States, rather than admitted as refugees. *Flora v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 529, 2004 WL 1257702, Unreported. Aliens ↪ 54.1(4.1)

117. Criminal record, refugee

Even if alien had well-founded fear of persecution based on his political opinion, alien's six convictions for misdemeanors over period of four years furnished rational basis for Attorney General's exercise of discretion in denying alien asylum. *Purveegijn v. U.S. I.N.S. Processing Center*, S.D.N.Y.1999, 73 F.Supp.2d 411. Aliens ↪ 53.10(3)

118. Persecution, refugee--Generally

Surveillance of Guatemalan asylum applicant by paramilitaries, after applicant had intervened in attack by suspected paramilitaries on women who were affiliated with human rights organization, did not constitute past persecution, in that any threat was not sufficiently imminent or menacing. *Chavarria v. Gonzalez*, C.A.3 2006, 446 F.3d 508. Aliens, Immigration, And Citizenship ↪ 53.10(3)

Persecution, as required to support an asylum application, is the infliction of suffering or harm upon those who differ in race, religion or political opinion in a way regarded as offensive; it is an extreme concept that does not include every sort of treatment society regards as offensive. *Krotova v. Gonzales*, C.A.9 2005, 416 F.3d 1080. Aliens ↪ 53.10(3)

Family may constitute a "particular social group," and persecution of alien based on his/her membership therein may support asylum claim. *Thomas v. Gonzales*, C.A.9 2005, 409 F.3d 1177, petition for certiorari filed 2005 WL 2866185, vacated 126 S.Ct. 1613, 164 L.Ed.2d 358. Aliens ↪ 53.10(3)

"Persecution," a well-founded fear of which may suffice to make alien eligible for grant of asylum, is the infliction of suffering or harm upon those who differ in way regarded as offensive. *Ding v. Ashcroft*, C.A.9 2004, 387 F.3d 1131. Aliens ↪ 53.10(3)

"Persecution," as used in Immigration and Nationality Act section that permits Attorney General to grant asylum to alien who has well-founded fear of persecution, is to be viewed objectively, in terms of what reasonable person would deem "offensive," and thus, alien need not establish that her persecutor was motivated by desire to punish or inflict harm; rather, persecutor's motive is relevant and proper consideration only insofar as alien must establish that persecution is inflicted on him or her "on account of" characteristic or perceived characteristic of alien. *Pitcherskaia v. I.N.S.*, C.A.9 1997, 118 F.3d 641. Aliens ↪ 53.10(3)

Necessary element of asylum claim based on "past persecution" is that alien must show he was persecuted, because of his "race, religion, nationality, membership in a particular social group, or political opinion." *Prasad v. I.N.S.*, C.A.9 1996, 101 F.3d 614. Aliens ↪ 53.10(3)

"Persecution" for asylum purposes is punishment or infliction of harm for political, religious, or other reasons that this country does not recognize as legitimate. *Draganova v. I.N.S.*, C.A.7 1996, 82 F.3d 716. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

For purposes of asylum applicant's well-founded fear of persecution, "persecution" includes punishment or infliction of harm which is administered on account of race, religion, nationality, group membership or political opinion and must rise above the level of mere "harassment," although it need not necessarily threaten the applicant's life or freedom. *Borca v. I.N.S.*, C.A.7 1996, 77 F.3d 210. Aliens ↪ 53.10(3)

To show that he suffered past persecution, an asylum applicant must show that he endured more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty; additionally, persecution must be on account of race, religion, nationality, membership in a particular social group, or political opinion and be perpetrated by the government or by private persons that the government is unwilling or unable to control. *Kanivets v. Riley*, E.D.Pa.2003, 286 F.Supp.2d 460. Aliens ↪ 53.10(3)

One police department's failure to resolve alien's domestic violence complaint to her satisfaction did not amount to past persecution by the Mexican government, for purposes of alien's application for asylum. *Renteria v. Gonzales*, C.A.5 2006, 170 Fed.Appx. 895, 2006 WL 677713, Unreported. Aliens, Immigration, And Citizenship ↪ 528

Substantial evidence supported Immigration Judge's (IJ) denial of humanitarian asylum, where alien failed to show past persecution he had been subjected to included permanent physical and emotional scarring, or a combination of detention, involuntary military service, sleep deprivation, beatings, electric shock, and routine physical torture and psychological abuse. *Amadu v. Ashcroft*, C.A.8 2003, 84 Fed.Appx. 711, 2003 WL 23100021, Unreported. Aliens ↪ 53.10(3)

Allegation, in support of eligibility for asylum, that alien was forcibly recruited into Bangladesh's air force was not supported by the record where alien testified at his immigration hearing only that he was "accepted" into the Bangladesh air force, and not that he was "forcibly recruited" into it. *Atique v. Ashcroft*, C.A.3 2003, 66 Fed.Appx. 344, 2003 WL 1961208, Unreported. Aliens ↪ 54.1(4.1)

119. ---- Motive, persecution, refugee

Ethiopian alien seeking asylum on ground of political persecution, in connection with his conduct as government official in thwarting arrest of anti-government protestors, was not required to prove that his political opinion was Ethiopian government's sole motive for persecution. *Menghesha v. Gonzales*, C.A.4 2006, 450 F.3d 142. Aliens, Immigration, And Citizenship ↪ 540

Asylum applicant, who was native of the People's Republic of China, who feared she would be harmed in China by her former accomplices in scheme to obtain Social Security cards using fraudulent documents in retribution for her cooperation with authorities failed to establish that her feared persecution was on account of one of the statutorily protected grounds of race, religion, nationality, membership in particular social group, or political opinion, as required to support her asylum application; former accomplices' wish to harm applicant was based on her decision to cooperate with the government in attempt to reduce her own sentence, not on account of her membership in a particular group or for any political opinion. *Jun Ying Wang v. Gonzales*, C.A.7 2006, 445 F.3d 993. Aliens, Immigration, And Citizenship ↪ 53.10(3)

Substantial evidence supported immigration judge's finding that alien failed to establish that the harm his family suffered in Somalia was on account of a protected ground, so as to qualify as past persecution; militiamen who broke into alien's home and killed his father and other family members demanded money, gold, and alien's father's boat, indicating they were more likely motivated by greed than by alien's race, religion, nationality, membership in a particular social group, or political opinion. *Sheikh v. Gonzales*, C.A.8 2005, 427 F.3d 1077. Aliens ↪ 53.10(3)

Asylum applicant satisfied burden of showing that persecution that he experienced at hands of Indian police was

8 U.S.C.A. § 1101

motivated, at least in part if not entirely, by separatist political opinions which police had imputed to applicant on account of his father's political activities, though police, in taking applicant and his father into custody, had informed father that they had information that he had guns and ammunition in his home, where applicant credibly testified that, during beating of father and applicant at stationhouse, officers had repeatedly mentioned father's activities in support of separatist political party, and that neither applicant nor father was ever questioned about these alleged firearms. *Singh v. Gonzales*, C.A.3 2005, 406 F.3d 191. Aliens ↻ 54.1(4.1)

Aliens, including husband, wife, and their children, did not establish past persecution in Nigeria supporting application for asylum, given that alleged incidents did not rise to level of persecution and aliens did not establish nexus between their race or nationality and such incidents, which included thieves' robbery of husband and friends, beating of husband's brother by police looking for bribes, killing of Lebanese businessman and rape of his wife by employees, babysitter's possible abuse of son and threats against family, and closure of relative's water factory. *Saleh v. U.S. Attorney General*, C.A.11 2005, 148 Fed.Appx. 862, 2005 WL 2211587, Unreported. Aliens ↻ 53.10(3)

For purpose of eligibility for asylum, there is no requirement that persecution be based solely on account of a protected ground; rather, if the applicant can show that the persecution was, at least in part, motivated by a protected ground, then the applicant can establish eligibility for asylum. *Garcia-Valderrama v. U.S. Attorney General*, C.A.11 2005, 130 Fed.Appx. 434, 2005 WL 1076581, Unreported. Aliens ↻ 53.10(3)

For purpose of eligibility for asylum, there is no requirement that persecution be based solely on account of a protected ground; rather, if the applicant can show that the persecution was, at least in part, motivated by a protected ground, then the applicant can establish eligibility for asylum. *Garcia-Valderrama v. U.S. Attorney General*, C.A.11 2005, 130 Fed.Appx. 434, 2005 WL 1076581, Unreported. Aliens ↻ 53.10(3)

120. ---- Arrest and detention, persecution, refugee

Asylum applicant, who was native of Ethiopia, was not entitled to discretionary grant of asylum since the persecution she suffered was not so severe that repatriation would be inhumane; although applicant was detained for two months and abused at times during that period, no evidence indicated that she suffered any physical or psychological problems because of treatment and offending regime was no longer in power. *Abrha v. Gonzales*, C.A.8 2006, 433 F.3d 1072, rehearing denied. Aliens ↻ 53.10(3)

Alien's claim that he was detained and beaten by local police on two occasions was insufficient to establish past persecution required for asylum. *Alyas v. Gonzales*, C.A.8 2005, 419 F.3d 756. Aliens ↻ 53.10(3)

Claim by Laotian asylum applicant of Hmong ancestry, that he was detained and interrogated by government agents for one month upon returning to Laos from United States, did not describe conduct severe enough to establish past persecution. *Yang v. Gonzales*, C.A.8 2005, 413 F.3d 757, rehearing and rehearing en banc denied. Aliens ↻ 53.10(3)

Incident about which Cameroon native testified when, based on his membership in opposition political party, he was allegedly detained on one occasion for over three hours of questioning by Cameroon authorities, after being shoved to the ground and kicked, did not rise as matter of law to level of past "persecution," such as would give rise to presumption of future persecution in asylum case. *Eta-Ndu v. Gonzales*, C.A.8 2005, 411 F.3d 977, rehearing and rehearing en banc denied. Aliens ↻ 54.1(2)

Conclusion of Immigration Judge (IJ), that Albanian asylum applicant failed to establish fear of persecution, was supported by substantial evidence, in that Immigration and Naturalization Service (INS) Forensic Document Laboratory (FDL) determined that newspaper articles submitted by applicant had been altered to show him as author, such articles were at heart of his claim that he was detained and beaten as result of criticizing Berisha

8 U.S.C.A. § 1101

government, expert's testimony supporting applicant's claim was based in part on belief that applicant authored articles, and applicant's attorney agreed FDL was appropriate entity to examine articles. *Hysi v. Gonzales*, C.A.7 2005, 411 F.3d 847, rehearing and suggestion for rehearing en banc denied, certiorari denied 126 S.Ct. 1043, 163 L.Ed.2d 857. Aliens ☞ 54.1(4.1)

Kenyan applicant's three arrests following demonstrations that became riotous did not constitute "persecution" for purposes of withholding of removal, where two arrests resulted in detentions of less than 24 hours and involved no physical abuse, and, although third detention lasted three weeks and applicant was hit with batons and truncheons, he did not require medical attention, and there was no evidence that Kenyan government had continuing interest in him after his release. *Ngure v. Ashcroft*, C.A.8 2004, 367 F.3d 975, rehearing and rehearing en banc denied. Aliens ☞ 53.10(3)

Minor beatings and brief detentions, even detentions lasting two or three days, do not amount to political persecution within the meaning of the asylum statutes, even if government officials are motivated by political animus. *Eusebio v. Ashcroft*, C.A.8 2004, 361 F.3d 1088, rehearing and rehearing en banc denied. Aliens ☞ 53.10(3)

Substantial evidence supported decision of Board of Immigration Appeals (BIA) that asylum applicant, who worked as civilian employee of Lebanese Christian Forces, did not suffer past persecution when Syrian forces detained him for three days, deprived him of food, and beat him, with result that his face became swollen. *Dandan v. Ashcroft*, C.A.7 2003, 339 F.3d 567, rehearing and rehearing en banc denied. Aliens ☞ 54.1(4.1)

Board of Immigration Appeals' (BIA) determination that alien's detainments by Ethiopian authorities were too short and too tangentially related to political affiliation to constitute past persecution to grant her application for asylum was supported by substantial evidence; alien was detained, not imprisoned, by Ethiopian authorities, she was only held for 24 hours each time she was detained, she was not harmed during detainments, and no evidence was presented that her captors believed she was a member of anti-government group. *Fesseha v. Ashcroft*, C.A.1 2003, 333 F.3d 13. Aliens ☞ 54.1(4.1)

Alien did not suffer persecution within meaning of asylum statutes as result of his father, grandfather, and uncle being arrested and beaten for opposing collectivization in Romania, his father being beaten upon attempting to recover family property, and any discrimination, economic harm, or humiliation alien personally endured because of his family's opposition to communist regime. *Tamas-Mercea v. Reno*, C.A.7 2000, 222 F.3d 417. Aliens ☞ 53.10(3)

Alien's arrest and two-day detention by police following pro-democracy rally did not rise to level of "persecution" required for asylum. *Bradvida v. I.N.S.*, C.A.7 1997, 128 F.3d 1009. Aliens ☞ 53.10(3)

Actions by Polish authorities were not sufficient to constitute past persecution so as to entitle Polish citizen to be granted asylum under the Immigration Act; economic persecution was not substantial enough to qualify for asylum, nor were detentions and interrogations by authorities, given fact that alien was never formally charged or convicted of crime, was detained for relatively short periods of time and was not mistreated while incarcerated. *Zalega v. I.N.S.*, C.A.7 1990, 916 F.2d 1257. Aliens ☞ 53.10(3)

Beatings sustained by alien, a citizen of India, during two arrests by police rose to level of persecution required for asylum; police initially detained alien on both occasions because they believed he had assisted criminals attempting to flee the area, but evidence demonstrated that they severely abused alien during detention because of his political beliefs, and alien was never charged with any crime. *Chhokar v. Gonzales*, C.A.9 2005, 142 Fed.Appx. 319, 2005 WL 2108653, Unreported. Aliens ☞ 53.10(3)

Alien's three arrests, which each lasted for less than two days, following political demonstrations, and subsequent

8 U.S.C.A. § 1101

abuse at the hands of the police which did not require medical attention, did not amount to persecution required for asylum. *Kacaj v. Gonzales*, C.A.6 2005, 132 Fed.Appx. 584, 2005 WL 1285654, Unreported. Aliens 53.10(3)

Substantial evidence supported finding that alien's two incidents of arrest and police beatings, separated by 13 years of peaceful existence, did not rise to level of persecution on account of imputed political opinion which would entitle alien to asylum. *Tandon v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 181, 2005 WL 91615, Unreported. Aliens 53.10(3)

Single incident of detention in which Guatemalan alien was unharmed did not compel conclusion that she suffered past persecution or had well-founded fear of persecution, as required to overturn Bureau of Immigration Appeals' (BIA) denial of her application for asylum; rather, fact that alien remained in Guatemala for six years after sole incidence of detention without any contact by the soldiers emphasized that she neither suffered past persecution nor had well-founded fear of future persecution. *Villanueva Cordova v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 244, 2004 WL 2913573, Unreported. Aliens 53.10(3)

Alien's week in jail, during which time she was interrogated twice a day about her affiliation with particular group, followed by twice-monthly interrogations for three years, did not amount to persecution required for asylum. *Ven v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 355, 2004 WL 2891534, Unreported. Aliens 53.10(3)

Alien's single arrest and detention, and the physical abuse she endured, did not rise to level of persecution required for asylum. *Wang v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 519, 2004 WL 1941286, Unreported. Aliens 53.10(3)

Neither alien's brief detention by police due to his complaints about corruption, nor alien's harassment by his government employer, rose to level of persecution required for asylum. *Bolshov v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 65, 2004 WL 1869922, Unreported. Aliens 53.10(3)

Alien's detentions in Lebanon did not establish persecution, as required in his application for asylum; alien failed to mention the detentions in his application for asylum, in his appellate brief he specifically disavowed any reliance on those incidents as motivation for his decision to flee Lebanon, and it was not clear that the detentions were motivated by persecution on account of alien's political opinion. *Bachir v. I.N.S.*, C.A.1 2004, 111 Fed.Appx. 6, 2004 WL 1598288, Unreported. Aliens 53.10(3)

Three incidents asserted by alien did not rise to level of persecution required for asylum; on one occasion, when alien was a small boy, he was arrested as part of a large group and detained until next day, but he was released unharmed, on second occasion, alien was injured when he fell to ground as police fired into large crowd, and on third occasion, alien was arrested for wearing a yellow turban, but was again released unharmed and thereafter remained in his country without incident. *Aujla v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 54, 2004 WL 1595395, Unreported. Aliens 53.10(3)

Alien's testimony that he was detained, interrogated, and beaten after attending a political demonstration did not compel a finding of persecution, as required in application for asylum; detention was only for two to three days, and alien was only bruised, was not distinguished from the other demonstrators, and was not detained or beaten in the next year and a half. *Gjokic v. Ashcroft*, C.A.6 2004, 104 Fed.Appx. 501, 2004 WL 1491638, Unreported. Aliens 53.10(3)

Substantial evidence supported determination, in asylum proceeding, that alien suffered past persecution on account of his imputed political opinion, where alien was deemed to be credible in his testimony that he had been detained in solitary confinement, by a unit of the Guatemalan military, for two weeks due to his cooperation with a United Nations Inspection Mission and subsequently beaten for aiding the Mission, and that he and his family had

8 U.S.C.A. § 1101

received death threats. *Castellanos-Garcia v. Ashcroft*, C.A.9 2004, 99 Fed.Appx. 96, 2004 WL 1088254, Unreported. Aliens ↩ 53.10(3)

Alien did not suffer past persecution in China, as required in her application for asylum, despite her detention by local Communist party officials for five days; alien was not threatened or abused. *Zheng v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 258, 2003 WL 23098572, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) finding that alien, a medical professional, was not entitled to asylum, despite his allegation that he had been detained for questioning on four occasions and subjected to psychological torture because of his criticisms of Ethiopian government's medical policies; there was no evidence of physical abuse, alien's testimony that others similar to him were persecuted was contradictory at times, and there was no evidence of systematic persecution by the government of medical professionals. *Woldeyes v. Ashcroft*, C.A.5 2003, 83 Fed.Appx. 586, 2003 WL 22903020, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence did not support finding that alien, a citizen of India, was the target of legitimate police anti-terrorism activities and thus was not persecuted on account of an imputed political opinion; alien was arrested, detained, and beaten on several occasions without being formally charged or brought before a magistrate, and country conditions report indicated there were few if any terrorist groups still operating in alien's home area. *Singh v. Ashcroft*, C.A.9 2003, 75 Fed.Appx. 675, 2003 WL 22170683, Unreported. Aliens ↩ 54.1(4.1)

Finding of immigration judge (IJ), that asylum applicant's alleged fourth incarceration in military compound, following his alleged expression of certain political views while working as orderly for major general in Ugandan army, did not constitute past persecution, was supported by substantial evidence, including evidence that incarceration lasted only two weeks, that applicant was permitted to move about during incarceration, and that he remained in Uganda for two years after incarceration without incident. *Mwesige v. Ashcroft*, C.A.7 2003, 59 Fed.Appx. 888, 2003 WL 1120154, Unreported. Aliens ↩ 54.1(4.1)

Evidence that alien, a citizen of Albania, was arrested in Albania for participating in illegal roadblock and was treated harshly while in custody was insufficient to establish that he had a well founded fear of persecution if he were returned to Albania, as required for grant of asylum; although alien claimed purpose of roadblock was to prevent communists and socialists from spreading lies during pre-election campaign, he conceded that his arrest was proper, and there was no evidence that his mistreatment by police amounted to persecution. *Shqutaj v. I.N.S.*, C.A.3 2003, 57 Fed.Appx. 95, 2003 WL 231599, Unreported. Aliens ↩ 53.10(3)

121. ---- Military service, persecution, refugee

Alien who fled Yugoslavia because he was an ethnic minority who was drafted to serve in the military was a victim of persecution, requiring government to show in proceeding on his application for asylum that he did not have a well-founded fear of being persecuted if he were sent back. *Miljkovic v. Ashcroft*, C.A.7 2004, 376 F.3d 754. Aliens ↩ 53.10(3)

Ethnic Albanian from Montenegro was not entitled to reopening of asylum application based upon changed country conditions on claim that he might be forced to fight other ethnic Albanians in new war in Kosovo; Yugoslav government had right to require military service of its citizens, Montenegro was resisting conscription of its citizens for Kosovo war, and there was no evidence that alien would be forced to commit acts which he morally opposed, that military service was itself staging area for persecution of ethnic Albanians, or that Albanians received harsher treatment for draft evasion. *Pelinkovic v. Ashcroft*, C.A.7 2004, 366 F.3d 532. Aliens ↩ 53.10(3); Aliens ↩ 54(5)

Finding that Ethiopian asylum applicant did not suffer past persecution or have well-founded fear of future persecution was supported by substantial evidence, even though he resisted recruitment into Mengistu militia and

8 U.S.C.A. § 1101

was member of Amhara ethnic group, where he was not arrested for resisting recruitment, he kept his position with customs department even after fall of Mengistu regime, and he was never arrested or physically harmed by any Ethiopian government. *Wondmneh v. Ashcroft*, C.A.8 2004, 361 F.3d 1096. Aliens ↻ 53.10(3)

Asylum applicant from Montenegro region of Serbia and Montenegro failed to establish fear of future persecution based on his refusal to serve in military, where former Federal Republic of Yugoslavia (FRY) undertook only sporadic efforts to punish draft evaders, was generally unenthusiastic about arming ethnic minorities, and approved amnesty for those who had avoided military service. *Capric v. Ashcroft*, C.A.7 2004, 355 F.3d 1075. Aliens ↻ 53.10(3)

Iraqi asylum applicant did not suffer persecution based on alleged interrogation and beating that occurred when he rejoined military pursuant to grant of amnesty to deserters, inasmuch as there was no evidence that interrogation and beating took place other than applicant's testimony and his application for asylum, and his testimony failed to establish link between alleged interrogation and beating and his actual or imputed political opinion. *Al-Harbi v. I.N.S.*, C.A.9 2001, 242 F.3d 882. Aliens ↻ 54.1(4.1)

Alien was not entitled to refugee status where, although Greek law subjected all men to military service, he was Objectivist opposed to involuntary draft, and he allegedly would not be eligible for conscientious objector status in Greece, he presented no evidence that Greek government had threatened him with military service because he was an Objectivist or that it targeted Objectivists who refused to serve for disproportionate punishment. *Foroglou v. I.N.S.*, C.A.1 1999, 170 F.3d 68, certiorari denied 120 S.Ct. 60, 528 U.S. 819, 145 L.Ed.2d 53. Aliens ↻ 53.10(3)

Requiring military service and punishing deserters does not, per se, constitute "persecution," so as to entitle alien to political asylum. *Barraza Rivera v. I.N.S.*, C.A.9 1990, 913 F.2d 1443. Aliens ↻ 53.10(3)

Alien who was born and raised in Lebanon but who settled in Jordan before coming to United States failed to show that his likely imprisonment in Jordan for failure to fulfill his military obligation would be persecution, not prosecution, and thus, he failed to show a "well-founded fear" that he would be persecuted on account of his "race, religion, nationality, membership in a particular social group, or political opinion" if deported; he had taken advantage of Jordanian citizenship and for that Jordan could surely expect him to fulfill their citizenship requirements without interference. *Khalaf v. I.N.S.*, C.A.1 1990, 909 F.2d 589. Aliens ↻ 53.10(3)

Alien seeking asylum on ground that his government's prospective punishment of him because he would not serve in the Army would constitute persecution because of his political opinion in that he was a pacifist failed to show claimed "well-founded fear" of persecution because of political opinion, in light of his testimony that he wanted to go to military school and be an officer and that an officer simply orders subordinates to fight and does not fight himself. *Umanzor-Alvarado v. I.N.S.*, C.A.1 1990, 896 F.2d 14. Aliens ↻ 53.10(3)

Substantial evidence did not support finding, in asylum proceeding, that alien had no well-founded fear of future persecution in Montenegro based on his past evasion of the draft; bill granting amnesty to draft evaders, upon which Immigration Judge (IJ) rested his finding, was only pending, and changed country conditions did not reflect directly on the military and the treatment of draft evaders. *Kasnecoviq v. I.N.S.*, C.A.2 2006, 2006 WL 1308167, Unreported. Aliens, Immigration, And Citizenship ↻ 642

Alien's fear of forced conscription or reprisals for his refusal to join military in his native country of Guatemala did not establish required nexus to enumerated ground required for asylum. *Duarte Morales v. Gonzales*, C.A.9 2006, 2006 WL 1009206, Unreported. Aliens, Immigration, And Citizenship ↻ 532

Determination of immigration judge that Montenegrin national seeking asylum would not suffer future persecution if returned to country was supported by substantial evidence; national's fear of punishment from military court for

8 U.S.C.A. § 1101

having evaded draft was not reasonable in light of fact that Montenegrin government was not punishing draft evaders and was allowing them to move freely throughout country. *Kolenovic v. I.N.S.*, C.A.2 2005, 157 Fed.Appx. 387, 2005 WL 3263847, Unreported. Aliens ☞ 53.10(3)

Alien's fear of prosecution for leaving the El Salvadoran air force without permission, after his letters of resignation were denied, did not constitute persecution on account of a protected ground, as required in his application for asylum. *Sanchez-Gaitan v. Gonzales*, C.A.9 2005, 136 Fed.Appx. 74, 2005 WL 1414448, Unreported. Aliens ☞ 53.10(3)

Alien's testimony that he was forcibly conscripted into army, forced to witness terrible atrocities against his own people, and physically punished by army on several occasions for his protests against atrocities was insufficient to establish either past persecution or well-founded fear of future persecution required for asylum. *Perez v. Ashcroft*, C.A.2 2005, 120 Fed.Appx. 875, 2005 WL 348371, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported Bureau of Immigration Appeals' (BIA) determination that alien failed to show that it was more likely than not that he would be persecuted for refusing to perform required military service due to his religious beliefs, as would support his application for asylum, if he returned to Norway, his country of citizenship; rather, record showed that Norway allowed for "conscientious objection" to military service. *Usea v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 329, 2004 WL 2711278, Unreported. Aliens ☞ 54.1(4.1)

Alien's fear of disproportionately severe punishment for evading military conscription process lacked evidentiary support, and thus did not constitute well-founded fear of future persecution, as required to support his claim for asylum. *Woldermarian v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 189, 2004 WL 2360985, Unreported. Aliens ☞ 54.1(4.1)

Alien's claim of forced conscription into Eritrean military did not rise to level of persecution, as required to support his claim for asylum. *Woldermarian v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 189, 2004 WL 2360985, Unreported. Aliens ☞ 53.10(3)

Absent evidence that military organization's conscription effort was motivated by alien's political opinion, actual or imputed, rather than a need for members, organization's attempts to force alien to join were insufficient to show persecution on account of political belief which would entitle alien to asylum. *Paul v. Ashcroft*, C.A.5 2004, 109 Fed.Appx. 695, 2004 WL 2166205, Unreported. Aliens ☞ 53.10(3)

Neither previous disputes alien, a Christian citizen of former Yugoslav Republic of Macedonia, had with Albanian Muslims, nor alien's fear of serving in the military, were sufficient to establish a well-founded fear of future persecution which would entitle alien to asylum or withholding of deportation. *Golcev v. Ashcroft*, C.A.3 2004, 88 Fed.Appx. 538, 2004 WL 345681, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported determination that alien failed to prove past persecution or a well-founded fear of future persecution, as required in his application for asylum, on basis of being subject to military conscription requirement, even though military service would conflict with his religious beliefs; requirement was imposed on all males. *Karacsony v. Ashcroft*, C.A.9 2003, 83 Fed.Appx. 167, 2003 WL 22839330, Unreported. Aliens ☞ 53.10(3)

Record supported determination that aliens did not have a well-founded fear of future persecution if returned to Macedonia, as required in their application for asylum; possibility that alien's sons would be drafted into army did not rise to level of persecution. *Matlijoska v. Ashcroft*, C.A.3 2003, 82 Fed.Appx. 267, 2003 WL 22520410, Unreported. Aliens ☞ 53.10(3)

Native and citizen of El Salvador failed to carry his burden of proving in his application for asylum that he had

8 U.S.C.A. § 1101

well-founded fear of persecution, even though his aunt was killed in 1982, his father in 1983, and his uncle in 1995, and military attempted to recruit him in 1990 and 1991; ordinary attempts at conscription did not constitute persecution, there was no evidence 20 years later that alien was endangered simply for being related to them, allegations surrounding uncle's death were vague, unsubstantiated, and based on hearsay, and none of alien's other family members suffered any problems with military. *Martinez-Alvarado v. Ashcroft*, C.A.9 2003, 63 Fed.Appx. 996, 2003 WL 21222146, Unreported. Aliens ↻ 53.10(3)

122. ---- Deportation, persecution, refugee

Involuntary deportation of aliens by Ethiopian authorities to Eritrea, a country which previously had been part of Ethiopia and place where aliens' fathers were from, during time of war between Eritrea and Ethiopia, did not constitute persecution, as required to support alien's claim for asylum. *Woldermariam v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 189, 2004 WL 2360985, Unreported. Aliens ↻ 53.10(3)

123. ---- Education, persecution, refugee

Substantial evidence supported determination that alien did not have a well-founded fear of future persecution if returned to Jordan, as required to warrant grant of asylum; educational disadvantage as a result of inability to read or write the dominant language did not rise to the level of "persecution." *Rabadi v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 816, 2003 WL 22977108, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's finding that alien was not eligible for asylum on ground that he failed to show past persecution or well-founded fear of future persecution; although alien had been punished for participating in student demonstrations, in that he was barred from taking college entrance exams and hindered in his post-graduation job search, he was never physically harmed, arrested, or threatened with further investigation. *Wang v. U.S. Dept. of Justice*, C.A.2 (N.Y.) 2003, 65 Fed.Appx. 363, 2003 WL 21308870, Unreported. Aliens ↻ 53.10(3)

124. ---- Employment, persecution, refugee

Evidence that alien, a Chinese citizen who was arrested in China and detained for five days because he was a practitioner of Falun Gong, later lost his job and was unable to find work in his home city, and was watched by local officials after he moved back to his parents' village was insufficient to establish past persecution necessary for asylum, absent evidence that alien sought employment for the three years he lived in his parents' village. *Zheng v. U.S. Atty. Gen.*, C.A.11 2006, 451 F.3d 1287. Aliens, Immigration, And Citizenship ↻ 531

Economic discrimination that alien suffered in Bulgaria when she was dismissed from her first job on accusations of theft and had a difficult time finding a new job did not establish persecution for purposes of eligibility for asylum; even if there was an anti-Roma undercurrent to the discrimination, no evidence suggested that it was perpetrated or tolerated by state actors, and the acts themselves were not severe enough to constitute persecution. *Mitreva v. Gonzales*, C.A.7 2005, 417 F.3d 761, rehearing and rehearing en banc denied. Aliens ↻ 53.10(3)

Pakistan government's policy of allocating government jobs according to geographic areas was not innately persecutory of any particular ethnic group living within those geographic areas, and would not support asylum claim by aliens who, due to fact that they were living in particular geographic area where other members of their same ethnic group were clustered, were allegedly eligible for only three to four percent of available government jobs, where aliens did not testify that they had ever lost job because of their ethnicity, and where this government policy in no way limited private employment opportunities available to aliens. *Ahmed v. Ashcroft*, C.A.8 2005, 396 F.3d 1011. Aliens ↻ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) finding that alien, a citizen of Ethiopia and a native of the

8 U.S.C.A. § 1101

country presently known as Eritrea, failed to establish past persecution in Ethiopia on the basis of his ethnicity and political opinion so as to support his asylum application, even if alien's allegations, which the IJ discredited, were believed, where alien alleged only the loss of one job due to his ethnicity, which amounted at most to discrimination, and although deplorable, was not persecution, and alleged that the police sought him out but did not arrest him. *Medhin v. Ashcroft*, C.A.7 2003, 350 F.3d 685. Aliens ↻ 54.1(4.1)

Alien's loss of government job, summoning to police station, and single beating in his native country of Albania did not constitute past persecution required for asylum. *Zagorcani v. Gonzales*, C.A.7 2005, 145 Fed.Appx. 184, 2005 WL 2336983, Unreported. Aliens ↻ 53.10(3)

Asylum applicant's allegation that he was discharged from his position as village doctor after he had already left China did not allege treatment rising to the level of past persecution. *Lin v. I.N.S.*, C.A.2 2005, 135 Fed.Appx. 454, 2005 WL 1317022, Unreported. Aliens ↻ 53.10(3)

Even if alien's union membership or activities could constitute political opinion, his evidence of mistreatment on account of his membership and activities did not constitute persecution, as required to support his application for asylum; although alien believed he failed to find employment in the three or four months he remained in Guatemala, after the glass factory where he was employed closed, because of his union membership, no particular reason for alien's inability to obtain other employment could be inferred from such a short period, and letter or letters alien received warning him to stop participating in strike did not portend any imminent harm or danger, rather, alien continued to participate with no ill consequences. *Ortiz-Palma v. Ashcroft*, C.A.7 2005, 121 Fed.Appx. 154, 2005 WL 272921, Unreported. Aliens ↻ 53.10(3)

Record, including alien's testimony that he lost his job as miner because of disagreement within his union, and he could not find new work in his town, did not compel conclusion that alien was persecuted on account of enumerated ground, as required to overturn Board of Immigration Appeals' (BIA) denial of asylum and withholding of removal. *Valdez v. Ashcroft*, C.A.9 2004, 111 Fed.Appx. 477, 2004 WL 2203855, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to prove past persecution; alien claimed that, because of his ethnicity, he got paid less money than other people for similar work, was transferred to job locations that were less than ideal, and that if he were to return, he might have difficulty finding work, but on cross-examination, alien admitted that he believed he was paid a lower salary because he had not obtained a university diploma, alien provided no independent evidence that his low salary or his transfers were because of any protected ground, and alien testified that he was never threatened, arrested, detained, or physically harmed due to any protected ground. *Fanhoun v. Ashcroft*, C.A.6 2004, 109 Fed.Appx. 46, 2004 WL 1982344, Unreported. Aliens ↻ 54.1(4.1)

Alien's allegations that she was fired from her teaching position, and that authorities visited her parents' home to ask about her whereabouts, did not amount to past persecution on account of political opinion which would entitle her to asylum. *Lin v. Bureau of Citizenship and Immigration Services*, C.A.3 2004, 105 Fed.Appx. 424, 2004 WL 1758161, Unreported. Aliens ↻ 53.10(3)

Allegations of discrimination, harassment, and denial of educational and employment opportunity in Saudi Arabia on account of a noncitizen Saudi resident's Palestinian origin did not amount to persecution, as required in her application for asylum. *Elfarra v. Ashcroft*, C.A.8 2004, 88 Fed.Appx. 141, 2004 WL 133983, Unreported. Aliens ↻ 53.10(3)

Aliens failed to provide compelling evidence of their past persecution in Romania, as required in their applications for asylum, even though they both lost specific jobs because of their politics and both were detained for questioning; both aliens found other work and they established a successful business with which the government

8 U.S.C.A. § 1101

did not interfere, aliens retained their passports and were able to travel freely, police detentions were brief and one alien was not harmed, but only subjected to unfulfilled threats, and a physical assault on one alien was not shown to have been politically motivated. *Gorea v. Ashcroft*, C.A.9 2003, 82 Fed.Appx. 588, 2003 WL 22872507, Unreported. Aliens ↩ 54.1(4.1)

Alleged adverse treatment and experiences of family of alien by former government of their native Belarus did not rise to the level of "persecution" so as to support their application for asylum and withholding of deportation where alien was allegedly denied certain government opportunities because of his families' ties to the United States, was allegedly ignored by employers after his resignation from the Communist Party, and local newspapers allegedly included negative reports of his resignation. *Sashko v. I.N.S.*, C.A.9 2003, 81 Fed.Appx. 693, 2003 WL 22803858, Unreported. Aliens ↩ 53.10(3)

Asylum applicant, who lost his government job and was barred from future government employment because he led an allegedly illegal strike of air traffic controllers, failed to establish that he had a well-founded fear of future persecution; applicant could only guess who made threatening telephone calls and who tried to abduct him, knew of no severe consequences to the other leaders of illegal strike of air traffic controllers who remained in the Philippines, and applicant's bar from future government employment did not necessarily preclude him from finding other work in the Philippines. *Flores v. Ashcroft*, C.A.9 2003, 61 Fed.Appx. 510, 2003 WL 1918252, Unreported. Aliens ↩ 53.10(3)

Asylum applicant failed to establish that he suffered past persecution; applicant lost his government job and was barred from future government employment because he led an allegedly illegal strike of air traffic controllers, and testified that persons unknown threatened him by telephoning his parents about four times per year, and that someone "nearly" tried to abduct him, but he was neither followed nor harmed when he left the scene. *Flores v. Ashcroft*, C.A.9 2003, 61 Fed.Appx. 510, 2003 WL 1918252, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported finding of Board of Immigration Appeals (BIA) that alien had not shown past persecution based on race, religion, nationality, social group membership, or political opinion, inasmuch as employment discrimination and harassment suffered by alien did not rise to level of persecution, and purported attempted kidnappings were not obviously carried out on the basis of alien's ethnicity. *Makaeva v. Ashcroft*, C.A.9 2003, 62 Fed.Appx. 796, 2003 WL 1870838, Unreported. Aliens ↩ 53.10(3)

125. ---- Threats, persecution, refugee

Death threat that Colombian national received from Marxist paramilitary group following her political activity in Colombia in support of mayoral candidate, in form of "condolence note" indicating that she should "rest in peace for doing what she shouldn't be doing," was in nature of mere harassment or intimidation and did not rise to level of past "persecution," such as might support asylum claim. *Silva v. U.S. Atty. Gen.*, C.A.11 2006, 448 F.3d 1229. Aliens, Immigration, And Citizenship ↩ 53.10(3)

Finding by Board of Immigration Appeals (BIA), that death threat made against Guatemalan asylum applicant by paramilitaries was based on fact that they had robbed him, and was not related to their earlier attack on human rights workers in which applicant had intervened, for purposes of determining whether applicant was persecuted based on imputed political opinion, was not supported by substantial evidence, in that applicant testified clearly that robbery was attempt to suppress information about earlier attack. *Chavarria v. Gonzalez*, C.A.3 2006, 446 F.3d 508. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Indian alien's testimony regarding threats made to alien's family during police raid of his home, stating that his father told him that the police warned his father that if alien was arrested again he would not be spared, was not inconsistent with statements in his asylum application, that police threatened his parents that if alien was caught he would be taught a lesson forever, and thus did not support adverse credibility finding in alien's application for

8 U.S.C.A. § 1101

asylum. *Singh v. Gonzales*, C.A.9 2006, 439 F.3d 1100. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Threats that alien allegedly received while working at the United States embassy in Cambodia, such as "you will see what happens when the U.S. leaves Cambodia" or the United States "cannot protect you all the time," without more, did not compel a finding of past persecution supporting alien's asylum request. *Ang v. Gonzales*, C.A.1 2005, 430 F.3d 50. Aliens ↪ 53.10(3)

Broadcasted death threat that alien received on his security radio while he was working at the American embassy in Cambodia did not support alien's claim that he suffered past persecution in Cambodia because of his political affiliation or his support of the United States, in view of evidence that the threat was made by a disgruntled former subordinate. *Ang v. Gonzales*, C.A.1 2005, 430 F.3d 50. Aliens ↪ 53.10(3)

Substantial evidence compelled finding, in asylum proceeding, that alien, a Russian citizen of Jewish ethnicity, was subjected to past persecution; alien received repeated death threats which government did not act against in any meaningful way, one of those threats was made immediately after the murders of two of her friends, she was assaulted by men who attempted to strangle her before they were interrupted, and an attempt was made to enter her residence, by men who threatened to kill her if she did not open the door. *Smolniakova v. Gonzales*, C.A.9 2005, 422 F.3d 1037. Aliens ↪ 54.1(4.1)

Substantial evidence did not support immigration judge's determination that the harm alien suffered was too mild to constitute past persecution, as required for asylum claim; the immigration judge failed to consider the facts that while alien was detained and tied up overnight during soldiers' invasion of political activist's home, for whom she worked, soldiers pressed a gun to her head and threatened to kill her while another unzipped his pants and threatened to rape her, and that she was tied in the excruciating "kandoya" style, and, the judge also failed to consider the escalating nature of the events in Uganda that followed the attack. *Nakibuka v. Gonzales*, C.A.7 2005, 421 F.3d 473. Aliens ↪ 54.1(4.1)

Two oral threats alien received from guerillas, including one in which term "death sentence" was used, amounted to harassment, rather than persecution required for asylum. *Hernandez-Baena v. Gonzales*, C.A.7 2005, 417 F.3d 720. Aliens ↪ 53.10(3)

Credible verbal death threats may fall within meaning of past persecution under INA. *Un v. Gonzales*, C.A.1 2005, 415 F.3d 205. Aliens ↪ 53.10(3)

Specific, credible and immediate threat of death on account of political opinion is not outside definition of "persecution," such as will support application for asylum, just because it occurs during single incident, and alien should not have been required to demonstrate pattern or practice of mistreatment in order to show that she had been persecuted in past, where alien testified that, following single incident in which she was allegedly beaten in her home by Guatemalan police officers aligned with dominant political party, she was threatened with death like her uncle, a prominent member of opposition party, unless she provided information about this other party. *Corado v. Ashcroft*, C.A.8 2004, 384 F.3d 945. Aliens ↪ 53.10(3)

Credible death threats that were made against alien by police commissioner in his country of origin, especially when coupled with evidence of his detention, for 19 consecutive days, in dark, crowded cells without formal charges and with no indication of when he would be released, in shackles that prevented him from straightening his legs, and without benefit of toilet in which to urinate, rose to level of "persecution," of kind needed to support asylum claim. *Ndom v. Ashcroft*, C.A.9 2004, 384 F.3d 743. Aliens ↪ 53.10(3)

Harm suffered by asylum applicant, who had been placed in a burning warehouse by guerrillas, bound so he could not escape absent help, and had suffered additional threats on his life from the same group, rose to the level of "persecution." *Lopez v. Ashcroft*, C.A.9 2004, 366 F.3d 799. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported finding that asylum applicant, an ethnic Albanian from what used to be the Kosovo region of Serbia, had not suffered past persecution, which would have raised a rebuttable presumption of a well-founded fear of future persecution; unfulfilled threats by various Serbs against applicant constituted harassment rather than persecution, and the one incident of physical violence against applicant was not connected with any particular threat and there was no evidence indicating that the incident was officially sponsored. *Hoxha v. Ashcroft*, C.A.9 2003, 319 F.3d 1179. Aliens ↪ 54.1(4.1)

Fact that anonymous callers repeatedly threatened to kill family of wife and son of Guatemalan army colonel was sufficient basis to find past persecution within meaning of asylum statute. *Rios v. Ashcroft*, C.A.9 2002, 287 F.3d 895.

Finding of Board of Immigration Appeals (BIA), that threats against former government police officer arising from his testimony against leaders of New People's Army (NPA) in Philippines did not constitute past persecution, was supported by substantial evidence, including evidence that neither he nor his family was ever touched or closely confronted, and that he remained in Philippines for six years after first being threatened. *Lim v. I.N.S.*, C.A.9 (Cal.) 2000, 224 F.3d 929. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) determination that, even taking asylum applicant's testimony as true, he failed to establish past persecution in the Philippines because he admitted that he was never physically harmed and that he received only one threatening letter; similarly, substantial evidence supported the IJ's determination that applicant's fear was not well-founded because he testified that the threat against him was not fulfilled, he continued to live in the Philippines for three years after he received the letter, and his family lived undisturbed in the Philippines and no longer received telephone calls asking about him. *Carlos v. Gonzales*, C.A.9 2006, 167 Fed.Appx. 696, 2006 WL 391307, Unreported. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

The harm that alien suffered in Indonesia did not amount to persecution, for purposes of eligibility for asylum; alien had experienced discrimination and threats since childhood for being a Christian of Chinese descent, she was present when riots broke out in which people were yelling, "kill the Chinese," her place of business was attacked and burned during riots, and her mother's house was robbed. *Tjen v. Attorney General of U.S.*, C.A.3 2005, 160 Fed.Appx. 222, 2005 WL 3529262, Unreported. Aliens ↪ 53.10(3)

Three incidents of inappropriate touching and one incident of indecent exposure alien was subjected to did not amount to persecution required for asylum. *Shierly v. Attorney General of the U.S.*, C.A.3 2005, 140 Fed.Appx. 434, 2005 WL 1981786, Unreported. Aliens ↪ 53.10(3)

Threats against alien's family, as described by alien, did not rise to level of persecution as would support alien's application for asylum and withholding of removal, where alien did not describe threats with any specificity nor did he know what political group was making the threats. *Jaimes-Cornejo v. Gonzales*, C.A.9 2005, 133 Fed.Appx. 426, 2005 WL 1316996, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's finding that alien seeking asylum failed to show persecution she allegedly suffered as result of refusal to pay demanded protection money to extortionists after she opened a store was on account of a protected ground; alien suggested that her refusal to accede to demands of extortionists could constitute political expression if the basis for refusal was a disagreement with the political goals of the extortionists, but alien did not present any evidence that her refusal was based on any such political stand on her part. *Bobryvets v. Gonzales*, C.A.6 2005, 132 Fed.Appx. 602, 2005 WL 1285641, Unreported. Aliens ↪ 53.10(3)

Alien's claim that he was treated rudely by parking lot attendants who charged him an increased fee involved no threat or physical harm, and thus did not establish persecution required for asylum. *Sunarjo v. Gonzales*, C.A.3 2005, 130 Fed.Appx. 621, 2005 WL 1231958, Unreported. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

Alien could not demonstrate that he faced a particularized threat of persecution which would entitle him to withholding of removal; alien's grandmother voluntarily returned to area of country where alien had lived with her, remaining there without serious incident. *Luntungan v. Gonzales*, C.A.9 2005, 132 Fed.Appx. 152, 2005 WL 1175947, Unreported. Aliens ↻ 54.1(4.1)

Death threats by three students who wanted alien, a teacher, to change their grades did not rise to the level of past persecution for purposes of the alien's asylum application; although the alien argued that the immediacy of the threats was bolstered by the fact a certain group of people attacked the school's principal, she did not support her conclusion that the students at issue could rally similar violence to back up their threats. *Gamez v. Gonzales*, C.A.7 2005, 126 Fed.Appx. 318, 2005 WL 697187, Unreported. Aliens ↻ 53.10(3)

Single incident in which alien was allegedly threatened with death by unnamed individuals at a billiards club if he spoke in favor of America while in his native country did not constitute past persecution which would entitle alien to asylum; threat was not based on protected ground and person who made threat was unknown. *Akmal v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 226, 2004 WL 3019538, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported decision, in asylum proceeding, that threats or death or other harm, allegedly made by officials of a Nicaraguan political party if alien did not lend his expertise in videotaping and other skills to help the party with various political intrigues, did not amount to past persecution or give alien a well-founded fear of future persecution; no actual harm was done to alien or his family. *Chamorro v. Ashcroft*, C.A.5 2004, 119 Fed.Appx. 608, 2004 WL 2980369, Unreported. Aliens ↻ 53.10(3)

Anonymous threatening phone calls and traffic incidents committed by unknown assailants failed to establish past persecution or well-founded fear of future persecution, as required to support alien's application for asylum. *Perales v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 597, 2004 WL 2914280, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported Immigration Judge's conclusion that threats made to asylum applicants' family members through third parties did not constitute past persecution of applicants. *Arevalo-Galicia v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 267, 2004 WL 2914269, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to establish past persecution; alien alleged that he received threats of physical violence from thugs who also burned down his garage, but alien suffered no physical harm and was not detained as result of incident. *Tjoe v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 71, 2004 WL 1870257, Unreported. Aliens ↻ 53.10(3)

Threats and stone-throwing incidents that alien endured were not so serious as to amount to past persecution and did not give rise to well-founded fear of future persecution based on enumerated ground which would entitle him to asylum. *Parra v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 113, 2004 WL 1869346, Unreported. Aliens ↻ 53.10(3)

Threats alien received went unfulfilled and thus did not amount to past persecution entitling her to asylum. *Mendoza v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 91, 2004 WL 1663251, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported Board of Immigration Appeals's (BIA's) conclusion that anonymous death threats alien received, and witnessing the murder of his father, did not rise to level of past persecution which would entitle alien to asylum. *Angeles v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 61, 2004 WL 1595410, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's determination that two threatening letters received by alien did not rise to level of persecution required for asylum. *Orozco v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 197, 2004 WL 1447755, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Absent compelling evidence that aliens were of continued interest to the unknown persons who made telephoned death threats, or that they would be singled out for their political opinions if they returned to the Philippines, substantial evidence supported determination that aliens did not establish past persecution or a well-founded fear of future persecution, as required in their application for asylum, despite their credible testimony regarding the anonymous death threats; threats were unfulfilled. *Salem v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 99, 2004 WL 1376626, Unreported. Aliens 53.10(3)

Even when considered in their cumulative effect, unfulfilled threats and other past hardships suffered by alien did not rise to level of past persecution, for purposes of his application for asylum. *Elian v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 78, 2004 WL 1208869, Unreported. Aliens 53.10(3)

Two verbal threats against alien, based on his refusal to take part in election fraud in Albania, were not so immediate and menacing as to compel a finding of past persecution, where there was no specific evidence either threat would have been carried out and alien suffered no mistreatment when he returned to Albania for a week, even though alien presented evidence he was followed to Italy and threatened there; alien made no attempt to secure government protection even though government was led by party alien had represented. *Hysaj v. Ashcroft*, C.A.7 2004, 99 Fed.Appx. 73, 2004 WL 1064472, Unreported. Aliens 53.10(3)

Aliens who were allegedly threatened in Indonesia because of their Chinese ethnicity were not eligible for asylum, since threats did not rise to level of persecution. *Limerta v. Ashcroft*, C.A.10 2004, 88 Fed.Appx. 363, 2004 WL 309333, Unreported. Aliens 53.10(3)

Threats allegedly made against alien were not fulfilled and did not cause her any harm, and thus substantial evidence supported decision, in asylum proceeding, that she did not suffer past persecution; threats were not sustained, alien was not pursued by alleged persecutors and she did not change her lifestyle as a result of the threats, she did not seek government protection, and she did not allege that she experienced any actual suffering or harm due to the threats. *Rancancoj De Leon v. I.N.S.*, C.A.9 2003, 82 Fed.Appx. 535, 2003 WL 22746021, Unreported. Aliens 53.10(3)

Guatemalan native was not a subject of past persecution, for purposes of his application for asylum and withholding of deportation, even though he was shot at by a military airplane and threatened by soldiers, and a friend died after returning to Guatemala; alien was never involved in any type of political organization, his family continued to live in Guatemala unharmed, and threat was not combined with confrontation or other mistreatment. *Salguero-Castro v. I.N.S.*, C.A.9 2003, 62 Fed.Appx. 773, 2003 WL 1793386, Unreported. Aliens 53.10(3)

Asylum applicant, who had only shown that he had received a number of threatening phone calls from an individual with whom he previously fought, failed to show evidence that he suffered actual and specific past harms as a result of the threats, and therefore had not established past persecution based on a protected ground sufficient to establish eligibility for asylum. *Henarath v. Ashcroft*, C.A.9 2003, 59 Fed.Appx. 976, 2003 WL 1497301, Unreported. Aliens 53.10(3)

126. ---- Future persecution, refugee

Substantial evidence did not support immigration judge's finding that, even if alien had suffered past persecution on account of a political opinion, the government rebutted the presumption that she would suffer future persecution; even though alien's family members remained unharmed in Uganda, there was no evidence that they were political opponents and the record did not contain any information suggesting that the political powers in Uganda were any more tolerant of political opponents than when alien fled. *Nakibuka v. Gonzales*, C.A.7 2005, 421 F.3d 473. Aliens 54.1(2)

8 U.S.C.A. § 1101

Asylum applicant, in alleging that she was sought by police in China for cohabiting with her boyfriend, failed to establish past persecution or well-founded fear of future persecution on account of political opinion, in that she never publicly expressed opposition to government's policy on cohabitation, government sought applicant to secure her compliance with domestic law rather than to suppress any political opinion, her only allegation of persecution was one visit by authorities to her family, and her fears of future persecution because of corruption among police did not strengthen her claim. *Li v. Gonzales*, C.A.7 2005, 416 F.3d 681. Aliens ↪ 53.10(3)

Even assuming that native of northern Yemen had established his membership in organizations advocating the unification of northern and southern Yemen, he failed to satisfy burden of showing that, based upon his membership in these organizations, he had any well-founded fear of future persecution if he were returned to Yemen, as required to support his asylum claim, where Yemen's civil war had since ended, and goals of peace and unification allegedly advocated by these organizations had been achieved. *Allabani v. Gonzales*, C.A.6 2005, 402 F.3d 668. Aliens ↪ 54.1(4.1)

Fact that peace accords had since been signed by Guatemalan government and insurgent forces and that, since these peace accords were signed, neither alien nor his relatives who continued to reside in Guatemala had been approached in bellicose manner or threatened in any way undermined objective reasonableness of any fear of future persecution that alien might have if his asylum claim was denied, and if he was removed to Guatemala. *Rodriguez-Ramirez v. Ashcroft*, C.A.1 2005, 398 F.3d 120. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's determination that alien would not suffer persecution based on ethnicity if returned to the Ukraine, as required for alien's asylum claim; State Department reports indicated that Ukraine's nationality policy met international standards required for the protection of minority groups and alien's testimony could be read as indicating that alien was unable to work and was harassed by police mainly because he had failed to obtain proper legal documents and permission, and not because of his ethnicity. *Ambartsoumian v. Ashcroft*, C.A.3 2004, 388 F.3d 85. Aliens ↪ 54.1(4.1)

Kenyan national satisfied his burden of showing a probability of future persecution based on his acts in opposition to alleged corruption in Kenya's current regime, in assisting Kenyan women who had allegedly been sold into de facto slavery to the Saudi royal family to escape from their alleged captors while present in the United States, and was thus entitled to withholding of removal on that basis; evidence was presented of threats which were made against alien by Kenyan official after he had provided this assistance, as well as of the imprisonment, attacks on, and threats against members of alien's family still present in Kenya, some of which attacks were accompanied by specific threats against alien. *Njuguna v. Ashcroft*, C.A.9 2004, 374 F.3d 765. Aliens ↪ 53.10(3)

Alien, a Cambodian citizen, failed to show likelihood of future persecution, as would support her application for asylum and withholding of removal, although record showed past persecution by the Khmer Rouge, where past persecution consisted of unfulfilled threats, and there had been no reported persecution of Cambodian refugees who had been repatriated in October 1997. *Meas v. Ashcroft*, C.A.8 2004, 363 F.3d 729. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's (IJ) determination that alien failed to show a clear probability of future persecution based upon his political views and activities, and therefore he was not entitled to asylum, withholding of removal, or relief under the Convention Against Torture; records submitted by alien were not reliable and did not support his claims, and IJ reasonably concluded that alien's claim that he organized and directed a worker's protest group which voiced concerns about his former company's general personnel policies, as opposed to simply complaints about having been fired, was not credible. *Sviridov v. Ashcroft*, C.A.10 2004, 358 F.3d 722. Aliens ↪ 54.1(4.1); Treaties ↪ 8

Evidence did not compel conclusion that there was a reasonable chance of alien suffering future persecution if he were to return to the Ukraine, and thus qualified as a "refugee" for purposes of his request for asylum, despite evidence that alien had suffered past persecution for favoring Ukrainian independence; alien had been issued

8 U.S.C.A. § 1101

passport and allowed to travel to United States without difficulty, his wife and mother continued to live peacefully in Ukraine, and State Department profile suggested that there was no real threat of mistreatment to those who had supported Ukrainian independence in the past. *Koliada v. I.N.S.*, C.A.6 2001, 259 F.3d 482. Aliens ↪ 54.1(4.1)

Substantial evidence supported denial of alien's request for withholding of removal to China; alien's testimony as to events his grandfather and father experienced in the 1950's and the 1980's did not establish a clear probability that alien would be persecuted if returned to China. *Shen v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 113, 2005 WL 844722, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA) refusal to grant alien from Iraq humanitarian asylum on the "compelling reasons" or the "other serious harm" grounds was not an abuse of discretion where the alien did not present any medical or other evidence that the severity of his past persecution had caused or would cause him particular problems other than general distress were he to return to Iraq, and presented no evidence that he would suffer serious harm were he to return to an Iraq not governed by a former dictator and his party. *Hadad v. Ashcroft*, C.A.6 2005, 127 Fed.Appx. 800, 2005 WL 758237, Unreported. Aliens ↪ 53.10(3)

By establishing that as an ethnic Chinese Christian woman, she was a member of two sub-groups that were subject to a particularized risk of persecution in Indonesia, alien met the comparatively low level of individualized risk required to prove that, as a member of the ethnic Chinese minority in Indonesia, she had a well-founded fear of future persecution if returned to Indonesia, making her eligible for asylum. *Oey v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 919, 2005 WL 752270, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's finding that alien seeking withholding of removal failed to establish clear probability of future persecution based on threatening telephone calls she received in the past regarding her active support of political party; alien tolerated the calls for years while living in her native county, never contacted the police, changed her telephone number, or disconnected her phone, caller never followed through with threats, and alien never tried to relocate within her country. *Rodriguez-Realpe v. Ashcroft*, C.A.3 2004, 115 Fed.Appx. 593, 2004 WL 2904728, Unreported, certiorari denied 126 S.Ct. 339, 163 L.Ed.2d 50. Aliens ↪ 54.1(4.1)

Applicant failed to offer sufficient objective evidence to show that he faced a reasonable possibility of future persecution on account of his actual or imputed political opinion arising from his participation in a student demonstration and in a student organization when he lived in Guatemala and, therefore, he was not a "refugee" entitled to asylum or withholding of removal. *Lima-Gonzalez v. Ashcroft*, C.A.3 2004, 106 Fed.Appx. 123, 2004 WL 1719471, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding of immigration judge (IJ) that alien failed to prove it was more likely than not that she would be subjected to persecution on account of her gender, or the political opinion imputed to her by virtue of her family's historical political affiliations, and thus alien was not entitled to withholding of removal, despite alien's alleged subjective fear of violence toward women in Guatemala and possibility of her being connected to a great uncle who was allegedly murdered quarter century earlier during civil war. *Aldana-Hernandez v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 548, 2004 WL 718920, Unreported. Aliens ↪ 53.10(3)

Guatemalan citizens failed to establish that they were entitled to withholding of removal, despite evidence that village in which they lived had been attacked nearly 20 years earlier by guerrillas and that their parents had been killed or wounded, where attacks were not motivated by villagers' or parents' political or religious beliefs, aliens had lived in United States for over 15 years, no family members had been attacked in Guatemala in recent years, and there was no evidence that aliens would be subjected to future persecution on basis of their political or religious beliefs. *Najera Mendez v. I.N.S.*, C.A.1 2004, 92 Fed.Appx. 13, 2004 WL 549806, Unreported. Aliens ↪ 53.10(3)

Evidence supported immigration judge's (IJ) finding that alien, a citizen of Guatemala, failed to establish

8 U.S.C.A. § 1101

entitlement to withholding of removal on basis that it was more likely than not that he would suffer future persecution if returned to Guatemala; although alien was mistreated in 1997 by members of guerilla organization after he left the organization, and his fear for his safety in Guatemala might be well-founded, the IJ did not err in finding that no reason or basis existed to assume that the alien would again be mistreated should he return to Guatemala some four years after the cessation of the Guatemalan civil war. *Chumil v. Ashcroft*, C.A.10 2004, 89 Fed.Appx. 164, 2004 WL 254757, Unreported. Aliens ⚡ 53.10(3)

Testimony that soldiers searched houses in alien's village for weapons and accused her of complicity with guerillas on account of friendship with her neighbors, and that after alien left for the U.S. her mother was beaten by the army and told that if alien returned the army would take her away, did not compel conclusion that alien would probably be persecuted if returned to Guatemala; alien's neighbors were not harmed and her life was not threatened, and army's treatment of alien was not on account of any imputed political opinion. *Galindo v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 244, 2003 WL 22977467, Unreported. Aliens ⚡ 53.10(3)

Alien failed to show a clear probability that he would face persecution on account of his political opinion if returned to home country to support application for withholding of removal under the Convention Against Torture; alien was not persecuted for political opinions after attempted draft into army, threats received after alien expressed opposition to army did not result in detention, injury, or harm, and evidence was presented that army was no longer engaged in forced recruitment. *Ramirez-Barrios v. Ashcroft*, C.A.8 2003, 77 Fed.Appx. 914, 2003 WL 22295779, Unreported. Aliens ⚡ 53.10(3); Treaties ⚡ 8

127. ---- Miscellaneous cases, persecution, refugee

Record fully supported immigration judge's (IJ) determination regarding ineligibility for asylum and withholding of removal by alien, a native of Libya holding Palestinian Authority (PA) passport; every piece of evidence presented by alien indicated that he and his family had been victims of circumstance, not special targets of brutality. *Majd v. Gonzales*, C.A.5 2006, 446 F.3d 590. Aliens, Immigration, And Citizenship ⚡ 54.1(4.1)

Indignities suffered by asylum applicant, who was citizen of Albania, during communist era, including loss of his land and being forced to work as farmer on government tracts, did not amount to past persecution based on his status in social group of wealthy landowners and his political opinions in opposition to communist government. *Feto v. Gonzales*, C.A.7 2006, 433 F.3d 907. Aliens ⚡ 53.10(3)

Substantial evidence did not support immigration judge's (IJ's) finding that Chinese alien failed to demonstrate that she was persecuted by Chinese authorities, in asylum proceeding; alien testified that when she was detained by authorities, her interrogator pulled her head and kept shaking her head, that she was electrocuted by a rod, and that as a result of the electrocution, she suffered from a headache, dizziness, and blurry vision, and she was paralyzed with fear. *Quan v. Gonzales*, C.A.9 2005, 428 F.3d 883. Aliens ⚡ 53.10(3)

Record supported immigration judge's (IJ's) determination, in denying Albanian alien's application for asylum, that she had failed to meet her burden of showing past political persecution, including evidence that she could have obtained documents confirming her hospital visit after allegedly being beaten by police or other medical evidence, but failed to do so. *Shkabari v. Gonzales*, C.A.6 2005, 427 F.3d 324. Aliens, Immigration, And Citizenship ⚡ 54.1(4.1)

Allegedly being forced to perform oral sex acts on high-ranking Mexican police officer who was aware of his homosexuality, and being threatened with death when this same police officer allegedly held loaded firearm to Mexican national's head, constituted "persecution" which, if shown to be on account of Mexican national's membership in protected social group, i.e., group consisting of homosexual men in Mexico, would make alien eligible for asylum. *Boer-Sedano v. Gonzales*, C.A.9 2005, 418 F.3d 1082. Aliens ⚡ 53.10(3)

8 U.S.C.A. § 1101

Anti-Roma discrimination that alien suffered as a child in Bulgaria did not amount to persecution for purposes of establishing asylum eligibility; a child's toy set on fire in alien's family's backyard and several incidents in which street toughs threw rocks through family's windows were better characterized as harassment and discrimination than persecution, neither alien nor her family suffered any harm, and there was no evidence that the government either participated in or condoned the acts of private discrimination. *Mitreva v. Gonzales*, C.A.7 2005, 417 F.3d 761, rehearing and rehearing en banc denied. Aliens ↻ 53.10(3)

Alien failed to establish that she suffered persecution by either the government of her native country or by persons or an organization that the government was unable or unwilling to control, as required to support grant of asylum; claim of persecution was based upon gang member's conduct in shooting at alien, her grandmother, and her niece, which resulted in her grandmother's death and niece's severe injury, but, there was no showing that gang member's conduct was attributable to the government, or that the police did not investigate the shooting and pursue gang member after the shooting. *Menjivar v. Gonzales*, C.A.8 2005, 416 F.3d 918, corrected. Aliens ↻ 53.10(3)

Applicant, who was Sunni Moslem born to Palestinian parents in Lebanon, failed to establish threat of persecution warranting withholding of removal, where he omitted alleged incidents of abuse or torture from his asylum application, and thus claimed for first time in his testimony that he had been shot and detained for weeks on end, and discrimination against Palestinians in Lebanon, as indicated by State Department report, did not in itself compel finding of persecution. *Sharari v. Gonzales*, C.A.1 2005, 407 F.3d 467. Aliens ↻ 54.1(4.1)

Harm that disabled Russian child experienced as result of his disability, when personnel at government hospital initially discarded him with aborted fetuses and other medical waste because he was "damaged," when, having survived this initial neglect, he was involuntarily placed in state institution with other disabled individuals who were rarely and inadequately fed, wrapped in wet, soiled linens, and deprived of medical treatment or any other human contact, when, after being released to his parents, he was denied benefits of public education or medical care, and when he was physically assaulted by members of public in incidents that Russian authorities refused to investigate, rose to level of "persecution," which, as imputed to care-giving parent, supported her application for asylum. *Tchoukhrova v. Gonzales*, C.A.9 2005, 404 F.3d 1181, rehearing and rehearing en banc denied 430 F.3d 1222, petition for certiorari filed 2006 WL 1221941. Aliens ↻ 53.10(3)

Incidents on which asylum applicant relied to establish that he was persecuted in past, which consisted solely of fact that, when he was six years old, he allegedly witnessed his father being beaten by guerrillas and of subsequent incident in which members of Guatemalan army allegedly shot innocent civilians in region of Guatemala where he lived in belief that they were assisting guerillas, did not rise to level of past "persecution" of applicant, where applicant himself was never attacked or threatened in any way. *Rodriguez-Ramirez v. Ashcroft*, C.A.1 2005, 398 F.3d 120. Aliens ↻ 53.10(3)

Incidents on which asylum applicant relied to establish that he was persecuted in past, which consisted solely of fact that, when he was six years old, he allegedly witnessed his father being beaten by guerrillas and of subsequent incident in which members of Guatemalan army allegedly shot innocent civilians in region of Guatemala where he lived in belief that they were assisting guerillas, did not rise to level of past "persecution" of applicant, where applicant himself was never attacked or threatened in any way. *Rodriguez-Ramirez v. Ashcroft*, C.A.1 2005, 398 F.3d 120. Aliens ↻ 53.10(3)

Applicant's testimony, that it was difficult for people from northern part of Ivory Coast to obtain identity documents that government required for proof of citizenship, resulting in denial of right to be free from harassment by government officials, right to vote, and right to apply for work, did not establish persecution sufficient to warrant asylum, especially since applicant had never been arrested, detained, interrogated by authorities, or convicted of any crime. *Berte v. Ashcroft*, C.A.8 2005, 396 F.3d 993, rehearing denied. Aliens ↻ 53.10(3)

Abuse suffered by alien of Gypsy ethnicity when he was jailed by Bulgarian police for 10 days, beaten every day

8 U.S.C.A. § 1101

with bags of sand, forced to perform hard labor, and refused release until he signed statement attesting that he was not harmed while in custody, was so extreme as to support finding of past persecution for purposes of asylum application. *Mihalev v. Ashcroft*, C.A.9 2004, 388 F.3d 722. Aliens ↻ 53.10(3)

Substantial evidence supported conclusion that the nexus between the harm alien suffered in four incidents and any protected ground was insufficient to establish past persecution, as required in his application for asylum; two physical confrontations with a military officer arose from a personal dispute over a debt, the robbery of alien and his wife was economically motivated, and there was no evidence that the raid on a community organization meeting by masked men, and the subsequent burning of alien's house, was politically motivated. *Romilus v. Ashcroft*, C.A.1 2004, 385 F.3d 1. Aliens ↻ 53.10(3)

Neither the heavy-handed and drawn-out nature of Romanian police officers' investigation of alien who had served in the military under deposed communist regime for his possible involvement in shooting of civilians, nor the fact that alien credibly testified regarding his innocence from any participation in shootings, was sufficient to give rise to presumption that this investigation was mere pretext to persecute alien on account of his imputed political opinion, as required to support his asylum claims, where alien failed to otherwise demonstrate that this investigation served no bona fide purpose. *Dinu v. Ashcroft*, C.A.9 2004, 372 F.3d 1041. Aliens ↻ 54.1(2)

Alien, a native and citizen of Kenya, failed to establish past persecution severe enough to warrant humanitarian asylum, even though alien was arrested for his political activity in opposition to Kenya's tea farming policies, was threatened with execution, was stripped of clothes and placed in dark cement cell, cell was flooded with cold water at irregular intervals, and alien was not allowed to eat, sleep, or contact other people while in prison. *Ngarurih v. Ashcroft*, C.A.4 2004, 371 F.3d 182. Aliens ↻ 53.10(3)

Persistent threatening or assaultive behavior directed against alien, an Israeli Muslim, and members of his fishing crew, when members of Israel's Marine corps allegedly circled rapidly around his boat and caused it to fill with water, shot bullets over boat, and sprayed pressurized water at boat and its occupants in freezing temperatures, when combined with other acts directed at his livelihood, such as purposeful destruction of his fishing nets, rose to level of "persecution," such as might support grant of asylum. *Baballah v. Ashcroft*, C.A.9 2004, 367 F.3d 1067. Aliens ↻ 53.10(3)

Alien suffered past persecution by Ethiopian soldiers, as required to establish eligibility for asylum; two soldiers raped alien, stating that "[y]ou had your time in the previous government," and rape occurred during visit by soldiers to alien's home that was part of regular program of searches to which alien's family was subjected. *Kebede v. Ashcroft*, C.A.9 2004, 366 F.3d 808. Aliens ↻ 53.10(3)

Escalating pattern of intimidation which was directed against aliens based on their familial relationship with third party, in first poisoning their dog, then vandalizing their car, and finally threatening to cut throat of one of the alien's and attempting to kidnap her daughter, was sufficiently extreme to rise to level of "persecution," such as might support grant of asylum. *Thomas v. Ashcroft*, C.A.9 2004, 359 F.3d 1169, rehearing en banc granted 382 F.3d 1154, on rehearing 409 F.3d 1177, petition for certiorari filed 2005 WL 2866185, vacated 126 S.Ct. 1613, 164 L.Ed.2d 358. Aliens ↻ 53.10(3)

Finding of Board of Immigration Appeals (BIA), that Guatemalan asylum applicant failed to establish past persecution, was supported by substantial evidence, where record showed only that, while in army, applicant was kidnaped by unknown individuals who may have been guerrillas, thrown into truck, beaten, and held captive for three hours, resulting in superficial physical harm. *Guzman v. I.N.S.*, C.A.1 2003, 327 F.3d 11. Aliens ↻ 54.1(4.1)

While alien had undoubtedly endured some harassment at hands of local Romanian police after her parents emigrated from country, in being subjected to periodic questioning and in having her home searched and some

8 U.S.C.A. § 1101

property removed, any such harassment did not rise to level of persecution of kind required to support her request for asylum, where alien was never arrested, jailed, physically assaulted or threatened and did not suffer any extreme economic deprivation, being allowed to reside in her family's two-bedroom home and live off of funds provided by her relatives in the United States. *Ciorba v. Ashcroft*, C.A.7 2003, 323 F.3d 539. Aliens 53.10(3)

Alien showed that he was unwilling or unable to return to his home country because of well founded fear of "persecution" on account of his membership in particular social group or political opinion, making him eligible for asylum and entitling him to withholding of deportation; alien was closely confronted and put in harm's way because he received multiple death threats at his home and place of business, he had been followed by and narrowly escaped four armed men trying to kill him, and he was targeted because of his membership in political party. *Ruano v. Ashcroft*, C.A.9 2002, 301 F.3d 1155. Aliens 53.10(3)

Evidence that, prior to Belarus' independence from Soviet Union, Soviet State Security Committee (KGB) questioned alien on several instances, conducted searches of his home and place of business, and on one occasion arrived at his home at 1:00 a.m. and knocked on his door for 40 minutes before leaving, all on account of his beliefs and activities as a Roman Catholic, was insufficient to establish past persecution for purposes of asylum application. *Mikhailevitch v. I.N.S.*, C.A.6 1998, 146 F.3d 384. Aliens 53.10(3)

Isolated instances of verbal harassment against individual of Jewish ancestry in Ukraine did not constitute persecution sufficient to entitle him to asylum, where individual was not subjected to any physical punishment or significant deprivation of liberty. *Harchenko v. I.N.S.*, C.A.6 2001, 22 Fed.Appx. 540, 2001 WL 1429245, Unreported. Aliens 53.10(3)

Alien, a native of China, failed to demonstrate that beating she sustained at hands of loan collectors was result of protected basis which would entitle her to asylum; there was no evidence that collectors beat alien for any reason other than that she intervened when they attempted to collect outstanding loan from her father, collectors did not harm alien's mother even though she, too, was present, undermining alien's indication that collectors sought to persecute members of her family, and alien did not offer evidence that collectors harmed any other relatives, or sought to harm them. *Shui-Xiam Ye v. U.S. Atty. Gen.*, C.A.2 2006, 2006 WL 1308668, Unreported. Aliens, Immigration, And Citizenship 535

Alien failed to establish past persecution, as required to be eligible for asylum; at her hearing, alien testified on cross-examination that she obtained medical documents from hospitals in both Mali and the United States, but she did not provide them during her immigration proceedings because the doctors "didn't see anything," and although alien claimed that the hospitals reached "inconclusive results," hospital reports nevertheless would have provided important evidence that she sought treatment and that she manifested objective symptoms such as the black spots on her limbs and fingernails, swollen extremities, and temporary blindness. *Keita v. Gonzales*, C.A.6 2006, 2006 WL 960324, Unreported. Aliens, Immigration, And Citizenship 642

Substantial evidence supported finding, in asylum proceeding, that alien was not persecuted in Bangladesh because of his opposition to the criminal activities of a gang, despite allegations that he was twice beaten by gangsters from the refugee camp where he resided, that gangsters attempted to break down the door of his residence, and that the government did nothing about the gangsters. *Ahamed v. Gonzales*, C.A.9 2006, 166 Fed.Appx. 942, 2006 WL 285967, Unreported. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding with respect to asylum applicant, a Nigerian national; a number of inconsistencies existed among applicant's statements in his asylum application, airport interview, and hearing testimony relating to purported initiation into a cult which was allegedly persecuting him, as well as events demonstrating persecution. *Ekuje v. I.N.S.*, C.A.2 2005, 150 Fed.Appx. 24, 2005 WL 2327237, Unreported. Aliens 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported immigration judge's conclusion that alien did not suffer past persecution in South Africa; incidents in which alien and his family were robbed by people who used racial epithets for persons of Indian descent, his wife was threatened, and his children were bullied at school did not rise above level of unpleasantness, harassment, and basic suffering. *Sulaman v. U.S. Attorney General*, C.A.11 2005, 147 Fed.Appx. 872, 2005 WL 2129923, Unreported. Aliens ↻ 53.10(3)

Neither ethnic slurs alien was subjected to nor robbery of jewelry store of alien's father by unknown individuals established persecution required for asylum. *Shierly v. Attorney General of the U.S.*, C.A.3 2005, 140 Fed.Appx. 434, 2005 WL 1981786, Unreported. Aliens ↻ 53.10(3)

Single incident in which unknown person battered and threatened alien's son did not establish persecution required for asylum. *Jaku v. Gonzales*, C.A.6 2005, 140 Fed.Appx. 605, 2005 WL 1901828, Unreported. Aliens ↻ 53.10(3)

Relegation of alien to traditional gender role as woman in Albania did not constitute past persecution entitling her to asylum, and thus, alien failed to show that decision of Board of Immigration Appeals (BIA) denying her asylum application would have been overturned on appeal, as required to establish entitlement to granting of untimely motion to reopen asylum proceedings on ground that ineffective assistance of counsel prevented her from filing timely appeal. *Ljucovic v. Gonzales*, C.A.6 2005, 144 Fed.Appx. 500, 2005 WL 1875470, Unreported, rehearing en banc denied, petition for certiorari filed 2006 WL 868272. Aliens ↻ 54(5)

Alien's testimony that she was struck on the back while fleeing from rioters who terrorized the area during month-long riots did not establish persecution required for withholding of removal, as rioting was lawlessness which could break out among angry people anywhere in the world. *Wati v. Gonzales*, C.A.3 2005, 140 Fed.Appx. 356, 2005 WL 1705822, Unreported. Aliens ↻ 53.10(3)

Incidents aliens testified to, including fact that alien had lost opportunity as a youth to attend school in her native language when government shut it down, that, at subsequent schools, native children harassed her by touching her body, that natives would throw stones at her house, that she had been forced to pay higher fees than natives for official papers, and that, while taking public transportation, driver of van stopped vehicle, which was otherwise carrying only natives, and ordered aliens to turn over all jewelry and items of value, did not establish persecution required for asylum. *Liong v. Gonzales*, C.A.3 2005, 140 Fed.Appx. 342, 2005 WL 1691364, Unreported. Aliens ↻ 53.10(3)

Alien's experiences with guerillas, consisting of incident in which guerillas cut him on the hand and other face-to-face interactions which alien described as "frightening," did not amount to past persecution required for asylum. *Garza-Lopez v. Gonzales*, C.A.1 2005, 139 Fed.Appx. 287, 2005 WL 1684382, Unreported. Aliens ↻ 53.10(3)

Robberies and assaults alien was allegedly the victim of over course of two years did not amount to persecution on account of ethnicity or religion, as required for asylum, but, rather, appeared to be street crimes under government temporarily out of control. *Sulimin v. Gonzales*, C.A.3 2005, 139 Fed.Appx. 448, 2005 WL 1678780, Unreported. Aliens ↻ 53.10(3)

Alien, an uncircumcised woman of Kikuyu tribe in Kenya, failed to establish past persecution and, thus, did not qualify as a refugee entitled to asylum; alien merely received threats because she was uncircumcised and there was an attack on her house, and although she described an incident in which her husband's car was pelted with rocks, her husband was not physically harmed and she failed to show that she personally suffered any violence. *Gichema v. Gonzales*, C.A.10 2005, 139 Fed.Appx. 90, 2005 WL 1566940, Unreported. Aliens ↻ 53.10(3)

Combination of job loss, vandalism, confrontation with a violent mob, harassment, detention, beatings, and threats

8 U.S.C.A. § 1101

of arrest established that harm alien was subjected to rose to level of persecution required for asylum. *Mkrtchyan v. Gonzales*, C.A.9 2005, 137 Fed.Appx. 995, 2005 WL 1541040, Unreported. Aliens ↻ 53.10(3)

Alien's testimony that he was subjected, on numerous occasions, to hostility due to his ethnicity, but did not suffer any acts of physical violence and was never detained or arrested, did not establish past persecution required for asylum. *Nasybulin v. Gonzales*, C.A.9 2005, 137 Fed.Appx. 991, 2005 WL 1541032, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported decision of immigration judge to deny humanitarian asylum to alien due to past persecution in Kenya, where violence experienced by alien by violent gangs had not been imposed by government of Kenya, government of Kenya had been attempting, and was thus willing, to control activities of violent gangs, and government succeeded in quelling that violence. *Wambugu v. Gonzales*, C.A.10 2005, 140 Fed.Appx. 7, 2005 WL 1526133, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that difficulties experienced by alien, which included denial of the continuation of her university studies and cancellation of her passport because she did not secure her husband's written permission, did not rise to the level of persecution. *Mazhari-Ravesh v. Gonzales*, C.A.9 2005, 135 Fed.Appx. 71, 2005 WL 1400311, Unreported. Aliens ↻ 53.10(3)

Alien, who was native and citizen of Hungary, failed to show she was a victim of persecution in Hungary because of her Romani or "gypsy" ethnicity, and thus, was not eligible for asylum based persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, where alien showed she was ostracized and badgered by private individuals, not the government, and although she did introduce evidence of incident in which local police refused to assist her husband who had been injured in nightclub, one incident did not amount to persecution, especially in light of evidence that government was making substantial efforts to address suffering endured by the Romani population. *Hegyí v. Gonzales*, C.A.6 2005, 136 Fed.Appx. 777, 2005 WL 1385950, Unreported, rehearing en banc denied. Aliens ↻ 53.10(3)

Alien's loss of customers, inability to secure a loan, decision to close his business for lack of customers, ostracism by friends, and receipt of threatening phone calls, all on alleged basis of his mixed marriage, constituted, at most, discrimination, not persecution required for asylum. *Ljuljdjurovic v. Gonzales*, C.A.6 2005, 132 Fed.Appx. 607, 2005 WL 1285648, Unreported. Aliens ↻ 53.10(3)

Harassment and discrimination that alien suffered while in high school did not rise to level of persecution required for asylum. *Luntungan v. Gonzales*, C.A.9 2005, 132 Fed.Appx. 152, 2005 WL 1175947, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that alleged desire of father of alien's paramour for revenge, which was premised on alien's fatal stabbing of paramour, was not persecution on account of a protected ground which would entitle alien to asylum. *Ostro v. Gonzales*, C.A.3 2005, 131 Fed.Appx. 822, 2005 WL 1162470, Unreported. Aliens ↻ 53.10(3)

Aliens' testimony detailing some discrimination against Chinese ethnics, including requirement of carrying identification documents and limitations on education and governmental employment, together with testimony regarding vandalism of their home, two robberies, and incident in which female alien was accosted and threatened, was insufficient to establish persecution required for withholding of removal. *Go v. Gonzales*, C.A.3 2005, 131 Fed.Appx. 389, 2005 WL 1140728, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that alien seeking asylum failed to establish past persecution or a well-founded persecution on account of an enumerated ground; alien testified that he belonged briefly to an organization and that they repeatedly tried to get him to rejoin after he left and that he feared his country's

8 U.S.C.A. § 1101

authorities would falsely assume he was a terrorist because he was incarcerated in the United States following increased national security measures after terrorist attacks, but there was nothing in the record to suggest that either organization at issue or authorities had raised any concern about alien or expressed an interest in harming him. *Ahmed v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 883, 2005 WL 1122295, Unreported. Aliens ↻ 54.1(4.1)

Past persecution criterion was satisfied, in alien homosexual's asylum application, where police in alien's country of origin had detained him after seeing him leave gay bar, had asked if he was gay, had beaten him severely, and had threatened that they knew where he lived and would harm his family should he report them. *Pena-Torres v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 628, 2005 WL 943706, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that three incidents of street violence which alien was subjected to, one involving skinheads, one involving persons gathered outside a church alien was passing by, and one involving friends of a loan shark seeking repayment, did not rise to level of persecution required for asylum. *Awaadeh v. Gonzales*, C.A.3 2005, 126 Fed.Appx. 577, 2005 WL 900236, Unreported. Aliens ↻ 54.1(4.1)

Alien's experiences of being teased as a child and assaulted for money in high school did not rise to level of persecution on account of an enumerated ground which would entitle him to asylum. *Mualim v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 329, 2005 WL 79093, Unreported. Aliens ↻ 53.10(3)

Asylum applicant did not suffer past persecution, and thus was not entitled to presumption that her fear of future persecution was well founded, where she was never arrested or harmed, and after incidents she was able to attend school and obtain travel documents. *Njoh v. Ashcroft*, C.A.8 2005, 119 Fed.Appx. 838, 2005 WL 53310, Unreported. Aliens ↻ 54.1(2)

Alien's testimony at asylum proceeding that, while serving as active-duty police officer, he was wounded when guerrillas attacked a bank he was guarding and that, after identifying one suspect in court, he received several calls which never escalated into actual confrontations or physical injury to himself or others did not establish persecution on account of enumerated ground. *Martinez Izaguirre v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 392, 2004 WL 2903622, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) denial of withholding of removal because aliens failed to demonstrate that it was more likely than not that they would be subject to persecution if removed to Indonesia; events, including being demoted, receiving threats, and having rocks thrown at their house, did not compel finding of past persecution, and there was not clear probability of persecution on account of political opinion because alien no longer participated in political activities and no longer wanted to participate in such activities. *Yusuf v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 219, 2004 WL 2860104, Unreported. Aliens ↻ 53.10(3)

Incidents during which alien was assaulted and injured twice, one of which was serious and required medical attention, together with death threats alien was subjected to, cumulatively constituted past persecution for purposes of asylum. *Singh v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 837, 2004 WL 2668583, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that attacks and threatening notes described by alien did not rise to level of persecution required for asylum; according to alien, she and other political and religious parade participants were hit multiple times at one or more parades with small sticks and fists, but alien did not testify to a need for medical treatment, and she testified that she participated in as many as seven other parades over a two-year period without incident, and with respect to notes, alien testified that she did not receive any threats after certain year. *Naik v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 124, 2004 WL 2416049, Unreported. Aliens ↻ 54.1(4.1)

Armed confrontation between alien's family and squatters on their land did not constitute persecution, so as to entitle alien to asylum. *Gjoka v. Ashcroft*, C.A.6 2004, 112 Fed.Appx. 425, 2004 WL 2316650, Unreported.

8 U.S.C.A. § 1101

Aliens ↪ 53.10(3)

Alien established government sanction of his persecution, as required for asylum; alien, his sister, and his mother experienced brutality at the hands of police directly, and police failed to investigate when alien and his family were attacked by ultra-nationalist private citizens. *Conchev v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 940, 2004 WL 2203867, Unreported. Aliens ↪ 53.10(3)

Alien from Jordan failed to prove that generalized statements to the effect that she "should pay a price" and "should be taught a lesson," in a context where some women who did not wear the hijab had acid thrown on them or were cut with blades, supported a 50% probability of actual physical harm, so as to warrant withholding of deportation. *Zaza v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 640, 2004 WL 1987310, Unreported. Aliens ↪ 53.10(3)

Alien's repeated beatings, detentions, and electric shocks by police amounted to past persecution required for asylum. *Bah v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 810, 2004 WL 1922153, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's determination at asylum proceeding that alien failed to prove persecution; alien suffered no harm from her government while living in her native country, did not establish that the government sought to punish her for her failure to support the country's independence, and never joined a political group opposing independence or took any affirmative action against independence, but merely failed to vote in referendum along with tens of thousands of others. *Weldehiwet v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 50, 2004 WL 1869644, Unreported. Aliens ↪ 54.1(4.1)

Childhood incidents alien described, as well as discrimination and threats of physical violence alien and his family experienced, did not amount to persecution which would establish alien's eligibility for asylum, as neither alien nor his family suffered any physical harm as a result of incidents. *Prajogo v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 120, 2004 WL 1869469, Unreported. Aliens ↪ 53.10(3)

Routine harassment, confrontational literature, and employment discrimination endured by alien and her family did not establish past persecution entitling alien to asylum. *Gerchikova v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 87, 2004 WL 1869291, Unreported. Aliens ↪ 53.10(3)

Government's act of not renewing alien's export license and putting a lien on his home did not rise to level of persecution required for asylum, as government's motives might have been legally legitimate. *Khaligh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 133, 2004 WL 1859826, Unreported, vacated 141 Fed.Appx. 684, 2005 WL 2030560. Aliens ↪ 53.10(3)

Treatment alien received at university and his questioning on two occasions by police, without being arrested or physically mistreated, did not rise to level of persecution required for asylum. *Ujkic v. Ashcroft*, C.A.6 2004, 107 Fed.Appx. 560, 2004 WL 1859585, Unreported. Aliens ↪ 53.10(3)

Letter informing alien that Iranian officials had attempted to locate him in Chile did not establish past persecution or well-founded fear of persecution supporting claim for asylum from Chile, where alien was found to have been firmly resettled from native Iran before arriving in United States, given alien's failure to explain what harm he feared from being located by Iranian government in Chile, or why Chilean officials who granted him asylum would not protect him from danger he feared from being located by Iranian government. *Navidi-Masouleh v. Ashcroft*, C.A.10 2004, 107 Fed.Appx. 856, 2004 WL 1834642, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's conclusion that alien's beating by various men did not amount to past persecution which would entitle him to asylum; there was no evidence that compelled conclusion that the men who attacked alien were individuals his country's government was "unwilling or unable to control," nor was there

8 U.S.C.A. § 1101

evidence that compelled conclusion that alien was beaten "on account of" his affiliation with political organization. *Farook v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 107, 2004 WL 1663267, Unreported. Aliens ↪ 53.10(3)

Alien failed to establish that she suffered past persecution, as required for asylum eligibility; alien claimed she was assaulted by rebels near her hometown, that documents were stolen from her, including her identification papers, and that she was told to "leave the country," but alien did not allege that she was physically harmed, and although alien claimed she was further persecuted during later period when she received three unsigned threatening letters telling her to leave the country or "they" would "come after her," there was no nexus between threats and earlier assault, since alien claimed she did not know who the men who robbed her were, why they robbed her, or why they wanted her to leave the country. *Rosales Gonzalez v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 69, 2004 WL 1613569, Unreported. Aliens ↪ 53.10(3)

Board of Immigration Appeals (BIA) did not err, in asylum proceeding, in rejecting alien's claims of past persecution and a well-founded fear of future persecution; attacks on alien's youth group did not rise to level of past persecution, and the attacks and threats did not demonstrate a well-founded fear of future persecution inasmuch as they were the result of alien's participation in a youth group which no longer existed. *Sauveur v. Ashcroft*, C.A.10 2004, 108 Fed.Appx. 557, 2004 WL 1529243, Unreported. Aliens ↪ 53.10(3)

Finding of past persecution was not compelled, as would warrant reversal of Immigration Judge's denial of alien's claim for asylum; alien suffered no physical harm during two incidents in Indonesia on which her claim was predicated, nor was she detained as result of either incident, and in midst of infamous riots in Indonesia, worst treatment alien suffered was having two Indonesian men pound on her car windows. *Widjaja v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 665, 2004 WL 1197252, Unreported. Aliens ↪ 54.1(4.1)

Gang members' conduct in circling young Albanian woman in cars and calling her home and suggesting that she could "make money elsewhere" did not rise to level of persecution, as opposed to mere harassment, and thus, immigration judge properly denied asylum to woman, despite her claims that gang allegedly attempted to kidnap her for purpose of forcing her into prostitution in another country, where woman did not seek police protection, nor did she belong to a protectable social group that was defined by a political or religious belief. *Lleshanaku v. Ashcroft*, C.A.7 2004, 100 Fed.Appx. 546, 2004 WL 1088251, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported denial of alien's application for asylum; the single beating of alien by drunken students was insufficient to show past persecution on account of his ethnicity, anonymous telephone threats could not be linked to any person or group or to alien's ethnicity and the threats were not fulfilled, and the firing of alien's wife and a beating of his son at school did not compel a finding of persecution. *Makarov v. Ashcroft*, C.A.8 2004, 95 Fed.Appx. 841, 2004 WL 540270, Unreported. Aliens ↪ 53.10(3)

Alien's claims of being hit on the shoulder and having his dishes broken were insufficient to demonstrate the kind of past persecution that would entitle him to asylum. *Shi v. Ashcroft*, C.A.2 (N.Y.) 2004, 91 Fed.Appx. 187, 2004 WL 392953, Unreported. Aliens ↪ 53.10(3)

Neither telephone calls to alien, which inquired about places he had worked, nor threatening calls to alien's wife compelled a conclusion of past persecution required for asylum. *Rivera-Fiorentini v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 41, 2004 WL 326387, Unreported. Aliens ↪ 53.10(3)

Assault on alien in a taxi by unknown assailants did not compel conclusion that alien suffered past persecution on account of protected ground rather than for a desire for information about his work, as required for asylum claim. *Rivera-Fiorentini v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 41, 2004 WL 326387, Unreported. Aliens ↪ 53.10(3)

Aliens, who were husband and wife, failed to show past persecution or well-founded fear of future persecution in their native country based on political opinion, membership in social group, or other protected grounds, and thus,

8 U.S.C.A. § 1101

were not entitled to grant of asylum, based upon fact that one lost his job because of his labor union activities, their three-week eviction from apartment formerly owned by government, or their belief that their children would be kidnapped if they returned to native country;. *Busho v. I.N.S.*, C.A.6 2004, 86 Fed.Appx. 952, 2004 WL 237429, Unreported. Aliens ↻ 53.10(3)

Alien failed to establish that he was subjected to past persecution or had an objectively reasonable fear of future persecution if returned to home country of Cambodia, as required to support his application for asylum; although alien was transferred from one job to another and heard a rumor that his life was in danger, alien was not fired, alien continued to receive same pay in new position, and alien offered nothing more than rumor to support his claim that his life was in danger. *Kham v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 648, 2004 WL 193252, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported determination, in asylum proceeding, that alien failed to show past persecution; alien did not claim she was mistreated and did not establish that alleged persecution of her relatives was closely tied to her. *Rabadi v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 816, 2003 WL 22977108, Unreported. Aliens ↻ 54.1(4.1)

Alien seeking asylum suffered severe past persecution that rendered him eligible for asylum under the humanitarian exception; uncontroverted record documented his severe past persecution, including severe beatings and death threats, on the basis of, inter alia, his refusal to participate in genocide, his ethnic identity as a Croatian, his attributed religious beliefs as a Catholic, and his actual and attributed political beliefs. *Feresin v. Ashcroft*, C.A.9 2003, 83 Fed.Appx. 904, 2003 WL 22954293, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that alien, a citizen of the Republic of Georgia, was not subjected to persecution by narco-traffickers and Georgian nationalists; mistreatment in form of phone threats, poisoning of her dog, robbery, and inducement of the premature delivery of her baby, did not amount to persecution, and there was no evidence that her tormentors were motivated by her membership in a protected group. *Grigorian v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 809, 2003 WL 22954204, Unreported. Aliens ↻ 53.10(3)

Aliens who testified they would be persecuted if returned to Lithuania because of having been in the U.S., and because they would be considered to have a considerable amount of money, failed to establish that such persecution would be based on a protected ground, and that the harm they feared was more likely than not to occur, and therefore aliens were not entitled to withholding of removal. *Putauskas v. Ashcroft*, C.A.10 2003, 80 Fed.Appx. 645, 2003 WL 22520839, Unreported. Aliens ↻ 53.10(3); Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that, although alien suffered some mistreatment, it did not rise to level of persecution. *Onwuegbuzie v. Ashcroft*, C.A.5 2003, 80 Fed.Appx. 904, 2003 WL 22513565, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' determination that alien did not establish that he suffered from past persecution, where alien was never detained, interrogated, or harmed by the police, and, although his father received threats on his behalf, alien was never directly threatened by anyone. *Sandhu v. I.N.S.*, C.A.9 2003, 79 Fed.Appx. 288, 2003 WL 22434768, Unreported. Aliens ↻ 53.10(3)

Board of Immigration Appeals' (BIA) determination that Guatemalan union official and his family had not demonstrated persecution, and thus were not entitled to asylum, was not supported by record; aliens' uncontroverted testimony indicated that official, his wife, and his brother-in-law were attacked and threatened on three separate occasions, family's home was destroyed, and they regularly received threatening phone calls and witnessed suspicious cars driving by their home, and State Department report indicated that claims of mistreatment by labor union members and leaders were frequently received. *Montenegro v. Ashcroft*, C.A.3 2003, 68 Fed.Appx. 290, 2003 WL 21357248, Unreported. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Encounters between unidentified men and alien's family members at family's home in Philippines did not constitute past persecution, for asylum purposes, where men did not physically harm or threaten family, and alien was living in United States at time of encounter. *Almado v. I.N.S.*, C.A.9 2003, 66 Fed.Appx. 723, 2003 WL 21267451, Unreported. Aliens ↪ 53.10(3)

Alien's single conversation with two men who identified themselves as military police seeking information about alien's employer, and subsequent vague and unfulfilled threats against alien and his family, failed to establish that alien, a native of Guatemala, was a victim of past persecution, for purposes of his application for asylum. *Maldonado de Leon v. Ashcroft*, C.A.9 2003, 65 Fed.Appx. 155, 2003 WL 21153474, Unreported. Aliens ↪ 53.10(3)

Alien's confinement by the Pakistan government did not support his claim of persecution by the government of Bangladesh for purposes of alien's eligibility for asylum. *Atique v. Ashcroft*, C.A.3 2003, 66 Fed.Appx. 344, 2003 WL 1961208, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported determination that alien did not suffer past persecution, as required in his application for asylum; alien was never arrested or harmed by government officials or anyone else while living in his homeland, he received no direct threats from anyone, but only heard through others that police were looking for him, he lived elsewhere in the country for nine months following his friends' arrest, and he returned to his home town for a period after having left the country. *Bamory v. Ashcroft*, C.A.3 2003, 65 Fed.Appx. 768, 2003 WL 1827094, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination that alien, a Russian citizen, was not a victim of past persecution on account of his political opinion, ethnicity, or membership in a particular social group, as required in his application for asylum; alien was attacked by anti-Semitic organization because they believed he possessed a criminally inculpatory videotape, and organization was not aware that alien was Jewish and did not target him because of his status as a journalist. *Bortnikov v. I.N.S.*, C.A.9 2003, 63 Fed.Appx. 287, 2003 WL 1793389, Unreported. Aliens ↪ 54.1(4.1)

Finding of immigration judge (IJ), that asylum applicant's alleged first three incarcerations in Ugandan military compound, allegedly following his refusal to obey order to rape 15-year-old girl while he was member of Internal Security Organization (ISO), did not constitute past persecution, was supported by substantial evidence, including evidence that his punishment was no more severe than that of other ISO members viewed as insubordinate, and that he remained in Uganda for two years after fourth incarceration without incident. *Mwesige v. Ashcroft*, C.A.7 2003, 59 Fed.Appx. 888, 2003 WL 1120154, Unreported. Aliens ↪ 54.1(4.1)

Guatemalan asylum applicant was not subjected to past persecution, where, unlike his murdered brother and missing father, he was not in Guatemalan civil patrol and was never harmed, and he testified that he never "personally" was threatened by military. *Hernandez-Perez v. Ashcroft*, C.A.9 2003, 55 Fed.Appx. 426, 2003 WL 117995, Unreported. Aliens ↪ 53.10(3)

Even if alien's house was burned on one occasion when she was a child, and even if she received threats over the years about her father, that did not amount to "past persecution" within meaning of regulations on establishing whether alien had objective, well-founded fear of future persecution based on past persecution, and thus her asylum application was properly denied, where alien had remained in Mexico for years after the fire without harm, her mother and sister still remained there apparently without harm, and her mother had been employed in her father's old job, in the same city where alien grew up, since his departure. *Saldivar-Lopez v. I.N.S.*, C.A.9 2002, 54 Fed.Appx. 893, 2002 WL 31890939, Unreported. Aliens ↪ 53.10(3)

Evidence, that Chinese teacher never suffered any physical punishment, harm, or significant deprivation of liberty as result of allegedly being accused of being sympathetic to 1989 pro-democracy demonstrators, even though he

8 U.S.C.A. § 1101

was denied allegedly deserved promotion, given a disciplinary warning, and later advised to report to education office to "receive investigation," supported finding that teacher was not victim of past persecution so as to qualify for asylum. *Ni v. I.N.S.*, C.A.6 2002, 54 Fed.Appx. 212, 2002 WL 31890910, Unreported. Aliens 53.10(3)

128. Governmental persecution, refugee

Substantial evidence did not support conclusion that the invasion of alien's home was not perpetrated by the government of Cote d'Ivoire, as required to establish the requisite governmental nexus in asylum proceeding; alien testified that his children told him that the home invasion was perpetrated by men in military uniforms with guns, and those men abducted alien's wife, questioned her about his whereabouts, and made statements about northerners. *Toure v. Attorney General of U.S.*, C.A.3 2006, 443 F.3d 310. Aliens, Immigration, And Citizenship 54.1(4.1)

Applicants for withholding of removal under the Convention Against Torture (CAT) failed to establish a connection between private creditor to whom they owned debt and Honduran government, as required to establish that any actions taken by creditor would be with the acquiescence of the Honduran government, and thus applicants were not entitled to relief under CAT. *Cruz-Funez v. Gonzales*, C.A.10 2005, 406 F.3d 1187. Aliens 53.10(3); Treaties 8

Substantial evidence supported immigration judge's determination that Kenyan government was not responsible for harassment suffered by alien, as required to establish past persecution for purposes of asylum eligibility; although alien asserted that she believed the men who harassed her, followed her, and invaded her home were affiliated with government because they wore either camouflage uniforms and blue shirts like policemen sometimes wore, or black and red shirts like members of government sometimes wore, and because they mentioned her political activities, the men did not identify themselves as being connected to government in any way. *Mbugua v. Gonzales*, C.A.2 2006, 2006 WL 1228879, Unreported. Aliens, Immigration, And Citizenship 642

Substantial evidence supported IJ's finding at asylum proceeding that incidents of violence against alien, a native and citizen of Russia, were committed by criminals, and thus not with acquiescence of government. *Filippov v. Gonzales*, C.A.2 2006, 2006 WL 1071084, Unreported. Aliens, Immigration, And Citizenship 542

Substantial evidence supported immigration judge's (IJ) determination that Pakistani applicant failed to establish eligibility for asylum and withholding of removal; even if incidents described by applicant rose to level of persecution, record, including applicant's acknowledged that police successfully intervened to prevent his being abducted during a wedding ceremony, did not compel conclusion that Pakistani government was unable or unwilling to control the persecutors. *Qureshi v. Gonzales*, C.A.9 2006, 2006 WL 1041698, Unreported. Aliens, Immigration, And Citizenship 642

Alien failed to demonstrate that harm she suffered in Indonesia was committed by government or by forces government was unable or unwilling to control, as required to show persecution, for purposes of asylum eligibility; incidents in which alien was assaulted and threatened with rape on a bus and on the street, and in which neighbors had thrown stones and excrement at her family's home, were perpetrated by private citizens, with no apparent government association, and nothing in record demonstrated conclusively that such abuses were so pervasive in Indonesia that officials could be presumed to approve of them. *Wijaya v. Attorney General of U.S.*, C.A.3 2006, 172 Fed.Appx. 411, 2006 WL 467972, Unreported. Aliens, Immigration, And Citizenship 542

Substantial evidence supported immigration judge's determination that alien, a native and citizen of China, failed to establish past persecution, or a well-founded fear of future persecution, as required for asylum claim; alien failed to demonstrate that the Chinese Government had any interest in her or that Government officials were involved in any alleged persecution. *Lin v. I.N.S.*, C.A.2 2005, 151 Fed.Appx. 68, 2005 WL 2650051, Unreported. Aliens 53.10(3)

8 U.S.C.A. § 1101

Alien did not establish that individuals of her religion or ethnicity were subjected to systematic government-sanctioned mistreatment, as required to demonstrate pattern or practice of persecution for purposes of withholding of removal. *Lu v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 166, 2005 WL 89382, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's determination that alien and family did not qualify for asylum due to failure to demonstrate nexus between alleged persecution and government; the Columbian government had arrested and prosecuted members of the gang that had threatened aliens. *Esquivel v. Ashcroft*, C.A.7 2004, 105 Fed.Appx. 99, 2004 WL 1662301, Unreported. Aliens ↪ 54.1(4.1)

Alien did not suffer past persecution, as required in his application for asylum, even though repeated beatings by members of a political party in power could constitute persecution; beatings were not shown to have occurred under government sanction, alien was not deprived of medical care by government hospital's refusal to treat him, on basis of police failure to file a report, inasmuch as he obtained treatment at a private clinic, and alien's arrest resulted from his disobedience of police orders and he was not mistreated by police. *Mohammad v. Ashcroft*, C.A.5 2004, 90 Fed.Appx. 746, 2004 WL 315179, Unreported. Aliens ↪ 53.10(3)

129. Singling out, refugee

Determination of Immigration Judge (IJ), that incident in which Israeli soldiers entered asylum applicant's home in Gaza Strip in 1967, and shot at him as he fled, along with ensuing encounters between Israeli forces and applicant's family, did not constitute "persecution" for purposes of asylum, was supported by substantial evidence, where neither applicant nor his parents were arrested, detained, abused, or physically harmed, and where war had broken out, such that threat of injury or harm affected entire population in Gaza. *Al-Fara v. Gonzales*, C.A.3 2005, 404 F.3d 733. Aliens ↪ 53.10(3)

Asylum applicant failed to prove a well-founded fear of persecution based on her Amhara ethnicity or political opinion since she did not demonstrate that she would be singled out personally for persecution in Ethiopia, or that she had a reasonable fear of persecution because of her membership in a group subject to a pattern or practice of persecution. *Woldemeskel v. I.N.S.*, C.A.10 2001, 257 F.3d 1185, amended on denial of rehearing. Aliens ↪ 53.10(3)

Evidence did not compel finding that alien suffered persecution in Fiji on account of her Indian origin or Hindu faith that would entitle her to asylum; ethnic Fijians' alleged acts of throwing rocks at her house and stealing her property were not severe, alien did not leave Fiji until five years after coup which established regime favoring ethnic Fijians, and alleged destruction of alien's temple was not directed toward her individually. *Singh v. I.N.S.*, C.A.9 1998, 134 F.3d 962. Aliens ↪ 53.10(3)

Alien's knowledge of random violence by government does not support a claim of political persecution sufficient to support asylum under immigration law. *Rodriguez-Rivera v. U.S. Dept. of Immigration and Naturalization*, C.A.9 1988, 848 F.2d 998. Aliens ↪ 53.10(3)

Alien, who was genuinely afraid to return to El Salvador but who had not been individually threatened because of his political opinions and who failed to indicate that his situation would be any different from the dangers faced by other Salvadorians, was not entitled to asylum since he failed to establish a well-founded fear of persecution. *Vides-Vides v. I.N.S.*, C.A.9 1986, 783 F.2d 1463. Aliens ↪ 53.10(3)

Citizen of Peoples Republic of China could not make out valid claim for asylum by contending that current government of that country was generally repressive, or by merely contending that he disagreed with particular policy; rather, citizen had to show that he feared persecution stemming from one of five categories of persecution enumerated in Immigration and Nationality Act, and had to further show that he feared particularized persecution

8 U.S.C.A. § 1101

directed at him personally on basis of his race, religion, nationality, membership in social group, or political opinion. *Guo Chun Di v. Carroll*, E.D.Va.1994, 842 F.Supp. 858, reversed 66 F.3d 315.

Even if ethnic Tamil's forced evacuation from her Sri Lanka village constituted persecution, such past persecution did not warrant finding that Tamil was refugee entitled to asylum where it appeared that only reason for evacuation of village was that military forces had elected to have battle there; evacuation, and thus persecution, was not based on membership in particular group or category. *Subramaniam v. District Director, U.S. I.N.S., Denver, Colo.*, D.Colo.1989, 724 F.Supp. 799.

Substantial evidence supported IJ's finding that alien did not establish a personal connection to general persecution suffered by individuals of her ethnicity in her native country, as required to show entitlement to withholding of removal; alien testified to some harassment of her family, but also testified that she remained in her country without incident until 18 years later. *Ng v. Gonzales*, C.A.9 2005, 121 Fed.Appx. 785, 2005 WL 375737, Unreported. Aliens ↻ 54.1(4.1)

Destruction of office building in which alien, a citizen of Indonesia of Chinese ethnicity, had his office did not constitute persecution of him, within the meaning of the Immigration and Nationality Act (INA), even though there was evidence that building may have been destroyed because it was owned by a Chinese bank, where all persons who rented office space in building were affected, whether or not they were Chinese. *Chi v. Ashcroft*, C.A.3 2004, 102 Fed.Appx. 766, 2004 WL 1530499, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's conclusion that alien did not suffer past persecution on account of her ethnicity or religion in Indonesia, as required to establish eligibility for asylum, where alien was not harmed in Indonesia, and aside from a threat from an employee, alien did not point to any act of persecution that targeted her as an individual. *Sundiman v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 696, 2004 WL 1379911, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported conclusion that alien, a citizen of the Philippines, had not suffered past persecution, as required in his request for asylum, on basis of alleged harassment by New People's Army (NPA) on account of his military service and religious activities; harassment was limited to vague and sporadic threats, which did not rise to the level of persecution, and alleged attacks on his military unit were not shown to be motivated by an effort to single him out for his opinions. *Mamalyan v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 657, 2003 WL 21751836, Unreported. Aliens ↻ 54.1(4.1)

130. Arson, refugee

Arson of alien's house in Ethiopia, in which he nearly died, due to fact that his family was Amharic and his father a high-ranking member of a recently ousted political party, was severe enough action to constitute persecution, warranting remand of his denied application for asylum. *Anbessie v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 855, 2003 WL 23098101, Unreported. Aliens ↻ 53.10(3); Aliens ↻ 54.3(6)

131. Coercive population control, refugee--Generally

Determination by the Board of Immigration Appeals (BIA), that the intrusive and painful gynecological examination that 18-year-old Chinese national was required to undergo as part of Mainland China's population control policies when male doctor allegedly squeezed her nipples and touched her vagina with his ungloved hand, did not rise to extreme level of "persecution," such as was required to support her asylum claim, was supported by substantial evidence. *Huang v. U.S. Atty. Gen.*, C.A.11 2005, 429 F.3d 1002. Aliens ↻ 53.10(3)

Chinese national's testimony regarding persecution to which he and his wife were allegedly exposed under China's "one family, one child" policy, when intrauterine device was forcibly inserted in wife following birth of their first

8 U.S.C.A. § 1101

child and when wife, when she again became pregnant after having this device removed, was allegedly forced to undergo abortion, was not too vague to support asylum claim; alien's testimony, while spare, was specific and detailed enough to support essential elements of claim, and if immigration judge or government had any concerns that testimony was fabricated, they should have probed for incidental details. *Chen v. U.S. Dept. of Justice*, C.A.2 2005, 426 F.3d 104. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Asylum applicant, who was Chinese citizen, failed to establish that he had a well-founded fear of future persecution or forced sterilization under China's coercive population control program if returned to China based on fact that he fathered two children while away from China; Fugian had a relatively lax family-planning policy, a second child was often permitted if first child was daughter, applicant's first child was daughter, and country conditions report stated that China's family planning regime did not apply with equal force to births abroad, and, at worse, couples returning to China with more children than they would have been permitted at home were given modest fines. *Huang v. U.S. I.N.S., C.A.2 (N.Y.)* 2005, 421 F.3d 125. Aliens ↻ 53.10(3)

Fine that asylum applicant was forced to pay when she gave birth to her second child did not amount to persecution for failure to follow China's official policy concerning child birth. *Yang v. U.S. Atty. Gen.*, C.A.11 2005, 418 F.3d 1198. Aliens ↻ 53.10(3)

Alien was not entitled to asylum on basis of his mother's alleged forcible sterilization under Chinese family planning policies; mother's victimization did not sufficiently encroach on alien's procreative rights to establish that alien himself was subjected to persecution. *Chen v. U.S. Dept. of Justice*, C.A.2 2005, 417 F.3d 303. Aliens ↻ 53.10(3)

Parents-in-law did not clearly evince opposition to China's coercive family planning policy and did not suffer persecution related to fact that daughters-in-law were subjected to coercive family planning policy, and thus parents-in-law were not eligible for asylum; although father-in-law lost job because of son and daughter-in-law's resistance to policy, evidence did not establish that he was barred from getting another position, mother-in-law was only detained briefly when daughter-in-law did not report to family planning officials, mother-in-law was not mistreated while in custody, parents-in-law had been away from China for 12 years, and daughter-in-law resided in United States. *Yuan v. U.S. Dept. of Justice*, C.A.2 2005, 416 F.3d 192. Aliens ↻ 53.10(3)

Even assuming, arguendo, that individual immigration judge (IJ) decisions construing the Immigration and Naturalization Act (INA) and summarily affirmed by the Board of Immigration Appeals (BIA) generally may be entitled to *Skidmore* deference, IJ decisions denying applications for immigration relief filed by Chinese citizens who sought asylum in connection with the persecution of their respective girlfriends and fiancée by China's coercive family planning policies did not possess any persuasive power; because the BIA failed to articulate a reasoned basis for its earlier decision establishing per se asylum eligibility for spouses of those subjected to coercive family planning policies, the IJs could not possibly advance principled, let alone persuasive, reasons to distinguish between, on the one hand, the BIA's decision to create spousal eligibility under the subject statute, and, on the other hand, the eligibility of boyfriends and fiancées under that same provision. *Lin v. U.S. Dept. of Justice*, C.A.2 2005, 416 F.3d 184. Aliens ↻ 54.3(4)

Even assuming that persecution directed at Chinese national for allegedly attempting to expose infanticide being practiced in Chinese hospital as means of implementing China's coercive population control policies was not persecution for "other resistance" to such policies, within meaning of provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) making victims of such persecution automatically eligible for grant of asylum, Chinese national's allegations of detention and physical abuse for exposing and criticizing this government practice would, if credible, be encompassed in more general asylum protections for those who have been persecuted on account of political opinion, and would render Chinese national eligible for asylum on that basis. *Cao v. Attorney General of U.S.*, C.A.3 2005, 407 F.3d 146. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Testimony of Chinese national that, while working as pediatrician at hospital in China, she had discovered that it was hospital's practice, as means of implementing China's population control policies, to allegedly kill newborn babies by injecting them with alcohol if their parents did not have necessary permits, and that she had been persecuted by government for attempting to expose this practice to news media, would establish, if credible, that she had been persecuted for "other resistance" to China's coercive population control program, within meaning of provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) making her automatically eligible for grant of asylum. *Cao v. Attorney General of U.S.*, C.A.3 2005, 407 F.3d 146. Aliens ↻ 53.10(3)

Imposition of fine by Chinese government for having a child without obtaining a marriage certificate did not amount to past persecution, as required to support asylum application, even though fine amounted to more than one year's wages for asylum applicant's family, where applicant was given substantial period of time to repay fine and applicant was willing to incur debt of a substantial higher amount to smugglers who brought her to United States. *Li v. Gonzales*, C.A.4 2005, 405 F.3d 171. Aliens ↻ 53.10(3)

Determination by Board of Immigration Appeals (BIA) that Chinese government's single act of insertion of intrauterine contraceptive device (IUD) into asylum applicant to prevent further pregnancy after birth of child without marriage certificate did not amount to past persecution, as required to support application, was not manifestly contrary to law, where applicant did not allege force, physical abuse, or other circumstances related to the insertion. *Li v. Gonzales*, C.A.4 2005, 405 F.3d 171. Aliens ↻ 53.10(3)

Imposition of fine by Chinese government for having a child without obtaining a marriage certificate did not amount to past persecution, as required to support asylum application, even though fine amounted to more than one year's wages for asylum applicant's family, where applicant was given substantial period of time to repay fine and applicant was willing to incur debt of a substantial higher amount to smugglers who brought her to United States. *Li v. Gonzales*, C.A.4 2005, 405 F.3d 171. Aliens ↻ 53.10(3)

Harm experienced by asylum applicant in China, as result of his parents' violation of one-child policy, including destruction of family's home, resulting in its relocation to inferior home, and applicant's subsequent separation from his parents, did not constitute past persecution, where applicant was not arrested, detained, fined, or deprived of opportunity to attend school. *Wang v. Gonzales*, C.A.3 2005, 405 F.3d 134. Aliens ↻ 53.10(3)

Substantial evidence supported adverse credibility finding in asylum case of Chinese alien who claimed that his wife had been forced to undergo abortion; alien's hearing testimony differed substantially from his asylum application and from his first asylum interview, in which he did not mention that wife was forced to have abortion. *Gao v. U.S. Atty. Gen.*, C.A.2 2005, 400 F.3d 963. Aliens ↻ 54.1(4.1)

Unfulfilled threats of physical mistreatment, detention or sterilization allegedly directed at asylum applicant, following birth of his fourth child in violation of Mainland China's population control policies, were not sufficiently imminent or concrete for these threats themselves to be considered past "persecution," such as might entitle applicant to presumption of well-grounded fear of future persecution, where neither applicant nor any of his family members were actually imprisoned, beaten, sterilized or otherwise physically harmed. *Li v. Attorney General of U.S.*, C.A.3 2005, 400 F.3d 157. Aliens ↻ 53.10(3); Aliens ↻ 54.1(2)

Alien who has been injured as result of involuntary sterilization performed in accordance with country's coercive population control policy, whether that injury is in nature of direct harm from sterilization performed on alien or indirect harm from sterilization performed on alien's spouse, is thereby entitled, without more, to withholding of removal; in light of permanent and continuing nature of harm inflicted by such involuntary sterilizations, persecution is ongoing, and it is impossible for government to rebut showing of such persecution with evidence that country conditions have changed or that it is possible for alien to relocate. *Qu v. Gonzales*, C.A.9 2005, 399 F.3d 1195. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Decision of Board of Immigration Appeals (BIA), that Chinese asylum applicant was not "forced to abort a pregnancy," so as to be persecuted on account of political opinion within meaning of asylum statute, was supported by substantial evidence, even though Chinese officials pressured her regarding sterilization, and she obtained abortion at five-month gestation period because she feared forced late-term abortion, forced sterilization, and death of her child upon birth, where officials did not know she was pregnant, and thus never pressured her to have particular abortion at issue. *Lau May Sui v. Ashcroft*, C.A.8 2005, 395 F.3d 863. Aliens ⚡ 53.10(3)

Decision of Board of Immigration Appeals (BIA), that Chinese asylum applicant failed to establish well-founded fear of future persecution based on involuntary sterilization or resistance thereto, was supported by substantial evidence, even though she signed documents to meet Chinese officials' demand that she be sterilized, where she was never actually required to report for sterilization even after having her third child, and she was now over 45 years old, divorced, and single. *Lau May Sui v. Ashcroft*, C.A.8 2005, 395 F.3d 863. Aliens ⚡ 54.1(4.1)

"Forced to abort a pregnancy," as used in statute stating that person who has been forced to abort pregnancy is "refugee" for asylum purposes, required asylum applicant to show that Chinese officials used some sort of physical force or undue pressure with intent to cause, and which did cause, the particular abortion in question. *Lau May Sui v. Ashcroft*, C.A.8 2005, 395 F.3d 863. Aliens ⚡ 53.10(3)

Term "forced," as used in subsection of the Immigration and Nationality Act making eligible for asylum aliens who have been forced to abort pregnancy or to undergo involuntary sterilization, does not require evidence of physical restraint; rather, "forced" is much broader concept, which includes compelling, obliging, or constraining by mental, moral, or circumstantial means, in addition to physical restraint. *Ding v. Ashcroft*, C.A.9 2004, 387 F.3d 1131. Aliens ⚡ 53.10(3)

In asylum proceedings, immigration judge's (IJ) adverse credibility determination, concerning alien alleging that if returned to China she would be forced to undergo involuntary sterilization, was not supported by substantial evidence; alien's testimony was consistent with the State Department Profile, and alien provided ample detail to explain why and how she was detained during her second and third pregnancies, which ended in forced abortions, and she was also resolute in explaining that she left China because of the one-child policy. *Lin v. Ashcroft*, C.A.7 2004, 385 F.3d 748. Aliens ⚡ 54.1(4.1)

Alien's allegations that but for China's allegedly inflated age requirements for marriage, namely, 25 for men and 23 for women, alien would have married pregnant fiancée and avoided forced abortion failed to establish persecution for purposes of alien's asylum application; alien and fiancée were not permanently barred from marrying, and marriage at the minimum ages in question would not have precluded them from having a long life together or from raising children. *Chen v. Ashcroft*, C.A.3 2004, 381 F.3d 221. Aliens ⚡ 53.10(3)

Substantial evidence supported determination of Board of Immigration Appeals (BIA) that asylum applicant failed to prove she had well-founded fear of suffering forcible abortion or sterilization if returned to People's Republic of China, even though she had one child and testified she planned to have more, where she failed to show she was in violation of one-child policy by having American-born child living in United States, there was no evidence of forced sterilization or abortions in recent years especially in her home province of Fujian, and BIA reasonably determined she lacked credibility. *S-Cheng v. Ashcroft*, C.A.8 2004, 380 F.3d 320. Aliens ⚡ 53.10(3)

Cogent and factually supported reasons cited by immigration judge (IJ) for adverse credibility determination regarding alien who claimed that his wife had been victim of forced sterilization under Chinese population control policy supported denial of asylum and withholding of deportation on ground of persecution; alien stated at time of his airport interview that neither he nor his family had ever been arrested, and explained that he left China for financial reasons, alien did not mention forced sterilization in earlier applications for asylum, which mentioned only fines for procreation, and his wife's ability to travel in China without any trouble was inconsistent with claim that his family was so afraid of being arrested that it was forced to go deep into hiding. *Li v. Ashcroft*, C.A.9 2004,

8 U.S.C.A. § 1101

378 F.3d 959, rehearing en banc denied 396 F.3d 1073. Aliens ↪ 54(3.1)

Substantial evidence in record supported immigration judge's (IJ) adverse credibility determination, and thus denial of asylum and withholding of deportation to Chinese alien, based on inconsistencies in his testimony and his airport interview, regarding his wife's forced abortions and ultimate sterilization under family planning policies and alleged closing of his bookstore because he sold Falun Gong materials. *He Chun Chen v. Ashcroft*, C.A.3 2004, 376 F.3d 215. Aliens ↪ 54.1(4.1)

Purported inconsistencies in alien's testimony, concerning gender of aborted child, date of alien's baptism, and length of pregnancy before abortion, were insufficient to support immigration judge's (IJ) decision that alien was not credible, upon review of denial of application for asylum and withholding of deportation, where inconsistencies were ill-founded, trivial, or nonexistent. *Gui Cun Liu v. Ashcroft*, C.A.3 2004, 372 F.3d 529. Aliens ↪ 54.1(4.1)

Applicant was automatically eligible for asylum where he showed that his wife was forced to undergo an abortion under China's one-child policy. *Ge v. Ashcroft*, C.A.9 2004, 367 F.3d 1121. Aliens ↪ 53.10(3)

Applicant's persecution was "on account of" her resistance to China's population control program, within meaning of asylum statute, where her forced examination for pregnancy occurred two days after she told village official she did not believe in program. *Li v. Ashcroft*, C.A.9 2004, 356 F.3d 1153. Aliens ↪ 53.10(3)

Applicant was persecuted for "other resistance" to population control program, within meaning of asylum statute, when, after announcing her opposition to China's population control policies, she was subjected to forced gynecological examination and threatened with future abortion, sterilization of her boyfriend, and arrest. *Li v. Ashcroft*, C.A.9 2004, 356 F.3d 1153. Aliens ↪ 53.10(3)

Alien whose asylum claim was denied well after the enactment of statute expanding class of "refugees" eligible for asylum to include aliens who would be subject to coercive population control programs if deported, but prior to birth of children that would allegedly subject her to forced sterilization if returned to Mainland China, was not entitled to relief from 90-day deadline on motions to reopen deportation proceedings based on any alleged change in law. *Guan v. Board of Immigration Appeals*, C.A.2 2003, 345 F.3d 47. Aliens ↪ 54(5)

Asylum applicant established past persecution by providing evidence that both times that she became pregnant after having her first child, Chinese government, pursuant to its one-child policy, harassed her by either deducting her wages, threatening her job stability, or threatening to impose unreasonably high fines, thus forcing her to have two abortions and accept insertion of intrauterine contraceptive device (IUD). *Wang v. Ashcroft*, C.A.9 2003, 341 F.3d 1015. Aliens ↪ 53.10(3)

Although Board of Immigration Appeals could have concluded that Chinese citizen was persecuted when she was detained by government officials for approximately one-half hour and subjected to involuntary pregnancy examination, the record was not so compelling that it required such a conclusion; therefore, substantial evidence supported Board's decision that citizen's treatment was not "persecution" under asylum laws, and that citizen thus did not qualify for asylum as one persecuted on account of her resistance to a coercive population control program. *Li v. Ashcroft*, C.A.9 2002, 312 F.3d 1094, rehearing granted, opinion vacated 335 F.3d 858, on rehearing 356 F.3d 1153. Aliens ↪ 53.10(3)

Asylum applicant, who allegedly suffered past persecution as a result of his resistance to China's "one child" population control program, did not establish a well-founded fear of persecution based on his uncorroborated claims that he or his wife feared sterilization and that he feared detention in the form of a birth control study class. *Guan Shan Liao v. U.S. Dept. of Justice*, C.A.2 2002, 293 F.3d 61. Aliens ↪ 54.1(4.1)

Alien failed to show "well founded fear" of persecution under China's "one child" policy if deported, and thus, he

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

was not entitled to refuge; evidence showed that Chinese government and its local agents imposed coercive measures under that policy in far from systematic way, and with decreasing frequency, and that alien belonged to subgroup that had been treated with particular leniency under "one child" policy, i.e., persons returning with additional child from university study abroad, and alien offered only limited evidence that he and his wife would be specific targets for forced sterilization or other persecution. *Chen v. U.S. I.N.S.*, C.A.4 1999, 195 F.3d 198. Aliens ⚡ 54.1(4.1)

Alien, a citizen of China, failed to establish persecution on account of his objections to and violations of his country's population control policies, and thus was not entitled to asylum; even if alien's wife was sterilized, alien did not show that procedure was involuntary, alien admitted that neither he nor his wife desired to have more children, and alien's wife completely failed to mention that she was involuntarily sterilized in her statement to immigration judge. *Huang v. Atty. Gen. of U.S.*, C.A.3 2006, 2006 WL 1625826, Unreported. Aliens, Immigration, And Citizenship ⚡ 541

Substantial evidence supported IJ's finding at asylum proceeding that alien, a native of China, failed to establish well-founded fear that she would be forced to undergo involuntary sterilization or would be subject to persecution for failure, refusal, or resistance to do so; although alien testified that she would be forcibly sterilized if she had more than one child, alien currently had no children, government of China prohibited use of force to compel person to submit to abortion or sterilization, and there were exceptions to one-child rule. *Wang v. U.S. Attorney General*, C.A.11 2006, 2006 WL 1024941, Unreported. Aliens, Immigration, And Citizenship ⚡ 642

Sterilization of alien's mother did not amount to persecution of alien, for asylum purposes. *Wu v. Gonzales*, C.A.2 2006, 2006 WL 897974, Unreported. Aliens, Immigration, And Citizenship ⚡ 53.10(3)

Immigration Judge's (IJ's) finding, on application for asylum, withholding of removal, and relief under the Convention against Torture (CAT), that testimony of alien, a citizen of China, was inconsistent with State Department's reports on country conditions in China was not supported by substantial evidence, where, contrary to IJ's conclusion, alien's testimony that she was forced to have an abortion because she was under legal age for marriage and unmarried did not conflict with State Department reports on country conditions in China. *Li v. B.I.A.*, C.A.2 2006, 167 Fed.Appx. 885, 2006 WL 392100, Unreported. Aliens, Immigration, And Citizenship ⚡ 54.1(4.1)

Decision of Board of Immigration Appeals (BIA) to deny spousal asylum to male Chinese national was substantially reasonable, notwithstanding grant of asylum to wife due to Coercive Population Control (CPC) policy; wife suffered no past persecution either through forced abortion or sterilization, and had no well-founded fear of future persecution. *Lin v. Gonzales*, C.A.5 2005, 150 Fed.Appx. 326, 2005 WL 2450255, Unreported. Aliens ⚡ 53.10(3)

Purported inconsistencies in aliens' testimony, as to how birth control officials in China found wife when she was pregnant for the second time, and whether her husband visited her in the hospital, were not necessarily inconsistent, and did not go to the heart of aliens' asylum claim, requiring remand for further proceedings, despite aliens' lack of authenticated corroborating documentation; unauthenticated documents were produced, which Immigration Judge (IJ) did not find to have been forged. *Ren v. Ashcroft*, C.A.1 2005, 145 Fed.Appx. 378, 2005 WL 1950805, Unreported. Aliens ⚡ 54.3(6)

Substantial evidence supported IJ's finding at asylum proceeding that alien left his country because of his beating and detention in connection with a criminal investigation, rather than because of his wife's sterilization; alien himself testified that he left the country shortly after his detention and beating, but nearly eight years after his wife's sterilization. *Xin Feng Li v. Ashcroft*, C.A.2 2005, 139 Fed.Appx. 306, 2005 WL 1703221, Unreported. Aliens ⚡ 54.1(4.1)

8 U.S.C.A. § 1101

Chinese school authorities' alleged mistreatment of alien due to alien's writing of article, for school assignment, that was critical of pro-birth-control policy did not rise to level of past persecution as would support alien's application for asylum and withholding of removal. *Dong v. Ashcroft*, C.A.2 2005, 139 Fed.Appx. 325, 2005 WL 1692210, Unreported. Aliens ☞ 53.10(3)

Immigration Judge (IJ) did not err, in asylum proceeding, in not informing alien that she might have been eligible for asylum on basis of a fear of China's coercive population control policies, where alien gave no indication of such fear; IJ repeatedly asked alien for all the reasons she feared returning to China, but neither she nor her husband mentioned those policies, and IJ had fully explained the different forms of relief available to alien, as required. *Zhen v. Gonzales*, C.A.9 2005, 137 Fed.Appx. 106, 2005 WL 1515044, Unreported. Aliens ☞ 54(2)

Forced abortion suffered by alien's girlfriend did not establish alien's eligibility for asylum. *Shi Fei v. Attorney General of U.S.*, C.A.3 2005, 131 Fed.Appx. 390, 2005 WL 1140732, Unreported. Aliens ☞ 53.10(3)

Alien lacked well-founded fear that he would be persecuted for resisting coercive population control program if he was removed to China, and thus, alien was not entitled to asylum; alien's altercation with family planning officials in China had occurred more than five years ago, altercation did not involve physical attack or threat of physical harm, altercation was alien's single incident of speaking out against Chinese government or its birth control policy, and there was no evidence of a warrant for alien's arrest in China. *Zhang v. Attorney Gen. of U.S.*, C.A.3 2005, 128 Fed.Appx. 287, 2005 WL 957339, Unreported. Aliens ☞ 53.10(3)

Native and citizen of People's Republic of China suffered past persecution when she was forced to have abortion pursuant to China's coercive population control policy, and thus was eligible for asylum, absent proof that her life or freedom would not be threatened in future. *Sun v. Gonzales*, C.A.9 2005, 126 Fed.Appx. 799, 2005 WL 663495, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported IJ's finding that alien, a former nursing student, failed to establish likelihood that she would be arrested if returned to her native country, based on her refusal to participate in forced abortion and act of complaining to various officials about requirement that she do so, as required to establish eligibility for withholding of removal; alien testified that police officers repeatedly visited her home to arrest her, but alien did not personally observe police visits and relied on information conveyed to her by relatives, including her parents, and statements issued by alien's parents did not mention police visits. *Zheng v. Ashcroft*, C.A.2 2005, 120 Fed.Appx. 877, 2005 WL 348388, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien claimed persecution on account of her alleged violation of country's family planning program; alien provided contradictory testimony about her patterns of residence, her testimony that she did not attempt to conceal her third pregnancy because authorities would mistakenly consider the pregnancy to be her second was undermined by evidence that she had an official birth certificate for her second child, and alien offered no explanation for such inconsistencies. *Jiang v. I.N.S.*, C.A.2 2005, 119 Fed.Appx. 350, 2005 WL 147272, Unreported. Aliens ☞ 54.1(4.1)

Aliens established prima facie eligibility for asylum, as required for grant of their motion to reopen and remand asylum proceedings in order to present evidence of birth of their twin daughters, which they alleged would cause them to be persecuted under China's one-child family planning policy should they return to China; aliens presented, inter alia, affidavit of specialist on demographic developments and population policy in China, asserting that China enforced its one-child policy against Chinese nationals with foreign born children, and evidence of the children's birth was new and previously unavailable, regardless of fact that alien had been pregnant during prior asylum hearing. *Chen v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 853, 2004 WL 2988457, Unreported. Aliens ☞ 54(5)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against asylum applicant, a native and citizen of China; applicant changed her testimony regarding core of her claim, her forced abortion and

8 U.S.C.A. § 1101

second IUD insertion, in that she stated "clearly and unequivocally" that two different doctors performed abortion and second IUD insertion, but, after she was confronted with fact that same doctor signed certificate for abortion and second IUD insertion, applicant changed her testimony and claimed she had difficulty remembering because of traumatic nature of abortion, applicant gave conflicting testimony about circumstances of her alleged abortion, and State Department's Asylum Profile called into question validity of applicant's medical certificates from China. *Zheng v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 198, 2004 WL 2820948, Unreported. Aliens ↪ 54.1(4.1)

Alien's credible testimony that he was persecuted on account of his political opinion when his wife underwent a forced abortion and he underwent a forced vasectomy due to his country's family planning policies, in conjunction with other record evidence, established his eligibility for asylum. *Guo Quing Guo v. Ashcroft*, C.A.9 2004, 114 Fed.Appx. 810, 2004 WL 2650824, Unreported. Aliens ↪ 53.10(3)

Immigration Judge's (IJ) adverse credibility finding against alien, seeking asylum based on fear of forced sterilization in China, was not supported by substantial evidence; IJ's discrediting of alien's specific testimony, regarding detention of his mother, destruction of his property, and his fear of sterilization after his wife's refusal to report for IUD insertion, with generalized statements from country report on China, was improper, and furthermore, country report regarding coercive measures taken by local authorities to enforce birth quotas was consistent with alien's testimony. *Chen v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 805, 2004 WL 2538165, Unreported. Aliens ↪ 54.1(4.1)

Alien's presentation of document stating that his wife was not pregnant on particular date was not inconsistent with his testimony that wife was pregnant a month earlier, so as provide basis for adverse credibility finding at asylum proceeding premised on country's one-child policy; alien claimed throughout hearing that his wife showed no signs of pregnancy at the later examination, and, as he testified, he and his wife were therefore surprised to learn a month later that wife had been pregnant for approximately two months. *Huang v. Ashcroft*, C.A.6 2004, 113 Fed.Appx. 695, 2004 WL 2491026, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) determination that alien did not suffer persecution, as required to support her claim for asylum, despite evidence that alien was not allowed to continue her education beyond sixth grade because of her parents' criminal convictions for violating China's family planning policy and fraud; alien had not specifically been barred from pursuing career, nor had her occupational prospects been curtailed directly, and although denial of educational opportunities, without more, would be persecution when based on policies directed at particular group, Chinese government did not bar all students whose parents have violated that country's family planning laws from education beyond sixth grade, rather, it was at least as possible, if not more likely, that steps taken against alien resulted either from her parents' criminal conviction of economic crime against state, or combination of their crime and violation of China's family planning laws, as it was that government acted on basis solely of family planning violation. *Chen v. Ashcroft*, C.A.6 2004, 113 Fed.Appx. 135, 2004 WL 2452559, Unreported. Aliens ↪ 53.10(3)

Alien's omission of the length of time that she was in the hospital, and the number of people who helped security guard put her in a car to go to the hospital to get a forced abortion, did not support adverse credibility finding at asylum proceeding premised on enforcement of country's one-child policy; alien's testimony and application consistently described how authorities approached her, how a security guard put her in a car to go to the hospital, and how she was forced to have an abortion. *Ju v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 937, 2004 WL 2203857, Unreported. Aliens ↪ 54.1(4.1)

Alien's confrontation with local authorities when he protested their action in forcing his aunt to have an abortion did not appear likely to cause him, on his return to his country, to be singled out for brutality, either physical or economic, and thus did not entitle him to relief under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). *Ben Bin Zhang v. Ashcroft*, C.A.3 2004, 110 Fed.Appx. 221, 2004 WL 2202436, Unreported. Aliens ↪ 53.10(3); Treaties ↪ 8

8 U.S.C.A. § 1101

Evidence supported finding that alien seeking asylum did not prove a well-founded fear of persecution in China from the mere fact that he had two children; State Department reported that, in the province of the alien's home, two children were frequently allowed, although the parents may have to pay fines, and the evidence at the hearing was that the children were registered. *Jie Sheng Lin v. Ashcroft*, C.A.3 2004, 110 Fed.Appx. 213, 2004 WL 2165881, Unreported. Aliens ↪ 54.1(4.1)

Alien's one altercation with family planning officials did not rise to level of persecution, on account of his resistance to a coercive population control program, which would entitle him to asylum. *Chen v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 465, 2004 WL 1931778, Unreported. Aliens ↪ 53.10(3)

Alleged inconsistencies in alien's asylum application and her testimony regarding whether her forced abortion was performed by two doctors, or a nurse and a doctor, and whether family planning unit members were in the operating room or outside, did not go to heart of alien's asylum claim, which was that she had been subjected to forced medical procedures, and thus could not form basis for adverse credibility finding. *Xu v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 482, 2004 WL 1923582, Unreported. Aliens ↪ 54.1(4.1)

Inconsistent dates provided by alien and his brother-in-law were sufficient to support adverse credibility finding, as dates went to heart of alien's claim that he fled family planning authorities. *Pan v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 136, 2004 WL 1859829, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding in which alien alleged persecution premised on her country's one-child policy; there were inconsistencies in alien's documents, such as fact that her marriage certificate bore a different state-issued identification number than her household registration document, deficiencies in alien's testimony with respect to the timing of her alleged forced abortion and her child's household registration, and alien's assertion that she had paid \$50,000 to a smuggler, despite her professed inability to afford a fine of roughly \$600, supported inference that alien had tremendous incentive to lie in order to remain in United States. *Weng v. Ashcroft*, C.A.1 2004, 104 Fed.Appx. 194, 2004 WL 1775154, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA's) conclusion that alien failed to establish a well-founded fear of persecution, based on her country's family planning policy, which would entitle her to asylum; country report indicated that in area where alien was from, sterilization appeared to be urged only for families who already had two children or perhaps three, and alien only had one child. *Lin v. Bureau of Citizenship and Immigration Services*, C.A.3 2004, 105 Fed.Appx. 424, 2004 WL 1758161, Unreported. Aliens ↪ 54.1(4.1)

In light of the major inconsistencies in alien's testimony in asylum proceeding, Immigration Judge's (IJ) adverse credibility finding was not so unreasonable as to compel reversal, even if IJ misstated the record on some immaterial facts; alien's testimony that he was released from detention after his wife submitted to an abortion was inconsistent with documentary evidence, and alien made no mention, during his initial interview, of his problems with Chinese birth control officials, which included beatings, detentions, and operations, and failed later to satisfactorily explain that omission. *Fa Dai Yang v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 259, 2004 WL 1588179, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge (IJ) properly held, in asylum proceeding, that alien's divorce and subsequent remarriage to his second wife constituted a fundamental change which wholly nullified his fear of future persecution on basis of his violations of Chinese family planning policies; remarriage changed alien's personal circumstances and unfettered his ability to have a family. *Fa Dai Yang v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 259, 2004 WL 1588179, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported determination, in asylum proceeding, that alien was not credible as to his alleged past persecution in China for opposition to birth control policies; alien initially stated he had four children, but later

8 U.S.C.A. § 1101

testified that his wife was sterilized after the birth of her second child, alien did not allege that officials sought to have him sterilized until years after his application, he gave inconsistent explanations as to why his statements were inconsistent, and his registration documents and sterilization certificate contradicted his testimony and were internally inconsistent. *Bao Dian Zheng v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 230, 2004 WL 1488410, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ) adverse credibility determination in asylum proceedings was not supported by substantial evidence, even though aliens could not recall their daughter's birth date, stated that they received no notice from Chinese family planning commission before wife was ordered to receive intrauterine device (IUD), and did not affirmatively authenticate documents, where IJ's determination was based on speculation and conjecture. *Yue Ng Wong v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 234, 2004 WL 1462274, Unreported. Aliens ↻ 54.1(4.1)

Given alien's unfamiliarity with English and his terse answers to many question, it was unreasonable for immigration judge (IJ) to doubt alien's credibility based on his failure to be more articulate or detailed in his description of persecution, including how his wife came to be sterilized, where, in his asylum application and testimony, alien explained that his wife was forcibly sterilized, leaving little to the imagination. *Wang v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 620, 2004 WL 1435190, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility determination against asylum seeker claiming persecution based on Chinese government's alleged forcible sterilization of his wife; IJ found, among other things, that asylum seeker's account of his wife's forced sterilization was inherently improbable, given that it allegedly occurred nine years after he had left country and that government was aware of his departure, and that his account was inconsistent, given his statement that government had previously "waived" sterilization. *Mei v. Board of Immigration Appeals*, C.A.2 2004, 100 Fed.Appx. 21, 2004 WL 1240572, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ) finding that alien's testimony, that she feared she would be arrested if she returned to China because she had fought with family planning officials after her older sister became pregnant for a second time and that she had pushed an official down a flight of stairs during the struggle, was not credible was supported by inconsistencies between her testimony and her asylum application and airport interview and supported denial of her application for asylum. *Zheng v. Ashcroft*, C.A.7 2004, 104 Fed.Appx. 564, 2004 WL 1218599, Unreported. Aliens ↻ 54.1(4.1)

Failure by alien, seeking withholding of removal with respect to his claim of persecution based on his violation of China's one-child policy, to authenticate documents, including marriage certificate and birth certificates by consular certification, was not proper basis for Immigration Judge (IJ) to refuse to admit documents and to find alien not credible; alien explained that he was not given birth certificate for his second child at time of her birth, and neither IJ nor government identified what type of non-duplicative, material, easily available corroborating evidence alien failed to produce, nor did IJ or government ask alien to explain why he was unable to produce pictures or any evidence regarding existence of second child. *Xue v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 652, 2004 WL 1166522, Unreported. Aliens ↻ 54.1(3)

Substantial evidence supported adverse credibility determination in asylum proceeding; there were several inconsistencies between alien's written application and his oral testimony, including whether his wife was forced to undergo forced sterilization after the birth of their first child and whether he fought with government authorities over family planning policies, and Immigration Judge (IJ) found alien to be extremely unresponsive regarding certain matters going to the heart of his claim, including details of his wife's sterilization. *Zou v. B.I.A.*, C.A.2 2004, 99 Fed.Appx. 322, 2004 WL 1157738, Unreported. Aliens ↻ 54.1(4.1)

Alien who had resisted China's coercive population control program, and whose wife had been forcibly sterilized, was automatically eligible for asylum. *Yang v. Ashcroft*, C.A.9 2004, 99 Fed.Appx. 124, 2004 WL 1157675, Unreported. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Evidence supported Immigration Judge's (IJ) determination that the testimony of an alien, that her sterilization procedure was involuntary, was not credible, thus defeating her claim for asylum; the only evidence indicating that the sterilization was forced was the alien's own testimony, and that testimony was inconsistent and implausible. *Xiu Ying Zhao v. Ashcroft*, C.A.3 2004, 98 Fed.Appx. 90, 2004 WL 1088365, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to show that he was persecuted, or that he had a reasonable fear of future persecution, for his resistance to China's family planning policy, and thus, he was not entitled to asylum or withholding of removal; the alien testified that the only adverse consequences he experienced as a result of his girlfriend's failure to undergo an abortion were that he was detained for an evening and required to pay a 30,000 renminbi fine, and that his father had an altercation with local officials. *Jin v. Ashcroft*, C.A.3 2004, 95 Fed.Appx. 441, 2004 WL 870867, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's (IJ) adverse credibility determination in denying alien's asylum application, despite alien's contention that she left China to escape persecution under China's family planning policy, where alien testified that she had two abortions in China, but failed to mention them in her asylum applications, alien's testimony that she was not pressured to undergo forced sterilization contradicted statement in her asylum application, and alien testified that she had voluntarily had intrauterine device (IUD) implanted. *Lin v. I.N.S.*, C.A.2 2004, 96 Fed.Appx. 27, 2004 WL 848259, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) denial of Chinese national's application for asylum and withholding of removal based on adverse credibility determination, despite alien's contentions that he was threatened with sterilization by Chinese family planning officials, that his wife had been forced to use intrauterine device, and that he was denied business license after birth of his second daughter, where alien originally sought asylum based on his father-in-law's political activities, and failed to mention denial of license, sterilization threat, or use of intrauterine device in his asylum application. *Hu v. U.S. I.N.S.*, C.A.2 2004, 95 Fed.Appx. 372, 2004 WL 848257, Unreported. Aliens ↪ 54.1(4.1)

Material inconsistencies supported finding, in asylum proceeding, that alien, a native of China, lacked credibility as to his claim of persecution on account of opposition to family planning policies; there were discrepancies between alien's testimony and his written statement and discrepancies within his testimony as to his family's history and income and the fine for having over-quota children, and Immigration Judge (IJ) believed alien had tried to memorize what he should say to the Court rather than recall specific facts. *Ou v. Ashcroft*, C.A.3 2004, 95 Fed.Appx. 404, 2004 WL 835844, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals's (BIA) adverse credibility determination against alien upon his application for asylum and withholding of removal, based on alleged fear of persecution pursuant to China's population control and forced sterilization policy; alien did not remember when his wife became pregnant with their second child, he did not remember exact date that he returned home after birth of second child, he was unclear about whether he went into hiding with rest of his family, and he changed his testimony regarding when, or if at all, "village cadres" broke up furniture in his house. *Ou v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 108, 2004 WL 817352, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) determination that alien's documentary evidence and credibility was insufficient to show his eligibility for asylum; IJ's findings included that alien, who claimed that Chinese Government sterilized his wife, with whom he had three children, and destroyed their home in order to further its population control policies, failed to provide clear and convincing documentary evidence attesting to his identity, his marriage, his children's existence, or his home's existence and destruction, was hesitant in answering questions going to merits of his allegations, and insufficiently explained inconsistencies in his affidavits. *Zou v. U.S. Attorney General*, C.A.2 2004, 94 Fed.Appx. 861, 2004 WL 816379, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence did not support immigration judge's adverse credibility determination in proceedings on

8 U.S.C.A. § 1101

alien's application for asylum and withholding of removal and thus did not sustain finding that alleged persecution did not happen, necessitating remand for further proceedings, inasmuch as conflicting evidence concerning birthplace of alien's second son and differing accounts of alien's whereabouts when his wife's forced abortion allegedly occurred did not go to heart of asylum claim, that alien's wife was forced to undergo abortion and subsequent sterilization, and immigration judge's reliance on State Department report concerning clinical checks of women of young marital age was not requisite individualized analysis of alien's credibility. *Cai v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 536, 2004 WL 626706, Unreported. Aliens ↪ 54.1(4.1); Aliens ↪ 54.3(6)

Evidence supported immigration judge's determination that Chinese citizen was not credible in seeking asylum and withholding of removal based on forced abortion performed on wife and forced contraception; the discrepancies concerning date of marriage reasonably raised concern as to whether citizen was trying to report facts accurately, citizen did not explain how his neighbor would have known that Chinese authorities took wife for intra-uterine device (IUD) insertion, he omitted from asylum application one act of forced IUD insertion, and inconsistency existed concerning end of wife's contact with birth control authorities. *Yu Sheng Zhang v. U.S. Dept. of Justice*, C.A.2 2004, 93 Fed.Appx. 277, 2004 WL 602619, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to establish well-founded fear of persecution if returned to her native country, supporting denial of asylum; although alien asserted that she was forced to have an abortion and beaten by government officials, evidence showed that alien left her native country to vacation with friends shortly after her alleged abortion and then returned to her native country afterwards, and alien presented no medical evidence that she lost her virginity or had an abortion. *Tang v. Ashcroft*, C.A.8 2004, 92 Fed.Appx. 375, 2004 WL 539056, Unreported. Aliens ↪ 53.10(3)

Immigration judge's (IJ's) adverse credibility determination against alien, who was from China and who sought asylum on ground of past persecution and well-founded fear of future persecution because Chinese government destroyed his home after his wife failed to abort his child, was supported by substantial evidence, including that alien was unsure of the sex of his child, and that alien testified in a contradictory fashion about whether he was present when authorities were alleged to have destroyed his home. *Jiang v. McElroy*, C.A.2 2004, 93 Fed.Appx. 266, 2004 WL 505142, Unreported. Aliens ↪ 54.1(4.1)

Discrepancies between alien's testimony and the statements in his asylum application provided substantial evidence supporting finding that his claims of persecution, on basis of his opposition to China's population control program, were not credible; there were variations as to dates for key events, such as his son's birthday, his wife's involuntary IUD insertion, her IUD removal, and her involuntary abortion. *Liu v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 366, 2004 WL 448087, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported finding that alien was not credible as to claim he was persecuted for his opposition to China's birth control policy, even though Immigration Judge (IJ) made several misstatements of fact in his decision; alien presented a false passport when he arrived in the U.S., he failed to mention two alleged altercations with Chinese officials until he testified before the IJ, he had no interest in population control policies either before or after his mother's sterilization, and he remained in China for nine months after his arrest without further encounters with officials. *Gao v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 362, 2004 WL 447564, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's finding that alien failed to show that his wife had been forcibly sterilized, and thus alien was not eligible for asylum on the basis of his country's coercive population control. *Chen v. Ashcroft*, C.A.3 2004, 89 Fed.Appx. 800, 2004 WL 362287, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination that alien was not entitled to asylum on basis of persecution stemming from China's family planning policy; Immigration Judge (IJ) found alien not credible inasmuch as his demeanor when giving details of his vasectomy was extremely hesitant and appeared rehearsed, he submitted a

8 U.S.C.A. § 1101

report of a medical examination but testified he was never examined by that physician, alien was unaware he had submitted an abortion certificate to substantiate claim of his wife's forced abortion, and he was not responsive to basic questions about his alleged escape from official custody. *Ren v. Board of Immigration Appeals*, C.A.2 2004, 91 Fed.Appx. 173, 2004 WL 350147, Unreported. Aliens ↪ 54.1(4.1)

Single discrepancy in alien's testimony regarding date on which his wife was sent to prison was not substantial evidence which could support IJ's adverse credibility finding at asylum proceeding; alien's claim of persecution was premised upon his devout practice of certain religion and his wife's imprisonment, which was not contingent upon actual date of imprisonment. *Liu v. Ashcroft*, C.A.9 2004, 88 Fed.Appx. 170, 2004 WL 260341, Unreported. Aliens ↪ 54.1(4.1)

Evidence that alien's mother had been forcibly sterilized and fined for violating China's "one child" policy did not establish that alien herself had been or would be persecuted, and therefore substantial evidence supported the denial of alien's application for asylum, despite her stated intention to violate the Chinese policy. *Zou v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 252, 2003 WL 23097755, Unreported. Aliens ↪ 53.10(3)

Alien who suffered past persecution in China, in form of his arrest and mistreatment for interfering with police efforts to take his aunt forcibly for an involuntary abortion, established past persecution on account of his political opposition to China's birth control policies, and was therefore entitled to a presumption of a well-founded fear of future persecution if he were returned to China. *Zhou v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 566, 2003 WL 22928794, Unreported. Aliens ↪ 53.10(3)

Immigration Judge (IJ) erred in determining that alien was ineligible for asylum and withholding of removal, even though substantial evidence supported finding that alien left China for reasons other than the forced sterilization of his wife; the involuntary sterilization of alien's wife constituted past persecution of alien and created a regulatory presumption that alien had a well-founded fear of future persecution, and there was no evidence that conditions had changed in China or that alien could avoid persecution by relocating within China. *Li v. Ashcroft*, C.A.5 2003, 82 Fed.Appx. 357, 2003 WL 22770160, Unreported. Aliens ↪ 54.1(2)

132. --- Marriage, coercive population control, refugee

Immigration judge's (IJ) conclusive factual finding that alien, native and citizen of China and applicant for asylum, had not married his girlfriend who had given birth to their child and was still in hiding in China, did not by itself preclude consideration of alien's claims of refugee status based on past persecution or fear of future persecution under China's family planning policies; IJ should have evaluated alien's credibility as to persecution claims, rather than concluding that he lacked legal status to make those claims by virtue of not having married. *Ci Pan v. U.S. Att. Gen.*, C.A.2 2006, 449 F.3d 408. Aliens, Immigration, And Citizenship ↪ 575

Alien, native of China, was not automatically eligible for political asylum based on fact that his current wife had undergone forced abortion in China, where alien was neither married to her at time she underwent abortion, nor was he father of aborted fetus. *Jian Wen Wang v. Bureau of Citizenship and Immigration Service*, C.A.2 2006, 437 F.3d 276. Aliens ↪ 53.10(3)

Determination by Board of Immigration Appeals (BIA) that Chinese government's single act of insertion of intrauterine contraceptive device (IUD) into asylum applicant to prevent further pregnancy after birth of child without marriage certificate did not amount to past persecution, as required to support application, was not manifestly contrary to law, where applicant did not allege force, physical abuse, or other circumstances related to the insertion. *Li v. Gonzales*, C.A.4 2005, 405 F.3d 171. Aliens ↪ 53.10(3)

Alien, an unmarried male citizen of the People's Republic of China, was not entitled to asylum, withholding of deportation, and protection under the Convention Against Torture (CAT) on ground that his live-in girlfriend, a

8 U.S.C.A. § 1101

Chinese national living in China, was fined and forced to have an abortion pursuant to China's population control program; the alien and his girlfriend were neither formally nor informally married, and the alien, lacking spousal status, exhibited no legally cognizable resistance to China's population control program by merely impregnating his girlfriend. *Zhang v. Ashcroft*, C.A.5 2004, 395 F.3d 531. Aliens ↪ 53.10(3); Treaties ↪ 8

Immigration Judge's (IJ) adverse credibility finding against alien, i.e., that alien's testimony was inconsistent as to when she paid her fine to Chinese government for early marriage and parenthood, was not specific and cogent, in proceeding for asylum, withholding of removal, and relief under Convention Against Torture (CAT); IJ did not point to any specific inconsistency, nor could United States government point to any which IJ might have had in mind. *Hu v. Gonzales*, C.A.2 2005, 160 Fed.Appx. 98, 2005 WL 3527341, Unreported. Aliens ↪ 54(3.1)

Substantial evidence supported immigration judge's determination that alien's testimony in support of his asylum application was not credible; there were several inconsistencies between alien's testimony and his asylum application as to whether he was married and whether he had engaged in public protests against China's family planning policy, and immigration judge found that alien's demeanor was vague and evasive. *Lin v. U.S. Dept. of Justice*, C.A.2 2005, 147 Fed.Appx. 212, 2005 WL 2107961, Unreported. Aliens ↪ 54.1(4.1)

Forced abortion suffered by alien's girlfriend did not establish alien's eligibility for asylum. *Shi Fei v. Attorney General of U.S.*, C.A.3 2005, 131 Fed.Appx. 390, 2005 WL 1140732, Unreported. Aliens ↪ 53.10(3)

Alien was not entitled, in asylum proceeding, to rely on his ex-wife's coerced abortion in order to establish his status as a refugee. *Fa Dai Yang v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 259, 2004 WL 1588179, Unreported. Aliens ↪ 53.10(3)

133. Child soldiers, refugee

Board of Immigration Appeals (BIA) committed no constitutional or statutory error in deciding that alien, who claimed to have been recruited as child soldier in Liberia, was not refugee eligible for asylum, and, thus, habeas relief was not warranted. *Sackie v. Ashcroft*, E.D.Pa.2003, 270 F.Supp.2d 596. Habeas Corpus ↪ 521

134. Civil strife, refugee

Fact that Indonesia was rife with civil uprisings and violence which were not specific to Christian or Chinese inhabitants did not negate aliens' fear of persecution on account of their race or religion, so as to support their claims to refugee status, where aliens were both Christian Indonesians, one of Manado ancestry and the other of Chinese ethnicity, whose fears of persecution in Indonesia were based on their Christian faith in particular, and on Indonesian civil strife in general. *Eduard v. Ashcroft*, C.A.5 2004, 379 F.3d 182. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's (IJ) determination that asylum applicant had not suffered from past persecution; applicant experienced civil unrest between competing political factions, not persecution where there was no evidence that the police were conspiring with a rival political group, or that they arrested applicant for any reason other than his involvement in causing a public disturbance. *Ali v. Ashcroft*, C.A.6 2004, 366 F.3d 407. Aliens ↪ 53.10(3)

Finding that destruction of asylum applicant's house in Togo, after he participated in demonstrations in opposition to Eyadema regime, was due to general unrest accompanying failed military conspiracy and not on account of applicant's political beliefs, was supported by substantial evidence, including applicant's testimony that there was "total insecurity" at that time, and that houses in addition to his were destroyed. *Eusebio v. Ashcroft*, C.A.8 2004, 361 F.3d 1088, rehearing and rehearing en banc denied. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Asylum applicants, who were ethnic Albanian citizens of Macedonia, failed to demonstrate well-founded fear of future persecution, where they submitted documents indicating political turmoil, civil strife, and human rights abuses during conflict between Albanian separatists and Macedonian military in 2001, but applicants were not involved in insurgency giving rise to such conflict. *Selimi v. Ashcroft*, C.A.7 2004, 360 F.3d 736. Aliens 53.10(3)

Aliens who were witnesses to various acts of guerrilla violence that had plagued Guatemala in the early 1980s failed to show entitlement to asylum based on past persecution, despite their contention that their social status and political beliefs singled them out as targets for guerrillas, where aliens were not persecuted on individual basis, where record as whole bespoke of general harm attributable to widespread civil strife, and where aliens had spent eight years in Guatemala after this alleged persecution and were able to live and work without interference from guerrillas. *Velasquez v. Ashcroft*, C.A.1 2003, 342 F.3d 55. Aliens 53.10(3)

Substantial evidence supported finding of Board of Immigration Appeals (BIA) that Armenian asylum applicant failed to establish past persecution, inasmuch as his testimony that he sustained knife wounds during Azeri attack on Armenian residents of town on border between Armenia and Azerbaijan in Nagorno-Karabakh region was nothing more than act of random violence during period of significant strife. *Rostomian v. I.N.S.*, C.A.9 2000, 210 F.3d 1088. Aliens 54.1(4.1)

Conditions of political upheaval which affect populace as whole or in large part are generally insufficient to establish eligibility for asylum. *Mitev v. I.N.S.*, C.A.7 1995, 67 F.3d 1325, rehearing and suggestion for rehearing en banc denied. Aliens 53.10(3)

Substantial evidence supported Board of Immigration appeal's finding that application for political asylum by Sri Lankan Tamil was based on fear of general civil unrest, rather than well-founded fear of persecution, and, thus, the application would be denied; the Sri Lankan Tamil had never been detained, arrested or imprisoned, his one encounter with authorities did not provide objective basis to fear of being singled out for persecution; moreover, the Tamil was not entitled to asylum simply based on general risk of persecution Tamils faced in Sri Lanka. *Sivaiankaran v. I.N.S.*, C.A.7 1992, 972 F.2d 161. Aliens 53.10(3)

Substantial evidence supported II's finding that incidents alien testified to, including bombing of hotel where alien had helped organize a political meeting, bombing of home of one of alien's relatives who was involved in political organization, shooting at convoy of cars which was returned from political meeting, and car-jacking, did not constitute past political persecution required for asylum; at time bombings and shooting occurred, country was in virtual state of anarchy in which violence abounded, and there was not sufficient evidence of motive or identity of perpetrators in shooting at convoy or car-jacking. *Ndreu v. Gonzales*, C.A.3 2005, 128 Fed.Appx. 295, 2005 WL 1122658, Unreported. Aliens 54.1(4.1)

Alien seeking asylum failed to establish that his fear of future persecution was objectively reasonable; alien feared that he would suffer because of civil unrest, high incidents of violent crime, socioeconomic conditions, random bombings, and militia recruiting, which were all generalized fears, and alien's similarly-situated family members continued to reside in the country without incident. *Hapidudin v. Gonzales*, C.A.9 2005, 126 Fed.Appx. 406, 2005 WL 825555, Unreported. Aliens 53.10(3)

Newspaper articles submitted by alien, as new evidence in support of his motion to reopen his claim for asylum, for withholding of removal, and for relief under the Convention Against Torture, described generalized conditions of strife that were not material to his claim that he would be persecuted if returned to Georgia; articles, which described contemporaneous events in Georgia, did not establish that alien would be placed at risk for persecution on account of a protected ground or torture. *Gogvadze v. Ashcroft*, C.A.3 2004, 106 Fed.Appx. 800, 2004 WL 1758229, Unreported. Aliens 54(5)

8 U.S.C.A. § 1101

Substantial evidence supported finding that alien did not demonstrate a well-founded fear of future persecution based on his membership in political party which would entitle him to asylum; at best, alien's documentary evidence, including country reports, showed that alien's native country had suffered a great deal of unrest and crime. *Andre v. Ashcroft*, C.A.1 2004, 102 Fed.Appx. 180, 2004 WL 1563203, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's finding that aliens failed to establish persecution entitling them to asylum; aliens suffered no past persecution and feared only general conditions of civil strife and insecurity if returned to their native country. *Vallejos v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 148, 2004 WL 1435120, Unreported. Aliens 53.10(3)

Neither alien's fear of perceived general climate of political violence in the Philippines, nor her experience as a bank employee during two robbery incidents, established any well-founded fear of persecution, as would entitle her to grant of asylum. *Baluyot v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 621, 2003 WL 21698807, Unreported. Aliens 53.10(3)

Neither alien's fear of perceived general climate of political violence in the Philippines, nor her experience as a bank employee during two robbery incidents, established any well-founded fear of persecution, as would entitle her to grant of asylum. *Baluyot v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 621, 2003 WL 21698807, Unreported. Aliens 53.10(3)

135. Crime, refugee

Ethnic slur during robbery of asylum applicant's home and workplace was insufficient to establish that applicant suffered past persecution on account of race, religion, nationality, membership in particular social group, or political opinion, as required to support application; thieves fled after stealing jewels and money, neighbors of same ethnicity were not robbed, robbery of relatively wealthy individuals was not uncommon, and applicant lived in peace for almost two years following robberies. *Lie v. Ashcroft*, C.A.3 2005, 396 F.3d 530. Aliens 53.10(3)

Isolated acts of robbery of asylum applicant's house and workplace, by unknown assailants, which only resulted in theft of some personal property and a minor injury, did not constitute persecution, as required to support application for asylum. *Lie v. Ashcroft*, C.A.3 2005, 396 F.3d 530. Aliens 53.10(3)

Documents evidencing continued instability and violence in Guatemala following peace accords between government and guerillas did not establish that alien had well-founded fear of persecution on account of his political opinion, based on his support of government and refusal to join guerillas, where evidence showed that instability and violence continued due in part to government's inability to control crime and violence, and it did not show that former guerillas continued to attack those who had supported government or refused to join guerilla forces. *Melecio-Saquil v. Ashcroft*, C.A.8 2003, 337 F.3d 983. Aliens 54.1(4.1)

Alien's rape by Salvadoran soldiers was not past persecution or basis for well-founded fear of persecution supporting her asylum claim, where she admitted she had no knowledge that soldiers raped her because of her or her uncle's aid to guerrillas, and there was no evidence to suggest that rape was anything but act of random violence. *Melgar de Torres v. Reno*, C.A.2 1999, 191 F.3d 307. Aliens 53.10(3)

Substantial evidence supported finding that alien seeking asylum was not persecuted on account of a statutorily protected ground; even if robberies at issue amounted to persecution, IJ concluded that robberies were motivated by pecuniary gain, not ethnic hatred, since attackers never mentioned alien's ethnic status and state department report stated that there was no evidence that individuals of alien's ethnic background were specific targets of police abuse or other mistreatment. *Asaduzzaman v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 607, 2005 WL 1154339, Unreported. Aliens 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported finding that three incidents of street violence which alien was subjected to, one involving skinheads, one involving persons gathered outside a church alien was passing by, and one involving friends of a loan shark seeking repayment, did not rise to level of persecution required for asylum. *Awaadeh v. Gonzales*, C.A.3 2005, 126 Fed.Appx. 577, 2005 WL 900236, Unreported. Aliens 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) determination that attacks on alien by street thugs did not rise to level of persecution necessary to warrant asylum, where thugs were seeking money, not seeking to harm alien on account of his race, religion, nationality, membership in particular social group, or political opinion, and there was no evidence that government was not attempting to stop attacks. *Setiawan v. Gonzales*, C.A.3 2005, 128 Fed.Appx. 873, 2005 WL 899923, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien did not experience requisite persecution; alien testified that she was not harmed at any time during any of events she described, and was not present or protected by police during some of events, and there was an insufficient showing that two robberies alien described were not merely result of criminal activity. *Hermanto v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 121, 2005 WL 79019, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien lacked a well-founded fear of future persecution; the murders of her family members and threats alien received were not recent events, country reports indicated that current crime and violence stemmed from common crime and that umbrella guerrilla organization which alien allegedly feared had dissolved itself, and alien's mother, sister, and brother still resided in the country and had not been harmed. *Mendez-Lazaro v. Ashcroft*, C.A.8 2004, 114 Fed.Appx. 272, 2004 WL 2495908, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that incident in which alien and her family were robbed at restaurant by native men did not amount to persecution; although robbery occurred at Chinese restaurant and robbers referred to victims as "you Chinese," alien offered no evidence to compel finding that she was not a random victim of crime. *Halim v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 164, 2004 WL 2030115, Unreported. Aliens 53.10(3)

Random criminal acts alien experienced while riding buses did not establish persecution required for asylum. *Kurnia v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 144, 2004 WL 1859835, Unreported. Aliens 53.10(3)

Immigration Judge's (IJ) conclusion that alien seeking asylum was targeted by a criminal gang solely for money, not because he was a member of social group of "entrepreneurs," was supported by substantial evidence; the alien himself said that the gang's purpose was to induce him to surrender his interest in a restaurant, and he provided no evidence that the gang was acting out of hatred toward entrepreneurs rather than love of money. *Efimov v. Ashcroft*, C.A.10 2004, 100 Fed.Appx. 731, 2004 WL 1234150, Unreported. Aliens 54.1(4.1)

Alien, a native and citizen of Guatemala, failed to establish past persecution or a well-founded fear of future persecution because of criminal gangs in Guatemala, as required to support her application for asylum, where evidence, at most, established that alien had been the victim of criminal activity in Guatemala. *Aquino v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 71, 2004 WL 334385, Unreported. Aliens 53.10(3)

Alien did not have a well-founded fear of future persecution if he returned to Guatemala, even though country remained poor and government faced challenges in its attempts to control crime; guerrilla group and government signed peace accords, and guerrilla forces dissolved themselves. *Ramos-Ortiz v. Ashcroft*, C.A.3 2003, 70 Fed.Appx. 68, 2003 WL 21543897, Unreported. Aliens 53.10(3)

136. Criminal prosecution, refugee

8 U.S.C.A. § 1101

Evidence that, if alien were removed to Pakistan, she would allegedly be subject to severe punishment for moral offenses under Pakistani ordinances that were based on Islamic law was insufficient to establish any well-founded fear of persecution based on her ethnicity, such as would support asylum claim, where ordinances in question were Pakistani laws of general applicability, and alien failed to show that laws would apply to her with any special rigor on account of her ethnicity or that she would be unable to avoid running afoul of them. *Ahmed v. Ashcroft*, C.A.8 2005, 396 F.3d 1011. Aliens ↪ 53.10(3)

Finding of Immigration Judge (IJ), that asylum applicant's fear of returning to Bangladesh was based on possible prosecution for criminal acts, rather than persecution based on his affiliation with Bangladesh National Party (BNP), was not supported by substantial evidence, where applicant testified he participated in no political violence except to defend himself, and it was not clear whether charges against him were brought by neutral caretaker government or government controlled by BNP's rival. *Hoque v. Ashcroft*, C.A.9 2004, 367 F.3d 1190. Aliens ↪ 54.1(4.1)

Sufficient evidence established that alien, a native of Guatemala, committed serious nonpolitical crimes in Guatemala, even though alien claimed the crimes were political in nature, and thus alien was ineligible for both political asylum and withholding of removal; alien was involved in burning buses which served civilian population, breaking windows, and fighting with police. *Chay-Velasquez v. Ashcroft*, C.A.8 2004, 367 F.3d 751. Aliens ↪ 53.10(3)

Asylum applicant's claim that he was fined excessively did not establish past persecution where there was no evidence was presented regarding applicant's income in native country, his net worth at the time of the fines, or any other facts that would make it possible to evaluate his personal financial circumstances in relation to the fines. *Guan Shan Liao v. U.S. Dept. of Justice*, C.A.2 2002, 293 F.3d 61. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals (BIA) properly rejected Chinese citizen's claim for refugee status based on his fear of being persecuted under China's "one child" policy, where China was applying facially neutral policy generally to residents of claimant's province, and he simply did not want it to be enforced against him; reviewing decision with appropriate deference, it was reasonable to conclude that prosecution for opposition to universally applied coercive family planning policy was not persecution for political opinion. *Zhang v. Slattery*, C.A.2 (N.Y.) 1995, 55 F.3d 732, certiorari denied 116 S.Ct. 1271, 516 U.S. 1176, 134 L.Ed.2d 217. Aliens ↪ 53.10(3)

Iranian native seeking asylum and withholding of deportation failed to carry his burden of proving that Iranian government sought him for purposes of persecution, rather than for legitimate purpose of criminal prosecution; although alien testified that government forces were looking for him because he was against the government and against the Islamic revolution and Islam, evidence showed only that he counselled student not to fight in Iraqi war, act which Board of Immigration Appeals (BIA) could reasonably infer was illegal in Iran, such that government forces were merely attempting to effect legitimate arrest. *Sadeghi v. I.N.S.*, C.A.10 1994, 40 F.3d 1139. Aliens ↪ 53.10(3)

Prosecution of alien for illegal activities is legitimate government act and not "persecution" as contemplated in asylum provisions. *Sadeghi v. I.N.S.*, C.A.10 1994, 40 F.3d 1139. Aliens ↪ 53.10(3)

Moroccan citizen did not demonstrate fear of persecution required for asylum; it was not clear that citizen was sought for reasons other than prosecution for violation of Moroccan laws and there was no evidence of invidious motive on part of authorities that citizen alleged were looking for him. *El Balguiti v. I.N.S.*, C.A.8 1993, 5 F.3d 1135. Aliens ↪ 53.10(2)

Citizen of Yemen did not show well-founded fear of persecution, as required to obtain asylum in United States, even though he claimed that if returned to Yemen he would be executed pursuant to a death sentence imposed by a Yemeni Moslem court for murder of fellow Yemeni Moslem for which he was convicted and served prison time in

8 U.S.C.A. § 1101

United States; as death was usual penalty for homicide in Yemen religious courts, application of that penalty to alien would not constitute "persecution." *Saleh v. U.S. Dept. of Justice*, C.A.2 1992, 962 F.2d 234. Aliens 53.10(3)

Prosecution for criminal violations of fairly administered laws is not ordinarily one of the statutory grounds upon which a claim for asylum can be based; alien must show that fear of persecution is attributable to one of the five statutorily enumerated grounds of race, political beliefs, religion, nationality, or membership in a particular source or group. *Janusiak v. U.S. I.N.S.*, C.A.3 1991, 947 F.2d 46. Aliens 53.10(3)

Criminal assault prosecution of alien in his home country, arising out of his assault of local family planning official after his wife was involuntarily sterilized, was not "persecution" entitling alien to political asylum, absent showing that officials improperly used assault as pretext to arrest him because of his opposition to coercive family practices, or evidence that any punishment imposed on him as result of assault conviction in home country would be especially unconscionable; while underlying predicate for alien's criminal act was arguably political, actual assault was not. *Yang v. Carroll*, E.D.Va.1994, 852 F.Supp. 460, affirmed 70 F.3d 114. Aliens 53.10(3)

Alien had well-founded fear of criminal assault prosecution in native country, not of persecution as required to establish eligibility for political asylum, since alien's assault of local family planning official and his initial refusal to pay fine imposed for having second child were not directly related to alien's opposition to coercive family planning practices, and decision to leave native country was at least partly motivated by economics; assault was motivated by involuntary sterilization of alien's wife, and failure to pay fine was due to lack of money. *Yang v. Carroll*, E.D.Va.1994, 852 F.Supp. 460, affirmed 70 F.3d 114. Aliens 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) finding that alien failed to establish past persecution or well-founded fear of future persecution; following his participation in workplace demonstration that escalated into physical fight and left many individuals injured, alien received two court summonses regarding the assaults which he ignored and fled country fearing arrest, but there was no evidence that government sought to prosecute alien based on political activity, rather, it sought to question alien regarding ensuing violence. *Xue v. Gonzales*, C.A.9 2005, 121 Fed.Appx. 752, 2005 WL 319118, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's finding that alien seeking asylum failed to establish past persecution on a protected ground; alien only suffered a single isolated incident of physical abuse, which IJ found was occasioned by government's belief that alien had committed a crime of fraud, and not by his race, nationality, political opinion, or membership in particular social group. *Bui v. Ashcroft*, C.A.9 2004, 114 Fed.Appx. 834, 2004 WL 2726104, Unreported. Aliens 53.10(3)

Alien's testimony that he feared the results of his trial for painting slogans on walls of buildings in his home town merely established that he faced a possibility of prosecution for an act deemed criminal in his country, rather than that he had a well-founded fear of future persecution required for asylum. *Wei v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 456, 2004 WL 1931319, Unreported. Aliens 53.10(3)

Alien's punishment for treason, resulting from his passing of military secrets to Ugandan rebels, did not constitute persecution, as required in his application for asylum; punishment was not imposed on account of his political opinion. *Baguma v. Ashcroft*, C.A.5 2003, 83 Fed.Appx. 4, 2003 WL 22770170, Unreported. Aliens 53.10(3)

Alien's claims that he and his family were denied economic and educational opportunities under the previous communist regime in Albania, and that police officers who arrested him for participating in illegal roadblock made threatening references to his father's incarceration decades earlier, did not require grant of asylum on ground alien had been persecuted because of his family; alien presented no evidence of any unique mistreatment or hardship prior to being properly arrested for his participation in the illegal roadblock. *Shqutaj v. I.N.S.*, C.A.3 2003, 57 Fed.Appx. 95, 2003 WL 231599, Unreported. Aliens 53.10(3)

8 U.S.C.A. § 1101

137. Economic hardship, refugee

Asylum applicant's dismissal from position of brigadier general in Albania's military did not warrant asylum, even if applicant opposed corruption; applicant did not contend that other employment in Albania was foreclosed to him or that he faced substantial economic disadvantage. *Musabelliu v. Gonzales*, C.A.7 2006, 442 F.3d 991. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Imposition of economic disadvantage on Mohajirs in Pakistan, through generic discrimination of limited number of spots for Mohajirs in universities and difficulty advancing to high levels in employment, did not amount to economic deprivation rising to level of persecution that would warrant granting asylum to alien. *Akhtar v. Gonzales*, C.A.6 2005, 406 F.3d 399, rehearing and rehearing en banc denied. Aliens ↻ 53.10(3)

Testimony of Chinese national that, after birth of his fourth child in violation of Mainland China's population control policies, he had been fined more than eighteen-months' salary, blacklisted from any government employment and from most other forms of legitimate employment, lost his health benefits, school tuition and food rations, and suffered from having his household furniture and appliances confiscated, if accepted as true, would show "persecution," of kind required to support asylum claim, as rising to level of deliberate imposition of severe economic disadvantage which could threaten his family's freedom, if not their lives. *Li v. Attorney General of U.S.*, C.A.3 2005, 400 F.3d 157. Aliens ↻ 53.10(3); Aliens ↻ 54.1(4.1)

Alien, a stateless Palestinian who fled native country of Kuwait, established clear probability that he would be persecuted if returned to Kuwait, as required to support application for withholding of removal; Palestinians living in Kuwait were subjected to severe economic discrimination and Kuwait's policy of discriminating against its entire Palestinian population was well-established. *Himri v. Ashcroft*, C.A.9 2004, 378 F.3d 932, as amended, amended 2004 WL 1879255. Aliens ↻ 53.10(3)

Asylum applicants, who claimed that implementation of South Africa's Employment Equity Act 55 resulted in their economic persecution on account of their race by causing them to lose their longtime jobs and rendering them unable to secure new ones, failed to provide evidence that they suffered from past economic persecution; substantial evidence supports conclusion that applicants suffered, at most, what could be perceived as reverse discrimination which resulted in some adverse economic consequences. *Gormley v. Ashcroft*, C.A.9 2004, 364 F.3d 1172. Aliens ↻ 53.10(3)

Asylum applicant from Montenegro region of Serbia and Montenegro failed to establish fear of future persecution in form of economic deprivation, where he failed to show that future significant economic disadvantage was likely and deliberately directed at him due to his Moslem religion and/or Albanian ethnicity. *Capric v. Ashcroft*, C.A.7 2004, 355 F.3d 1075. Aliens ↻ 53.10(3)

Economic discrimination that alien claimed he would face if returned to Romania neither rose to the level of deliberate imposition of substantial economic disadvantage resulting in economic deprivation nor constituted a threat to alien's life or freedom, and thus it did not constitute persecution, as required for grant of asylum. *Pal v. I.N.S.*, C.A.2 2005, 132 Fed.Appx. 914, 2005 WL 1327604, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that economic hardship alien endured did not rise to level of persecution required for asylum. *Jing Lian Zheng v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 523, 2004 WL 1941293, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that threats against aliens were economically motivated, rather than motivated by aliens' political affiliation or any imputed political beliefs which would demonstrate their eligibility for asylum. *Velasquez v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 111, 2004 WL 1869344, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Alien failed to establish that he suffered past persecution on account of his religion, as would warrant grant of asylum; although both alien and his wife were fired from their jobs for practicing their religion, and subjected to weekly interrogation sessions, there was no showing of severe economic deprivation, alien left the country three months after he was discharged, so there was no evidence that he could not have obtained alternate employment, and alien failed to provide specific testimony about weekly interrogation sessions elevating the harassment to persecution. *Wang v. Ashcroft*, C.A.9 2004, 99 Fed.Appx. 820, 2004 WL 1202973, Unreported. Aliens 53.10(3)

Alien's claims that he was subjected to economic deprivation as result of his participation in student demonstrations in China, and specifically that he was threatened with expulsion from high school, denied entrance into college despite having passed requisite entrance exams, and denied business license when he attempted to open small restaurant, did not demonstrate deliberate imposition of substantial economic disadvantage that would constitute "persecution," as required for grant of asylum. *Li v. Ashcroft*, C.A.2 2004, 94 Fed.Appx. 852, 2004 WL 816377, Unreported. Aliens 53.10(3)

Under the provisions of this section defining "refugee", economic hardship by itself is not a basis for eligibility as a refugee. 1981 (Counsel-Inf.Op.) 5 Op.O.L.C. 264.

138. Extortion, refugee

Substantial evidence did not support conclusion of Board of Immigration Appeals (BIA) that persecution suffered by asylum applicant in Armenia as result of his alleged support for Dashnaktsutun political party, in form of allegedly being forced to permit government representative to work in his business and losing his business as result, was personal, rather than on account of ground qualifying him for asylum; BIA conceded that applicant was victim of extortion, and applicant testified that extortion came at instance of governmental entity and provided circumstantial evidence that extortion was on account of political opinion imputed to him. *Yazitchian v. I.N.S.*, C.A.9 (Cal.) 2000, 207 F.3d 1164. Aliens 54.1(4.1)

Alleged detention of alien by Iraqi police until he agreed to sign away his family's liquor business did not render alien a refugee entitled to asylum, as alleged acts of secret police involved extortion, rather than qualifying persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. *Yusif v. Ashcroft*, C.A.6 2005, 130 Fed.Appx. 797, 2005 WL 1279458, Unreported. Aliens 53.10(3)

Alien's allegations that he had been forced to endure extortion of money, repeated threats, and a beating on the face on unspecified date, on account of his ethnicity, were insufficient to establish persecution required for asylum. *Kok Fie Koe v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 224, 2004 WL 2958298, Unreported. Aliens 53.10(3)

Substantial evidence supported finding that aliens failed to demonstrate that extortionists who eventually evicted them were motivated, even in part, by protected ground which would entitle them to asylum; aliens testified that local police repeatedly threatened them with violence and false prosecution to induce them to pay bribes, because of their perceived wealth as international ice skaters. *Khatin v. Ashcroft*, C.A.9 2004, 114 Fed.Appx. 811, 2004 WL 2650881, Unreported. Aliens 54.1(4.1)

Alien's testimony that military organization tried to extort money from his family was insufficient to establish past persecution required for asylum. *Em v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 267, 2004 WL 2580901, Unreported. Aliens 53.10(3)

Substantial evidence supported finding that alien seeking asylum did not suffer past persecution or have a well-founded fear of future persecution based on enumerated ground; alien testified that he did not know why police arrested him and that they may have arrested him to extort money from him. *Khan v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 933, 2004 WL 2203852, Unreported. Aliens 54.1(4.1)

8 U.S.C.A. § 1101

Alien failed to establish well-founded fear of persecution if he was returned to native country, and thus, he was not entitled to grant of asylum, although alien testified that he was the victim of extortion by communist party in his native country more than a decade ago, there was no evidence that alien would be subject to persecution upon his return, or if he resided in different part of country. *Noche v. Ashcroft*, C.A.3 2003, 71 Fed.Appx. 151, 2003 WL 21830115, Unreported. Aliens ↪ 53.10(3)

Alien failed to show that he was unable to return to his home country because of persecution or a well-founded fear of persecution, as required in his request for asylum, even though alien had been targeted for extortion; there was no basis to believe that he was targeted because of his ethnic or religious status, he could not identify who was responsible for killing his business partner or damaging his property, and he left his wife and son behind because they were not in as much danger since they weren't working. *Ounanian v. Ashcroft*, C.A.9 2003, 72 Fed.Appx. 592, 2003 WL 21774126, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported conclusion that alien, a citizen of the Philippines of Filipino-Chinese descent, lacked a well-founded fear of future persecution, as required in his application for asylum and withholding of removal; alien's fear that he might be kidnaped if he returned to the Philippines was based on possibility of extortion. *Co v. Ashcroft*, C.A.9 2003, 70 Fed.Appx. 952, 2003 WL 21751837, Unreported. Aliens ↪ 54.1(4.1)

139. Discrimination, refugee

Substantial evidence supported determination by Immigration Judge (IJ) that asylum applicant, who was native of Egypt and Coptic Christian, did not suffer past persecution in Egypt, even though Coptic Christians were subject to discrimination within Egypt based on religion; discrimination did not rise to level of persecution and those that bothered or mistreated applicant were individuals and not part of government. *Mansour v. Ashcroft*, C.A.9 2004, 390 F.3d 667. Aliens ↪ 53.10(3)

Yugoslavian army's actions against alien, an ethnic Albanian native from the former Yugoslav Republic of Macedonia, constituted past persecution based on his ethnicity, for purposes of asylum statutes; Albanian soldiers were not treated like their Serbian counterparts in that they were segregated, physically abused, deprived of bathing facilities and denied training, they were forced into battle without ammunition and deprived of other implements that were important to their survival, such that their only purpose was to provide a human shield for Serbian soldiers. *Begzatowski v. I.N.S.*, C.A.7 2002, 278 F.3d 665. Aliens ↪ 53.10(3)

Asylum applicant established past "persecution," as opposed to mere "discrimination," as required for satisfaction of objective requirement for refugee status, where alien testified credibly, and consistently with country conditions documentary evidence, that, following his conscription into Guatemalan army, he witnessed and was victim of repeated beatings and severe verbal harassment by his Hispanic superiors accompanied with verbal insults referring to his status as Indian, and that he was threatened with death when he complained to his commanding officer. *Duarte de Guinac v. I.N.S.*, C.A.9 1999, 179 F.3d 1156. Aliens ↪ 54.1(4.1)

Jewish citizen of Ukraine suffered "persecution," not mere "discrimination," and thus established prima facie eligibility for asylum; citizen witnessed violent attacks by ultra-nationalists against Jews, she was tied to chair with noose around her neck and threatened with death, and, soon after she left Ukraine, her husband and daughter were attacked by persons who alluded to fact that they had been unable to find her. *Korablina v. I.N.S.*, C.A.9 1998, 158 F.3d 1038. Aliens ↪ 53.10(3)

Evidence supported finding that ethnically Chinese Christian from Indonesia failed to meet statutory definition of "refugee," as required to obtain asylum; despite suffering discrimination in education and employment, alien enjoyed productive employment and relatively high level of education, and had traveled to other countries without seeking asylum. *Lim v. Gonzales*, C.A.10 2005, 137 Fed.Appx. 112, 2005 WL 1427670, Unreported. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

Harassment and discrimination suffered by alien in Armenia, on account of her religious status as a Jehovah's Witness, did not rise to level of past persecution that would warrant asylum. *Markosyan v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 954, 2005 WL 824075, Unreported. Aliens ↪ 53.10(3)

Alien who was native and citizen of Armenia failed to demonstrate either past persecution or well-founded fear of future persecution, as would support application for asylum, notwithstanding his subjective concern regarding discrimination he had faced in Armenia, as well as possibility that similar events might occur in the future; three isolated incidents of conflict could not constitute "persecution," and background information supported conclusion that, at most, Yezidis in Armenia suffered discrimination based on their ethnicity, rather than anything heinous enough to constitute persecution. *Khshoyan v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 550, 2004 WL 718927, Unreported. Aliens ↪ 53.10(3)

140. Genital mutilation, refugee

State Department country report for Nigeria, which noted that alien's home state had banned the practice of female genital mutilation (FGM), did not provide substantial evidence supporting adverse credibility determination in asylum proceeding; a closer reading of the report indicated that the ban was not consistently enforced, and that the rate of FGM was far higher in alien's home area than in other parts of Nigeria, which was consistent with her testimony. *Unreroro v. Gonzales*, C.A.10 2006, 443 F.3d 1197. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Forced female genital mutilation, like forced sterilization, is in nature of permanent and continuing act of persecution, that gives rise to presumption of well-founded fear of future persecution that government cannot rebut with evidence of changed country conditions or of possibility of relocating. *Mohammed v. Gonzales*, C.A.9 2005, 400 F.3d 785. Aliens ↪ 54.1(2)

Female genital mutilation performed on Somalian national qualified as "persecution," such as might support her asylum claim, notwithstanding that such mutilation was widely accepted and practiced in Somalia, and may have been performed with consent or involvement of her parents. *Mohammed v. Gonzales*, C.A.9 2005, 400 F.3d 785. Aliens ↪ 53.10(3)

Native and citizen of Ethiopia had objectively reasonable fear of being subjected to female genital mutilation (FGM), as required for asylum, where state department report indicated that approximately 90% of all females in Ethiopia were subjected to some form of practice of FGM, threat of FGM came from alien's own relatives and also any future husband and his relatives, and alien was only nine-years-old at time of hearing. *Abay v. Ashcroft*, C.A.6 2004, 368 F.3d 634. Aliens ↪ 53.10(3)

Native of Ghana had objectively reasonable fear of being subjected to female genital mutilation (FGM), as required for asylum, where she credibly testified that her lack of virginity would be discovered because she was designated to become Nkumssa Tribe's queen mother and that punishment for premarital sex was FGM, minister who had travelled extensively in Ghana testified that FGM was practiced in Ghana's central region, and State Department report indicated that, although FGM had been criminalized in Ghana, the number of prosecutions had been insignificant. *Abankwah v. I.N.S.*, C.A.2 1999, 185 F.3d 18. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's denial of asylum, withholding of removal, and relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); IJ's decision identified inconsistencies in alien's testimony that undermined her credibility, relied upon relevant country reports issued by State Department to discount alien's fear of female genital mutilation, and explained why alien had insufficient fear of political persecution or torture were she to return to her homeland. *Konate v. Gonzales*, C.A.6 2006, 179 Fed.Appx. 325, 2006 WL 1208076, Unreported. Aliens, Immigration, And Citizenship ↪ 644

8 U.S.C.A. § 1101

Evidence indicated that a reasonable person in alien's circumstances would not fear persecution on the basis of gender due to alien's prior subjection to female genital mutilation as required to support alien's application for asylum and withholding of removal; risk of danger to alien of marital rape, wife-beating, genital mutilation and abduction as a form of marriage was attenuated due to fact that alien was already married and had already been subjected to female genital mutilation. *Seifu v. Ashcroft*, C.A.5 2003, 80 Fed.Appx. 323, 2003 WL 22490221, Unreported. Aliens ↻ 53.10(3)

141. Guerilla groups, refugee

Columbian asylum applicant established persecution or well-founded fear of future persecution, by providing evidence that he was confronted by member of Fuerzas Armadas Revolucionarias de Colombia (FARC) as he helped to recover bodies of members of Colombian National Police (CNP), that FARC located his home, cell phone numbers, and names of his wife and children, and that when he relocated, FARC followed. *Tamara-Gomez v. Gonzales*, C.A.5 2006, 447 F.3d 343. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Substantial evidence supported immigration judge's finding that asylum applicant did not have requisite well-founded fear of future persecution by pro-government rebel group that, prior to his flight to the United States, had conscripted him into service, given that applicant also held pro-government stance, and that group did not have nationwide presence in Sierra Leone. *Turay v. Ashcroft*, C.A.8 2005, 405 F.3d 663. Aliens ↻ 54.1(4.1)

Alien who was Colombian national failed to establish well-founded fear of persecution based on her political opinion and activity, as would render her eligible for asylum; although evidence did not support finding that alien could viably relocate within Colombia to place where guerilla group that would allegedly persecute her was either nonexistent or minimal, and alien had exercised leadership in nonviolence movement, evidence did not indicate that her notoriety as an activist would outlast her four-year absence from Colombia, and any subjective fear she had as to returning to Colombia was not objectively reasonable. *Sepulveda v. U.S. Atty. Gen.*, C.A.11 2005, 401 F.3d 1226. Aliens ↻ 53.10(3)

Substantial evidence supported conclusion of Board of Immigration Appeals (BIA), that Guatemalan asylum applicant's fear of future persecution based on his support of government and refusal to join guerillas was not well-founded; alien failed to prove that guerillas threatened him in the past because of his support of government, as opposed to his refusal to join their forces for non-political reasons. *Melecio-Saquil v. Ashcroft*, C.A.8 2003, 337 F.3d 983. Aliens ↻ 54.1(4.1)

Alien was not entitled to asylum based on evidence that Guatemalan guerillas sought to recruit him to their side in a civil war and later sought to punish him for evading their "draft;" there was no indication that alien's political beliefs had anything to do with efforts to recruit him. *Velasquez-Valencia v. I.N.S.*, C.A.1 2001, 244 F.3d 48. Aliens ↻ 53.10(3)

Asylum applicant, who was Quiche Mayan Indian, suffered past persecution by Guatemalan military, and thus was entitled to legal presumption of well-founded fear of persecution, where military broke into his home and beat him so severely that he was bedridden for two days, military beat his father, applicant testified about prolific military violence in his town, including killings of his brother and grandfather, and, although attempted recruitment by guerillas prompted applicant to flee Guatemala, he consistently testified he feared both military and guerillas. *Chanchavac v. I.N.S.*, C.A.9 (Cal.) 2000, 207 F.3d 584. Aliens ↻ 54.1(2)

Alien had well-founded fear of future persecution, assuming credibility of her testimony that her family told her that guerillas were looking for her because she had taught adult literacy for government, and that, after she left Guatemala, guerillas killed her father and uncle after inquiring about their relationship to her. *Cordon-Garcia v. I.N.S.*, C.A.9 2000, 204 F.3d 985. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Citizen of the Philippines suffered "persecution" within meaning of statute providing for asylum based on well-founded fear of persecution, when she was kidnaped, beaten, held for a period of days, and threatened with more violence by revolutionary group. *Tarubac v. I.N.S.*, C.A.9 1999, 182 F.3d 1114. Aliens 53.10(3)

Alien had "well-founded fear of persecution" in retaliation for his acts and expressions of political opposition to guerrilla organization, and was accordingly a candidate for political asylum, based on evidence of death threats he received and of murder of other members of political assembly who, like alien, were vocal in their opposition to organization. *Sotelo-Aquije v. Slattery*, C.A.2 (N.Y.) 1994, 17 F.3d 33, on remand 863 F.Supp. 133.

Guerrilla threat to former Central American soldier could constitute persecutions for purpose of obtaining asylum, even if threat had "entirely rational and strategic purpose behind it"; fear of reprisal from guerrillas on part of ex-soldier was type of political persecution and if soldier, on basis of objective circumstances personally known to him, believed that he had at least one in ten chance of being killed by guerrillas, he was statutorily eligible for political asylum. *Montecino v. I.N.S.*, C.A.9 1990, 915 F.2d 518. Aliens 53.10(3)

Alien's failure to report to Pakistani government that his life had been threatened by terrorists who wanted him to cooperate in terrorist attack by distributing poison at hospital where he worked as pharmacist was not fatal to his claim that he was persecuted at the hands of terrorists that government was unable or unwilling to control; alien presented affidavit from expert on South Asian affairs stating there would be a natural and reasonable reluctance to approach police about threat from terrorist group, since police could not act until crime had been committed, if they were even inclined to do so, and State Department report indicated Pakistani government's attempts to address terrorism were perhaps not successful. *Rehman v. Atty. Gen. of U.S.*, C.A.3 2006, 2006 WL 1081161, Unreported. Aliens, Immigration, And Citizenship 644

Paramilitary group's threats involving graffiti at alien's family's farm and telephone calls to alien's home warning against continued collaboration with guerilla forces did not amount to persecution required for asylum; graffiti and threats were not addressed to alien personally and alien was never directly confronted by paramilitary group or threatened with serious harm. *Builes-Vasquez v. Gonzales*, C.A.1 2006, 175 Fed.Appx. 363, 2006 WL 988300, Unreported. Aliens, Immigration, And Citizenship 530(1)

Substantial evidence supported finding that alien seeking asylum failed to establish either past persecution or a well-founded fear of future persecution on account of his political opinion; alien testified that he received threatening phone calls from guerrilla group after declining additional work, but never testified that he was physically harmed, kidnaped, or abused, and members of alien's family who remained in the country had not received any phone calls or inquiries about his whereabouts. *Zuniga-Murillo v. U.S. Attorney General*, C.A.11 2005, 132 Fed.Appx. 277, 2005 WL 1189625, Unreported. Aliens 54.1(4.1)

Substantial evidence supported determination that alien was not eligible for asylum; alien's alleged mistreatment at the hands of guerillas was due to his refusal to join them when they tried to recruit him, rather than to his political opinion, and alien lacked a well-founded fear of persecution on account of a protected ground inasmuch as he admitted that he feared common thieves, if he returned to Guatemala, rather than the guerillas. *Sandoval v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 3, 2005 WL 327625, Unreported. Aliens 53.10(3)

Alien's testimony that guerrillas kidnaped and beat him after they came to his home seeking his brother, who was in the military, was, without further evidence of guerrillas' motivations, insufficient to establish that alien was harmed on account of a protected ground which would entitle him to asylum. *Reyes-Rodriguez v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 334, 2005 WL 79096, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's determination that alien seeking asylum failed to establish persecution on account of an enumerated ground; alien testified that on two occasions he received letters from guerrillas asking for money, but he disregarded the letters and was never contacted or threatened again, and his wife and children, who

8 U.S.C.A. § 1101

remained in his home town, had never been contacted by guerrillas. *Nepomuceno Repuyan v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 394, 2004 WL 2903624, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that alien seeking asylum failed to establish persecution on account of protected ground; alien testified that approximately two years after completing mandatory military service, four men whom he understood to be guerillas attacked him, threatened his family, and asked him questions about military's capture of guerrilla fighter that alien's unit had hunted, and that his uncle and cousins had been killed, without explaining how deaths might be connected to his experiences. *Hernandez v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 386, 2004 WL 2903578, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding that asylum applicant, whose encounters with guerrillas in his native country of Guatemala were not on account of imputed political opinion or any other statutorily protected ground, failed to establish well-founded fear of persecution motivated by his refusal to join guerrillas. *Escobar Calderon v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 544, 2004 WL 2856254, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to establish a well-founded fear of persecution based on his refusal to join guerilla forces or retribution for his service in military. *Becerril v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 264, 2004 WL 2579212, Unreported. Aliens ↻ 54.1(4.1)

Bureau of Immigration Appeals (BIA) abused its discretion in denying motion by aliens, who were natives and citizens of Peru, for reconsideration of BIA's decision denying their application for asylum; BIA committed both legal and factual errors in reaching its original decision, in that few isolated passages from State Department report on conditions in Peru failed to rebut substantial, compelling and uncontradicted evidence establishing aliens' well-founded fear of future persecution by guerilla group, and BIA mischaracterized record when it found aliens had offered no evidence that guerilla group had continuing interest in alien's whereabouts. *Sologuren v. Ashcroft*, C.A.9 2004, 112 Fed.Appx. 618, 2004 WL 2403854, Unreported. Aliens ↻ 54(5)

Substantial evidence did not support conclusion, in asylum proceeding, that alien lacked a well-founded fear of persecution in Peru; State Department reports which showed a weakening of the terrorist group were inapplicable to alien inasmuch as he was a member of the high-profile targets on which the group continued to focus its attacks. *Vilchez Zarate v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 129, 2004 WL 2370572, Unreported. Aliens ↻ 54.1(4.1)

Alien seeking asylum established persecution on account of her ethnicity and imputed support of guerrillas by testifying that her common law husband had been burned to death by guerrillas, that she had been assaulted and threatened by guerrillas, and that she continued to receive threatening letters from unidentified sources until her departure from her native country. *Pelico-Perez v. I.N.S.*, C.A.9 2004, 106 Fed.Appx. 643, 2004 WL 1987311, Unreported. Aliens ↻ 53.10(3)

Alien's forced recruitment by a guerilla group did not provide basis for asylum. *Dabo v. Ashcroft*, C.A.6 2004, 107 Fed.Appx. 513, 2004 WL 1870440, Unreported. Aliens ↻ 53.10(3)

Alien failed to establish a well-founded fear of future persecution based on enumerated factor which would demonstrate his eligibility for asylum; evidence established that threats from guerrillas were attributable to alien's government position, but alien no longer held that position, and guerrillas had diminished presence in the country. *Doctor v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 765, 2004 WL 1870390, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's determination at asylum proceeding that alien's testimony that guerillas kidnapped him because he worked for a wealthy business owner from whom the guerillas sought to extort money did not establish past persecution or a well-founded fear of future persecution. *Cardona-Molina v. Ashcroft*, C.A.9

8 U.S.C.A. § 1101

2004, 107 Fed.Appx. 115, 2004 WL 1869429, Unreported. Aliens ↻ 54.1(4.1)

Alien's testimony that guerrillas threatened him and beat his wife and children in order to stop him from organizing civil defense patrols in his town was insufficient to demonstrate past persecution on account of an enumerated ground, as required for asylum. *Cifuentes v. Ashcroft*, C.A.9 2004, 105 Fed.Appx. 944, 2004 WL 1832753, Unreported. Aliens ↻ 53.10(3)

Alien's single encounter with two guerrillas did not rise to level of past persecution which would establish alien's eligibility for asylum; guerrillas did no more than try to solicit money from alien and recruit him into their army. *Inga v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 50, 2004 WL 1595389, Unreported. Aliens ↻ 53.10(3)

Alien failed to establish past persecution or well-founded fear of future persecution, as necessary to be eligible for asylum; guerrillas' conscription efforts and threats against alien did not constitute past persecution, given significant changes in Guatemala and fact that his family had continued to live in his hometown undisturbed, alien did not have well-founded fear of future persecution, and claim of well-founded fear of persecution based upon pattern or practice of persecution against indigenous people such as himself fell short of systematic persecution necessary to warrant asylum. *Machic v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 596, 2004 WL 785317, Unreported. Aliens ↻ 53.10(3)

Alien failed to show that he had well-founded fear of future persecution on account of political opinion, as would warrant grant of asylum; although alien testified that anti-government guerillas in his native country threatened to recruit adult males, that his teacher had been killed by guerillas in retaliation for removing a flag at his school, and that government murdered a couple who returned to country without identifying documentation, alien failed to show that he held a political opinion or that one was imputed to him, or that motive for government's action or guerillas actions was based upon political opinion. *Antonio-Francisco v. Ashcroft*, C.A.9 2004, 88 Fed.Appx. 174, 2004 WL 260586, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported denial of alien's application for asylum; threatening telephone calls and verbal threats made by guerillas did not rise of level of severity that would constitute past persecution, and alien did not have a reasonable fear of future persecution inasmuch as guerillas' main reason for harassing alien was eliminated, since he no longer worked for alarm company. *Toro v. Ashcroft*, C.A.5 2003, 83 Fed.Appx. 15, 2003 WL 22880763, Unreported. Aliens ↻ 53.10(3)

Alien was not eligible for asylum even though he testified that he had been beaten several times for refusing to join a guerrilla group, that his grandfather had been killed for refusing to join the group, and that the group had threatened to kill his father for his money and for refusing to join them; there was no evidence that the guerrillas' actions were taken on account of any enumerated ground. *Molina v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 163, 2003 WL 22682596, Unreported. Aliens ↻ 53.10(3)

Alien, who admitted he no longer feared persecution by guerrillas if he returned to Guatemala, did not have well-founded fear of future persecution, as required in his applications for asylum and withholding of removal. *De Leon v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 153, 2003 WL 22682530, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported determination that alien, if he returned to Guatemala, did not face a reasonable fear of future persecution by anti-government guerrillas, as required in his application for asylum; government had entered into a peace accord with the guerrillas, and guerrilla movement had disbanded. *Ordenez Tumax v. Ashcroft*, C.A.5 2003, 79 Fed.Appx. 642, 2003 WL 22469756, Unreported. Aliens ↻ 53.10(3)

Alien failed to establish past persecution or fear of persecution for purposes of his application for asylum and withholding of removal based on single encounter with guerilla forces in Guatamala when the guerillas attempted to recruit him. *Zapet v. Ashcroft*, C.A.5 2003, 75 Fed.Appx. 244, 2003 WL 22080762, Unreported. Aliens ↻

8 U.S.C.A. § 1101

53.10(3)

Alien seeking asylum failed to establish a well-founded fear of persecution; two threatening letters, which were not accompanied by any other actions against him or his colleagues, were insufficient to support an objectively reasonable fear of future persecution, and his problems with guerrillas were not based on any of the statutorily enumerated grounds. *Westerheyde v. I.N.S.*, C.A.9 2003, 71 Fed.Appx. 746, 2003 WL 21872541, Unreported. Aliens ↪ 53.10(3)

Recruitment attempts by guerrillas did not, without more, constitute "persecution" for asylum purposes. *Gonzalez-Zepeda v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 707, 2003 WL 21774130, Unreported. Aliens ↪ 53.10(3)

Evidence was insufficient to establish that alien suffered from past persecution; threats from, and detention by, guerrillas did not rise to level of persecution, and alien was not targeted for recruitment because of any political opinion, ethnicity, or membership in a particular social group, but because he was an able-bodied man within guerrillas' reach. *Ramos-Ortiz v. Ashcroft*, C.A.3 2003, 70 Fed.Appx. 68, 2003 WL 21543897, Unreported. Aliens ↪ 54.1(4.1)

Aliens failed to demonstrate a well-founded fear of persecution, as required in their application for asylum and withholding of deportation, despite fact that they were involved in two past incidents with guerrillas; aliens did come into contact with guerrillas in first instance, having fled village prior to raid, and aliens were not harmed by guerrillas in second incident. *De la Roca v. Ashcroft*, C.A.3 2003, 63 Fed.Appx. 598, 2003 WL 1914155, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported the conclusion of Board of Immigration Appeals (BIA) that the guerrillas attempted to forcibly recruit alien who sought asylum, because of his knowledge and military training, and not on account of a protected ground. *Perez-Baten v. Ashcroft*, C.A.9 2003, 62 Fed.Appx. 809, 2003 WL 1900838, Unreported. Aliens ↪ 54.1(4.1)

142. Nongovernmental persecution, refugee


Native of Afghanistan who was living in Germany satisfied burden of showing that German officials were unwilling or unable to control anti-foreigner violence that she and her family experienced at hands of non-state actors, when she and her family members were threatened with death, were beaten and forced to flee in order to escape mob violence, had tires to their vehicle slashed and had their apartment vandalized, where police made no arrests following these beatings, quickly closed their investigation of intrusion into apartment as simple theft despite evidence of anti-foreigner hatred, and told alien, after her son was attacked, that such things happened all the time and that foreigners "better try to take care of [themselves]"; accordingly, presumption arose that alien was eligible for asylum, and burden was on government to rebut this presumption. *Mashiri v. Ashcroft*, C.A.9 2004, 383 F.3d 1112, as amended, amended 2004 WL 2435489. Aliens ↪ 53.10(3); Aliens ↪ 54.1(2)


Aliens, white South Africans, failed to establish eligibility for asylum on the basis of a well-founded fear of economic and/or criminal persecution if removed to South Africa; aliens established only that they feared future racial discrimination with adverse economic consequences, and potential criminal attacks from random black assailants. *Gormley v. Ashcroft*, C.A.9 2004, 364 F.3d 1172. Aliens ↪ 53.10(3)


Alien's concerns that removal to Ukraine would limit her employment prospects and expose her to dangers of uncontrolled criminal element did not indicate well-founded fear of persecution on basis of protected ground, as required for asylum eligibility. *Kharkhan v. Ashcroft*, C.A.7 2003, 336 F.3d 601, as amended. Aliens ↪ 53.10(3)


8 U.S.C.A. § 1101


Statute providing for grant of asylum to aliens based on their "well-founded fear of persecution" in their country of origin protects against persecution not only by government forces, but by nongovernmental groups which government cannot control. *Sotelo-Aquije v. Slattery*, C.A.2 (N.Y.) 1994, 17 F.3d 33, on remand 863 F.Supp. 133.


Substantial evidence supported immigration judge's (IJ) determination that alien, a citizen of Armenia, failed to carry his burden of demonstrating past persecution or a well-founded fear of future persecution, as required to qualify for asylum or withholding of removal; although the alien provided credible evidence that he was beaten and shot by a street gang on account of his Azeri ethnicity, substantial evidence supported the IJ's determination that the gang members were not government actors or individuals over whom the government exercised no control. *Balyan v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 202, 2004 WL 2829143, Unreported. Aliens  54.1(4.1)


Evidence in asylum proceeding compelled finding that alien was subjected to past persecution in Peru; specific death threats against him, along with the murder of his partner, rose to level of persecution, that persecution was a direct result of his loyalty to the government and refusal to cooperate with terrorists, and the government was unable or unwilling to control the persecution. *Vilchez Zarate v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 129, 2004 WL 2370572, Unreported. Aliens  53.10(3)

Alien's testimony that she and her son were beaten on various occasions by gang of thugs who made negative remarks about their religion, and that authorities refused to investigate complaints she made, was sufficient to establish well-founded fear of future persecution required for asylum. *Ramazanova v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 509, 2004 WL 1941279, Unreported. Aliens  53.10(3)

Alien's claims that she was slapped by a stranger and robbed at gunpoint and that her church was attacked did not support finding of a well-founded fear of persecution, as required for asylum; there was no evidence of a particularized, individual basis for fearing that alien would personally be targeted if returned to Indonesia. *Tan v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 236, 2004 WL 1336820, Unreported. Aliens  53.10(3)

Claims by alien, a native of Indonesia, that he was bullied as a child by children who stole his money, that alien was told by police that they would not take a report after his car was vandalized, and that local officials charged him more for documents than other Indonesians did not support a finding of an objectively reasonable fear of future persecution, as required to support alien's application for asylum. *Goeij v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 220, 2004 WL 1336655, Unreported. Aliens  53.10(3)

Alien seeking asylum failed to prove past persecution on account of his race or political opinion, or a likelihood of future persecution; his own testimony on the three assaults he suffered failed to establish that they resulted from his political support for the Peoples Progressive Party (PPP) in Guyana, and evidence did not establish that acts of violence were committed by the government or by forces the government was unwilling to control. *Bridgemohan v. Ashcroft*, C.A.3 2004, 95 Fed.Appx. 411, 2004 WL 857328, Unreported. Aliens  54.1(4.1)

Testimony that alien, a citizen of Moldova of Russian ethnicity, was mistreated in Moldova, did not compel a finding of persecution, as required in application for asylum; general hostility between ethnic groups did not rise to level of persecution, alien failed to establish that his mistreatment, which he had not reported to police, was condoned by the government or was something the government was unable or unwilling to control, and alien's parents and brother continued to live in Moldova without harm. *Emelkin v. Ashcroft*, C.A.6 2004, 97 Fed.Appx. 27, 2004 WL 829926, Unreported. Aliens  54.1(4.1)

Record did not compel a conclusion that the threats posed to an alien were so extreme as to constitute persecution or that, even if they were, they were based on the alien's political opinion or any other protected ground, so as to qualify the alien for asylum or withholding of removal; rather, the threats resulted from an employment-related dispute that was personal in nature, based on the alien's refusal to file false inspection reports regarding the number of employees at a project site. *Calixte v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 442, 2004 WL 729185, Unreported.

8 U.S.C.A. § 1101

Aliens ↪ 53.10(3)

Alien did not have a well-founded fear of future persecution if he returned to Pakistan, despite his membership in an opposition political party and beatings he received from persons he believed to be members of opposing parties; alien was never specifically targeted by the ruling party, his family members had remained in Pakistan without problem even though his father was also a member of the opposition party, and eleven years had passed since he was attacked while posting banners. *Mohammad v. Ashcroft*, C.A.5 2004, 90 Fed.Appx. 746, 2004 WL 315179, Unreported. Aliens ↪ 53.10(3)

Criminal group against whose members alien testified in Colombia was composed of organized bandits and hoodlums unaffiliated with the Columbian government, and therefore substantial evidence supported decision that alien was not entitled to asylum on basis of any credible fear of persecution on basis of being a member of a protectable group made up of persons who had testified against paramilitary groups involved in terrorist activity under the direction of corrupt military officials, despite his credible fear of returning to Colombia. *Duarte v. Ashcroft*, C.A.7 2003, 83 Fed.Appx. 119, 2003 WL 22766064, Unreported. Aliens ↪ 54.1(4.1)

Denial of alien's request for asylum was reasonable despite her testimony that a political group to which she had belonged, which engaged in ritual cannibalism, would harm her if she returned to Nigeria; scholarly reports indicated that the political group did not engage in cannibalism and was tolerant, and alleged threatening letter was vague and unsigned. *Obazee v. Ashcroft*, C.A.7 2003, 79 Fed.Appx. 914, 2003 WL 22473831, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to establish that he had fear of persecution in Indonesia because of his Chinese ethnicity or his Roman Catholic faith, and thus was not entitled to asylum or withholding of deportation, despite alien's testimony that he was attacked three times by individuals who arguably knew that he was Chinese and who were attacking him because of that ethnicity, absent evidence of nexus between ethnic or religious animosity and unwillingness or inability of government to protect members of his ethnic group. *Margomoeljono v. Ashcroft*, C.A.3 2003, 77 Fed.Appx. 584, 2003 WL 22324992, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported determination that alien was not entitled to asylum and withholding of removal, inasmuch as alien failed to demonstrate either past persecution or a well-founded fear of future persecution on account of a protected ground; danger that alien allegedly faced if he returned to Colombia stemmed from his refusal to cooperate with drug dealers. *Bravo v. Ashcroft*, C.A.1 2003, 73 Fed.Appx. 460, 2003 WL 22016314, Unreported. Aliens ↪ 54.1(4.1)

Asylum applicant's claim that he feared criminal gangs in the Ukraine did not rise to the level of persecution necessary to establish eligibility for asylum. *Hray v. Ashcroft*, C.A.3 2003, 74 Fed.Appx. 167, 2003 WL 21999446, Unreported. Aliens ↪ 53.10(3)

Aliens, who had overstayed their visitor's visas, were not entitled to asylum from Great Britain based on fear of persecution, notwithstanding murder of nephew by racist "skinheads" or "British nationalists" and other vandalism and threats aimed at them, where they were able to avail themselves of protection of British government, which convicted nephew's attackers of murder. *Hamdani v. I.N.S.*, C.A.9 2003, 66 Fed.Appx. 131, 2003 WL 21277395, Unreported. Aliens ↪ 53.10(3)

Members of Ukrainian family failed to establish that they had suffered past persecution or possessed well-founded fear of future persecution as result of their association with American relative, and thus they were not eligible for asylum, even though family was target of harassment and vandalism, where family did not report most incidents to police, and there was no evidence of connection between actions against family and Ukrainian government officials. *Lebid v. Ashcroft*, C.A.3 2003, 66 Fed.Appx. 376, 2003 WL 21027908, Unreported. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

143. Rape, refugee

Rape or sexual assault may be "persecution" for purposes of establishing eligibility for asylum. *Lopez-Galarza v. I.N.S.*, C.A.9 1996, 99 F.3d 954. Aliens ↪ 53.10(3)

Harm alien suffered, including being raped, repeatedly beaten, and forced to work as a prostitute, rose to level of persecution required for asylum. *Pozos v. Gonzales*, C.A.9 2005, 141 Fed.Appx. 629, 2005 WL 1901549, Unreported. Aliens ↪ 53.10(3)

144. War, refugee

Alien, an ethnic Armenian and Georgian citizen from separatist region of Abkhazia, did not show that alleged persecutors had acted on basis of his ethnic or political identity, and thus failed to demonstrate past persecution or a well-founded fear of future persecution, as required to support application for asylum; alleged persecution by Abkhazians stemmed from alien's refusal to join either side during armed conflict between Georgian forces and Abkhazian separatists, and confrontations with Abkhazians took place because of civil war, not alien's religion, politics, or social group. *Ustyan v. Ashcroft*, C.A.10 2004, 367 F.3d 1215. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's (IJ) determination that asylum applicant's fear was not objectively reasonable and thus that she did not establish a well-founded fear of persecution; there was no proven nexus between the violence in her native Sierra Leone and applicant's Creole ethnicity and political beliefs, the dangers faced in Sierra Leone by applicant, who was never physically harmed, detained, or arrested, were the result of the violent civil conflict there, and were the same as dangers faced by other residents throughout Sierra Leone, and applicant failed to show that she would be individually targeted for persecution on account of her own political beliefs or on account of her mother's political affiliation. *Pierson v. Ashcroft*, C.A.1 2004, 364 F.3d 38. Aliens ↪ 54.1(4.1)

Determination that alien fled Azerbaijan as result of civil war, not persecution, and resulting denial of alien's application for asylum and withholding of removal, was supported by evidence that encounter between alien and his wife and Azari soldiers was one-time event that did not result in physical injury, and that alien and his family continued to live in Azerbaijan for nearly two years after encounter without incident. *Vartanian v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 557, 2004 WL 720164, Unreported. Aliens ↪ 53.10(3)

Fact that Guatemala had been undergoing a civil war for decades, with a constant threat of random violence, was insufficient to support alien's claim for refugee status. *Galindo v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 244, 2003 WL 22977467, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported determination that alien, a native of Guatemala, failed to show past persecution or a well-founded fear of future persecution, as required in his request for withholding of deportation; alien departed from Guatemala due to civil war, war had effectively terminated, and alien did not identify a potential persecutor or demonstrate that he would be subject to torture if returned. *Larez-Juarez v. Ashcroft*, C.A.10 2003, 74 Fed.Appx. 29, 2003 WL 22087530, Unreported. Aliens ↪ 54.1(4.1)

145. Social groups generally, refugee

Noncriminal informants working against a Colombian drug cartel were not a "particular social group" eligible for asylum and withholding of deportation; group of informants were, for purposes of Immigration and Nationality Act (INA), both not visible enough, and, at the same time, potentially too numerous or inchoate. *Castillo-Arias v. U.S. Atty. Gen.*, C.A.11 2006, 446 F.3d 1190. Aliens, Immigration, And Citizenship ↪ 53.10(3)

8 U.S.C.A. § 1101

Alien's expulsion from secondary school in Zimbabwe, and his arrest and detention while in college, did not amount to past persecution based on his homosexual orientation, as might warrant grant of his request for asylum; actions of Zimbabwean authorities were not based on alien's homosexuality, but on his involvement in prohibited sexual misconduct, in that school prohibited any sexual activity between students, and alien's actions in college resulted in charges of sodomy and sexual assault. *Kimumwe v. Gonzales*, C.A.8 2005, 431 F.3d 319, rehearing and rehearing en banc denied. Aliens ↪ 53.10(3)

Asylum applicants, who were family that were natives of Columbia, established they were members of distinct social group of educated, landowning class of cattle farmers who were targeted by guerrilla group, as required to support application for asylum; State Department's Country Report for Columbia noted that cattlemen were among the guerrillas' preferred victims, and even if applicants' were to give up their land and cattle farming, there was no reason to believe that they would escape persecution. *Tapiero de Orejuela v. Gonzales*, C.A.7 2005, 423 F.3d 666. Aliens ↪ 53.10(3)

Homeless children in Honduras who lived in the streets did not constitute a particular social group whose members could seek asylum and withholding of removal based on their persecution or a well-founded fear of persecution in Honduras; poverty, homelessness, and youth were far too vague and all encompassing to be characteristics that set the perimeters for a protected group within the scope of the Immigration and Naturalization Act. *Escobar v. Gonzales*, C.A.3 2005, 417 F.3d 363. Aliens ↪ 53.10(3)

Aliens who were indebted to same private creditor in home country failed to establish that they were a particular social group for purposes of their asylum and withholding of removal claims, even if creditor was unscrupulous; debt was settled by a court which ordered aliens to pay creditor back. *Cruz-Funez v. Gonzales*, C.A.10 2005, 406 F.3d 1187. Aliens ↪ 53.10(3)

Alleged social group consisting of all business owners in Colombia who had rejected demands by narcotics traffickers to participate in illegal narcotics activity was too broad to qualify as particularized social group for purposes of asylum and withholding of removal. *Ochoa v. Gonzales*, C.A.9 2005, 406 F.3d 1166. Aliens ↪ 53.10(3)


Russian children with disabilities that are serious and long-lasting or permanent in nature and parents who care for them qualify as a "particular social group," within meaning of provision of the Immigration and Nationality Act (INA) making alien eligible for grant of asylum if he has well-founded fear of persecution based on his membership in "particular social group"; parents, in providing such care to their disabled children, are acting in manner which is so fundamental to their identities that they should not be required to change, and since they and their disabled children incur harm as unit, it is appropriate to treat them as single social group. *Tchoukhrova v. Gonzales*, C.A.9 2005, 404 F.3d 1181, rehearing and rehearing en banc denied 430 F.3d 1222, petition for certiorari filed 2006 WL 1221941. Aliens ↪ 53.10(3)


Group consisting of professionals who had been targeted by terrorists because they were in positions of authority and refused to use their positions to perpetrate a terrorist attack constituted a particular social group, for purposes of establishing persecution based on membership in a particular social group as ground for asylum eligibility. *Rehman v. Atty. Gen. of U.S.*, C.A.3 2006, 2006 WL 1081161, Unreported. Aliens, Immigration, And Citizenship ↪ 539


Alien's status as an informant did not render him a member of a "particular social group" who was eligible for asylum. *Kripalani v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 653, 2005 WL 1111835, Unreported. Aliens ↪ 53.10(3)


146. Nationality, refugee


8 U.S.C.A. § 1101


Substantial evidence supported the immigration judge's (IJ's) determination that alien, a citizen of Indonesia, did not suffer past persecution on account of her Christian religion or Chinese ethnicity, supporting denial of her asylum application; although alien was subjected to a robbery and assault with minor injury while walking home from school, and she attended a wedding at which Muslims stole food, such incidents did not rise to the level of persecution. *Tulengkey v. Gonzales*, C.A.10 2005, 425 F.3d 1277. Aliens  53.10(3)


Asylum applicants, who were Ethiopians of Eritrean descent, failed to establish that they suffered individual persecution as required to support applications; evidence in record demonstrated that Ethiopia's deportation efforts were directed primarily at ethnic Eritreans who demonstrated some form of political connection to Eritrea, applicants had no such connection, and applicants were not arrested and deported from Ethiopia. *Haile v. Gonzales*, C.A.7 2005, 421 F.3d 493. Aliens  53.10(3)


Immigration Judge (IJ) failed to address threshold issue regarding asylum applicant's nationality before denying application for asylum and withholding of removal and ordering applicant removed to India, and thus remand was required for IJ to address issue; applicant claimed that he inherited Chinese nationality from parents who were Tibetan refugees, even though he was born and raised in Tibetan refugee camp in India. *Dhoumo v. Board of Immigration Appeals*, C.A.2 2005, 416 F.3d 172. Aliens  54.3(6)

Asylum applicant, who was born in Gaza Strip, failed to establish well-founded fear of persecution based on his Palestinian nationality, even if harsh conditions confronted those residing in Gaza, where applicant personally suffered isolated harm or little cumulative harm. *Al-Fara v. Gonzales*, C.A.3 2005, 404 F.3d 733. Aliens  53.10(3)

Alien failed to establish past persecution, or reasonable fear of future persecution on account of his membership in a particular tribe, and thus, he was not entitled to withholding of removal on that basis; alien conceded that his native country's government had no way to recognize him as a member of his tribe in order to subject him to persecution or torture, and he admitted that he was never persecuted in the past. *Unuakhaul v. Ashcroft*, C.A.9 2004, 392 F.3d 1024, withdrawn from bound volume, amended and superseded 398 F.3d 1085, withdrawn and superseded 416 F.3d 931, amended 2005 WL 1839172. Aliens  53.10(3)

Substantial evidence supported immigration judge's determination that aliens had not established a well-founded fear of persecution based on their Armenian ethnicity if returned to Georgia, as required for aliens' asylum claim; although there was evidence of prior discrimination in Georgia against Armenians, there was no evidence of discrimination since regime change, and State Department reports indicated that there was no evidence of actions taken against Armenians on the basis of their ethnicity since the regime change. *Ambartsoumian v. Ashcroft*, C.A.3 2004, 388 F.3d 85. Aliens  54.1(4.1)

Asylum applicant failed to establish well-founded fear of persecution if returned to native country of Tatarstan and thus was not entitled to asylum; applicant produced no evidence that government of Russia would harm him or his family on the basis of his Tatar nationality if he were to return, incidents described by applicant occurred in former U.S.S.R. and return to Russian Federation would be a change in country conditions, State Department reports indicated that applicant could live in Tatarstan without being persecuted, and applicant's family continued to live in Tatarstan without being harmed. *Zakirov v. Ashcroft*, C.A.8 2004, 384 F.3d 541. Aliens  53.10(3)

Even assuming asylum applicant was credible, Board of Immigration Appeals' (BIA) decision that he did not suffer past persecution or have well-founded fear of persecution in Georgia based upon his Russian ethnicity was supported by substantial evidence, where incident in which he was shot began with police harassment because he was Russian, but actual shooting was random act of drunken officer, and the only other specific incidents he offered were mistreatment by private citizens and police requiring him to perform unpaid work. *Krasnopivtsev v. Ashcroft*, C.A.8 2004, 382 F.3d 832. Aliens  54.1(4.1)

8 U.S.C.A. § 1101

Husband and wife suffered past persecution within meaning of asylum statute, based on fact that wife was Christian and native Fijian while husband was Muslim of Indo-Fijian heritage, where husband was abducted and beaten, wife was physically attacked twice in her home, they could not go anywhere without being verbally assaulted and assailed with rocks, husband lost his job, they were denied marriage certificate, and both were seriously and repeatedly threatened. *Faruk v. Ashcroft*, C.A.9 2004, 378 F.3d 940, 199 A.L.R. Fed. 759. Aliens ☞ 53.10(3)

Alien, a stateless Palestinian who fled native country of Kuwait, established an objectively reasonable fear of future persecution based on his minority status if returned to Kuwait, as required to support application for asylum; Kuwait had engaged in forced expulsions, extreme persecution, and discrimination of Palestinians, Palestinians who remained in Kuwait were denied right to work, go to school, or obtain drinking water, and Palestinians had heightened risk of abuse by police. *Himri v. Ashcroft*, C.A.9 2004, 378 F.3d 932, as amended, amended 2004 WL 1879255. Aliens ☞ 53.10(3)

Evidence that government actors, in course of their past persecution of alien, an Israeli Muslim, had referred to him as a "goy," a word that means non-Jew and that is derogatory to Arabs, established requisite connection between acts of persecution and alien's ethnicity and religion, as required to support grant of asylum. *Baballah v. Ashcroft*, C.A.9 2004, 367 F.3d 1067. Aliens ☞ 53.10(3)

Adverse credibility determination by Board of Immigration Appeals (BIA) precluded BIA from finding that Sri Lankan asylum applicant was eligible for asylum based on alleged pattern or practice of persecution of Tamils, inasmuch as such determination precluded him from establishing subjective prong of well-founded fear standard. *Ramsameachire v. Ashcroft*, C.A.2 2004, 357 F.3d 169. Aliens ☞ 54.1(4.1)

Asylum applicant from Montenegro region of Serbia and Montenegro failed to establish past persecution based on his Albanian ancestry or Moslem religion, where his alleged arrest and firing were not on account of his refusal to serve in military, he was not forced from apartment on account of religion or ethnicity, and he did not suffer significant economic disadvantage. *Capric v. Ashcroft*, C.A.7 2004, 355 F.3d 1075. Aliens ☞ 53.10(3)

Even if crimes committed against alien, a native and citizen of Indonesia who was ethnically Chinese and a practicing Catholic, amounted to persecution, alien failed to establish that they were committed against her because of her ethnicity or religion, so as to render her eligible for asylum, where she could not identify the perpetrators or explain their motivations. *Purwanti v. Attorney General of U.S.*, C.A.3 2006, 176 Fed.Appx. 264, 2006 WL 1004876, Unreported. Aliens, Immigration, And Citizenship ☞ 538

Board of Immigration Appeals' (BIA) finding that alien was national of Jordan for purposes of asylum application was conclusive, since reasonable adjudicator would not be compelled to conclude to the contrary; alien was born in West Bank, documentary evidence stated that at time of her birth, Palestinians in West Bank were under Jordanian rule, she had five-year Jordanian passport containing no limitation on rights, State Department Advisory Opinion said holders of such passports enjoyed privileges and obligations of citizens of Jordan, her sisters had lived in Jordan for years, and her husband was Jordanian citizen. *Asad v. Ashcroft*, C.A.6 2005, 135 Fed.Appx. 839, 2005 WL 1412034, Unreported. Aliens ☞ 54.1(4.1)

Evidence did not compel conclusion that threats asylum applicant received at her job and in her home in her native Fiji on account of her marriage to Japanese man, rose to level of persecution, as required to overturn Bureau of Immigration Appeals' (BIA) denial of asylum. *Lata v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 102, 2004 WL 2983502, Unreported. Aliens ☞ 54.1(4.1)

Alien who failed to show either past persecution or a well-founded fear of future persecution in Armenia was not entitled to asylum and withholding of deportation, despite his mixed Armenian-Polish ancestry and membership in a disfavored political party. *Amirkhanian v. U.S.I.N.S.*, C.A.2 2004, 119 Fed.Appx. 302, 2004 WL 2861815, Unreported. Aliens ☞ 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported Immigration Judge's (IJ) determination that alien, who was Chinese Christian, failed to establish that it was more likely than not he would be subject to future persecution upon return to his native country of Indonesia, as would support his application for withholding of removal; despite evidence that Chinese Christians were a disfavored minority in Indonesia and that alien was harassed while residing there, his family members, who were also Chinese Christians, continued to reside in Indonesia without harm. *Laksono v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 133, 2004 WL 2711653, Unreported. Aliens ↻ 54.1(4.1)

Alien failed to establish that he had a well founded fear of persecution on account of his nationality as a Palestinian if returned to Kuwait, as required to support his application for asylum; although alien claimed he feared persecution because his brother and father lost their job and his brother was assaulted by a soldier, current conditions in Kuwait were less harsh towards persons of Palestinian nationality, and alien did not establish that he would be persecuted if returned to Kuwait. *Garadah v. Ashcroft*, C.A.6 2004, 86 Fed.Appx. 76, 2004 WL 68532, Unreported. Aliens ↻ 53.10(3)

147. Ethnicity, refugee

Immigration Judge's (IJ) choice to believe story that Montenegrin asylum applicant told at airport, that she had come to United States to marry, rather than story she told at hearing, that she had come to United States because she feared persecution on account of her Albanian ethnicity, was supported by substantial evidence; story at airport was detailed and plausible, especially when taken in tandem with applicant's failure to join her family when they immigrated to Australia. *Kanacevic v. I.N.S.*, C.A.2 2006, 448 F.3d 129. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien did not suffer past persecution in Russia due to his Jewish ethnicity, even though he was called anti-Semitic names on a number of occasions, had his studio and artwork vandalized, and was assaulted twice; incidents were not so severe as to amount to persecution and in any case were carried out by private actors, and alien failed to show that the government was unable or unwilling to control those private actors. *Suprun v. Gonzales*, C.A.8 2006, 442 F.3d 1078. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Asylum applicant, who was native of Ethiopia and member of Tigre ethnic group who was married to member of Oromo ethnic group, failed to establish that she had well founded fear of future persecution based on her mixed ethnic marriage or husband's past association with former regime if returned to Ethiopia; original source of applicant's persecution, the Mengistu regime, had been removed from power, nothing in record showed that new regime would commit similar abuses, applicant's fears regarding new regime in Ethiopia were based on second hand knowledge and speculation, and state department report indicated that new regime was considerable improvement and those that fled old regime would not be in danger of abusive treatment by new government upon returning. *Abrha v. Gonzales*, C.A.8 2006, 433 F.3d 1072, rehearing denied. Aliens ↻ 53.10(3)

Substantial evidence compelled finding, in asylum proceeding, that alien, a Russian citizen of Jewish ethnicity, was subjected to past persecution; alien received repeated death threats which government did not act against in any meaningful way, one of those threats was made immediately after the murders of two of her friends, she was assaulted by men who attempted to strangle her before they were interrupted, and an attempt was made to enter her residence, by men who threatened to kill her if she did not open the door. *Smolniakova v. Gonzales*, C.A.9 2005, 422 F.3d 1037. Aliens ↻ 54.1(4.1)

Asylum applicants, who were Ethiopians of Eritrean descent, failed to establish that they suffered individual persecution as required to support applications; evidence in record demonstrated that Ethiopia's deportation efforts were directed primarily at ethnic Eritreans who demonstrated some form of political connection to Eritrea, applicants had no such connection, and applicants were not arrested and deported from Ethiopia. *Haile v. Gonzales*, C.A.7 2005, 421 F.3d 493. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported conclusion, in asylum proceeding, that three incidents of anti-Azeri violence against alien did not amount to persecution at the hands of Armenian government officials; government did not condone the violence, but in fact made strong efforts to bring those responsible to justice, and the violence was confined to a local area and was carried out by the same small group of people. *Harutyunyan v. Gonzales*, C.A.1 2005, 421 F.3d 64. Aliens ↪ 54.1(4.1)

An alien's ethnic group may be considered a "social group," for purpose of the asylum statute. *Negeya v. Gonzales*, C.A.1 2005, 417 F.3d 78. Aliens ↪ 53.10(3)

Alien established by substantial evidence a well-founded fear of future persecution on account of her Chinese ethnicity were she returned to Indonesia, and thus was eligible for asylum; alien was not only a member of a significantly disfavored group, an Indonesian of Chinese ethnicity, she was particularly at risk because she was also a Christian and a woman, against whom evidence demonstrated a significant increase in risk for being raped and abused, and evidence further demonstrated that Indonesian government was either unwilling or unable to control the forces behind the ethnic and religious persecution in Indonesia. *Lolong v. Gonzales*, C.A.9 2005, 400 F.3d 1215, rehearing en banc granted 2006 WL 1703741. Aliens ↪ 53.10(3)

Aliens, who were ethnic Serbs and citizens of Bosnia-Herzegovina, established a well-founded fear of future persecution based on ethnicity as required to support applications for asylum; Croats had pattern and practice of ethnically cleansing all Serbs from the region where aliens had lived and aliens' fears of ethnic cleansing practices by Croats were substantiated by newspaper articles and United Nations High Commissioner of Refugees Repatriation Information Report which documented ongoing resistance and physical violence experienced by Serbs at hands of Croats. *Knezevic v. Ashcroft*, C.A.9 2004, 367 F.3d 1206. Aliens ↪ 54.1(4.1)

Aliens, who were ethnic Serbs and citizens of Bosnia-Herzegovina, established past persecution based on ethnicity as required to support applications for asylum; conflict between Croats and Serbs was specifically motivated by ethnic hatred and accompanied by systematic campaign of ethnic cleansing by Croats, Croat forces bombed town in which aliens had previously lived, aliens fled town due to threat of imminent harm or possible death, bombing destroyed aliens' business and home, and Croats stole all of aliens' personal property. *Knezevic v. Ashcroft*, C.A.9 2004, 367 F.3d 1206. Aliens ↪ 53.10(3)

Alien, a Kenyan citizen of Indian ethnicity, failed to establish connection between his ethnicity and robberies and threats he experienced, as required for asylum; alien did not put forth any evidence that any of his attackers ever uttered an ethnic slur or insult, nor was there any particular character to robberies or threats that would allow inference that assailants' actions were meant to convey message consistent with hatred toward ethnic Indians. *Solanki v. Gonzales*, C.A.3 2006, 2006 WL 1360149, Unreported. Aliens, Immigration, And Citizenship ↪ 538

Adverse treatment allegedly suffered by Ukrainian citizen because of his Armenian ethnicity did not rise to level of persecution necessary to establish entitlement to asylum, where alien claimed that his business had been vandalized twice, his wife had been beaten once, anti-Armenian graffiti was painted on his walls, Ukrainian had extorted money from him, and he had to pay bribes to numerous city officials to keep his business open. *Martirosov v. Gonzales*, C.A.3 2006, 164 Fed.Appx. 232, 2006 WL 176101, Unreported. Aliens, Immigration, And Citizenship ↪ 53.10(3)

Alien's testimony that, among other things, he was beaten outside of a restaurant by supporters of ultra-nationalist, anti-Semitic political group after they made racial slurs, that he was sprayed with tear gas and beaten by special police when he tried to intervene as they were beating two men whom he recognized as Jews, requiring him to seek medical treatment, that he was fired from his first job as an actor when theater where he worked was taken over by an anti-Semitic director, that he was insulted and harassed by his neighbors on a daily basis, and that he found Stars of David graffitied on his property, was sufficient to establish past persecution on account of Jewish ethnicity. *Korbukh v. Gonzales*, C.A.9 2005, 138 Fed.Appx. 923, 2005 WL 1606020, Unreported. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported finding that alien seeking asylum was not persecuted on account of a statutorily protected ground; even if robberies at issue amounted to persecution, IJ concluded that robberies were motivated by pecuniary gain, not ethnic hatred, since attackers never mentioned alien's ethnic status and state department report stated that there was no evidence that individuals of alien's ethnic background were specific targets of police abuse or other mistreatment. *Asaduzzaman v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 607, 2005 WL 1154339, Unreported. Aliens ↪ 54.1(4.1)

Aliens' testimony detailing some discrimination against Chinese ethnics, including requirement of carrying identification documents and limitations on education and governmental employment, together with testimony regarding vandalization of their home, two robberies, and incident in which female alien was accosted and threatened, was insufficient to establish persecution required for withholding of removal. *Go v. Gonzales*, C.A.3 2005, 131 Fed.Appx. 389, 2005 WL 1140728, Unreported. Aliens ↪ 53.10(3)

Alien's allegations that she was scratched and pushed by another child at age seven and was told by child's mother to get out of the country, that she was once pushed by gang members and fired from her job as a food inspector, and that she was threatened by a doctor that, unless she learned the language of the country, he would not provide her medical treatment again, were insufficient to demonstrate persecution on account of ethnicity, as required for asylum. *Ploom v. Gonzales*, C.A.8 2005, 124 Fed.Appx. 477, 2005 WL 551896, Unreported. Aliens ↪ 53.10(3)

Undisputed Eritrean ethnicity of alien's mother, together with country conditions reports stating that policy of alien's native country of deporting people of Eritrean origin had developed into a systematic, country-wide operation to arrest and deport anyone of full or part Eritrean descent, established, for purposes of his asylum claim premised on his ethnicity, that officials in alien's country would consider him to be Eritrean. *Mebrahtu v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 297, 2005 WL 66768, Unreported. Aliens ↪ 53.10(3)

Immigration Judge (IJ) applied correct legal standard to asylum applicant's claim of past persecution in Moldova, by requiring that applicant demonstrate that her persecutors were motivated, at least in part, by her Russian ethnicity; in finding that persecutors raped and beat applicant for no reason other than that they had female victim in hand, even if they hurled ethnic slurs, IJ did not improperly require ethnicity to be sole factor, rather, he determined that it was not a factor at all. *Levit v. Ashcroft*, C.A.3 2004, 116 Fed.Appx. 394, 2004 WL 2749889, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding that alien did not suffer past persecution on account of his ethnicity or religion which would entitle him to asylum; although alien was forced to run from a mob during riots and had been subjected to numerous insults and threats because of his Chinese appearance, he was not actually harmed. *Goenawan v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 265, 2004 WL 2579222, Unreported. Aliens ↪ 54.1(4.1)

Aliens, in their asylum proceeding, demonstrated a well-founded fear of persecution in Russia; Immigration Judge's (IJ) conclusion that aliens' nephew's murder in Russia was not attributable to his Armenian ethnicity was mere speculation unsupported by any facts. *Minosyan v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 116, 2004 WL 2370546, Unreported. Aliens ↪ 54.1(4.1)

Alien's testimony that when he was a child, he was harassed or discriminated against based on his ethnicity on three occasions, and that he was once the victim of an attempted robbery, was insufficient to show persecution required for asylum. *Zahar v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 907, 2004 WL 2163228, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's determination at asylum proceeding that alien failed to establish a well-founded fear of future persecution on account of her ethnicity or religious beliefs, where a large number of her similarly-situated family members resided in alien's native country without persecution. *Limasarian v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 464, 2004 WL 1931777, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Alien's testimony that when he was a child, other children harassed or discriminated against him based on his ethnicity, and that when he was in high school he was the victim of an attempted robbery, was insufficient to demonstrate that he had suffered persecution which would entitle him to asylum. *Tee v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 62, 2004 WL 1869915, Unreported. Aliens ↻ 53.10(3)

Isolated incidents during which individuals harassed or discriminated against alien based on his mixed-ethnicity did not rise to level of persecution required for asylum. *Yeranyan v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 41, 2004 WL 1595375, Unreported. Aliens ↻ 53.10(3)

Citizen of Montenegro was not entitled to asylum on ground that he was an ethnic Albanian, where he failed to present objective evidence of past persecution, and ethnic Albanians were treated better in Montenegro than in other parts of the former Yugoslavia. *Donovic v. Ashcroft*, C.A.6 2004, 103 Fed.Appx. 580, 2004 WL 1447657, Unreported. Aliens ↻ 53.10(3)

Alien failed to demonstrate well-founded fear of future persecution on account of his ethnicity and political opinion, barring grant of asylum; state department's report on native country indicated that the degree of prejudice against persons of alien's ethnicity and political affiliation was not high, and there was no evidence of individualized prejudice towards alien based on ethnicity or political opinion. *Jelkov v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 640, 2004 WL 1088269, Unreported. Aliens ↻ 53.10(3)

148. Homosexuality, refugee

Alien's alleged harassment based on his homosexuality, by local authorities in Zimbabwe and by his neighbors, did not rise to level of past persecution, for purposes of his request for asylum; officials allegedly chased alien and made disparaging remarks, and neighbors allegedly spat on alien, kicked him, threw stones at him, and on one occasion beat him and shocked him with an electric wire. *Kimumwe v. Gonzales*, C.A.8 2005, 431 F.3d 319, rehearing and rehearing en banc denied. Aliens ↻ 53.10(3)

Immigration Judge's finding that Lebanese asylum applicant failed to establish that militants' act of shooting cousin in the anus and killing him was motivated because cousin was homosexual was not supported by substantial evidence; evidence established that militants had military presence throughout region, militants applied Islamic law in that region, homosexuality was punishable by death under Islamic law, militants and state officials had arrested beaten, and in some cases killed, known or suspected homosexuals, and act itself was indicative that it was motivated by cousin's alleged homosexuality. *Karouni v. Gonzales*, C.A.9 2005, 399 F.3d 1163. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) findings that gay man from Guatemala seeking asylum based on claimed persecution against homosexuals in Guatemala did not show that the harassment he suffered was by the government or a group the government could not control and did not show he could not safely live elsewhere in Guatemala and, thus, had not demonstrated well founded fear of future persecution; beating alien received in Guatemala was by young men, he made no effort to contact authorities in his country, he made no effort to relocate elsewhere, and Department of State Country Conditions Report did not support claims of country-wide and government-sponsored or condoned discrimination against homosexuals. *Galicia v. Ashcroft*, C.A.1 2005, 396 F.3d 446. Aliens ↻ 53.10(3)

Sexual assaults on asylum applicant by police officers were "on account of" his membership in particular social group of gay men with female sexual identities in Mexico, for purposes of asylum statute; expert in Latin American history and culture testified that gay men with female sexual identities were recognized in Mexico as distinct and readily identifiable group and were persecuted for their membership in that group, and that police would attack and rape men with female sexual identities. *Hernandez-Montiel v. I.N.S.*, C.A.9 2000, 225 F.3d 1084. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Board of Immigration Appeals' (BIA's) determination that alien had not met his burden of showing that he would be persecuted for being a homosexual upon return to Lithuania, so as to be eligible for asylum, was supported by substantial evidence. *Satkauskas v. Attorney General of U.S.*, C.A.3 2006, 176 Fed.Appx. 271, 2006 WL 1004880, Unreported. Aliens, Immigration, And Citizenship ↻ 642

Past persecution criterion was satisfied, in alien homosexual's asylum application, where police in alien's country of origin had detained him after seeing him leave gay bar, had asked if he was gay, had beaten him severely, and had threatened that they knew where he lived and would harm his family should he report them. *Pena-Torres v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 628, 2005 WL 943706, Unreported. Aliens ↻ 53.10(3)

Although alien's evidence established that there was overt discrimination against gays in Peru, he could not show that it was likely that he would be targeted for persecution or that persecution of gays in Peru was so rampant and severe that his mere membership in group of homosexual men sufficed to establish objective well-founded fear of future persecution, as required to support alien's application for asylum after he failed to establish past persecution. *Cornejo-Merida v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 900, 2004 WL 2712643, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that alien failed to prove government authorities were unwilling or unable to protect him from persecution on account of his status as a homosexual man, and thus was not entitled to asylum; although country took harsh view of homosexuality, there was some evidence, including letter from police detective and country report, that officials recognized that violence against gays was unacceptable. *Parker v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 860, 2004 WL 2616555, Unreported. Aliens ↻ 54.1(4.1)

Alien's testimony that he was beaten by family members and raped by a neighbor on account of his homosexuality was insufficient to demonstrate past persecution or a well-founded fear of future persecution required for asylum; alien did not establish that government of his country was the source of his persecution or that it was unable or unwilling to control his attackers specifically, or, more generally, those elements of society responsible for victimizing gay men. *Uribe v. Ashcroft*, C.A.9 2004, 105 Fed.Appx. 941, 2004 WL 1831050, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported denial of asylum, even though alien was beaten, extorted, and robbed in Mexico because he was gay; harm did not rise to level of persecution. *Contreras v. Ashcroft*, C.A.9 2003, 75 Fed.Appx. 691, 2003 WL 22176710, Unreported. Aliens ↻ 53.10(3)

149. Race, refugee

Substantial evidence supported determination, in asylum proceeding, that alien did not suffer past persecution in Iraq on account of race, religion, nationality, membership in a particular social group, or political opinion; episode in which alien was injured during a police interrogation was based on her assault on a fellow bus passenger rather than any political motive, other interrogations, including those into her sons' whereabouts, did not rise to level of harassment, and alien continued to be employed by the government. *Margos v. Gonzales*, C.A.7 2006, 443 F.3d 593. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Evidence that alien, a Fijian citizen of East Indian extraction, was stabbed twice, robbed several times, and denied police aid, all because of his race, compelled conclusion, in asylum proceeding, that the acts against him cumulatively amounted to persecution, requiring remand for consideration of whether he was entitled to a presumption of a well-founded fear of future persecution. *Narayan v. Ashcroft*, C.A.9 2004, 384 F.3d 1065. Aliens ↻ 54.3(6)

Actions by ethnic Fijian soldiers of assaulting Indo-Fijian policeman in front of his family, holding him captive for a week, and beating him on street until he was bleeding and unconscious were motivated, at least in part, by

8 U.S.C.A. § 1101

protected grounds of race and imputed political opinion, as required for asylum, notwithstanding that soldiers were activated by fact that policeman had arrested high-ranking army officer for rape, where soldiers told policeman as they were beating him that Fiji was their country and that he "should go back to India." *Gafoor v. I.N.S.*, C.A.9 (Cal.) 2000, 231 F.3d 645, 177 A.L.R. Fed. 687. Aliens ↪ 53.10(3)

Country conditions evidence offered by Immigration and Naturalization Service (INS) did not rebut presumption that asylum applicant possessed well-founded fear of future persecution as result of having been beaten and threatened with death based on his Indian status while serving in Guatemalan army; State Department Profile described frequent claims of government-sponsored or condoned mistreatment of Indians. *Duarte de Guinac v. I.N.S.*, C.A.9 1999, 179 F.3d 1156. Aliens ↪ 54.1(2)

Ethnic Indian citizen of Fiji applying for asylum suffered past persecution because of her race, triggering regulatory presumptions that she was eligible for asylum and withholding of deportation; she was robbed 10-15 times on her way to and from work by ethnic Fijians because she was Indo-Fijian, she reported robberies to police, who said they could not do anything, she was compelled to quit her job of more than ten years and was afraid to leave her home, and ethnic Fijian soldiers looted her family's home because her family was of Indian descent, with the looting soldiers telling her family members that they should "go back home" to India. *Surita v. I.N.S.*, C.A.9 1996, 95 F.3d 814. Aliens ↪ 53.10(3); Aliens ↪ 54.1(2)

Alleged harm suffered by an alien in Albania did not constitute persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, so as to support her request for asylum; even if an alleged rape, mistreatment and telephonic threats were true, the alien did not prove anything but lawless private conduct. *Hasko v. Gonzales*, C.A.3 2005, 134 Fed.Appx. 575, 2005 WL 1415965, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) determination that harm visited on alien on account of his race or religion was discriminatory and improper, but not persecutory, as would support his asylum claim. *Tan v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 538, 2004 WL 1948437, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to establish well-founded fear of future persecution in Indonesia on account of race, as required to support asylum application; Immigration Judge's (IJ) finding of improved racial climate in Indonesia was supported by State Department country report, and by fact that majority of alien's immediate family had continued to live in Indonesia, and there was no evidence that family had suffered any harm. *Widjaja v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 665, 2004 WL 1197252, Unreported. Aliens ↪ 54.1(4.1)

150. Political opinion, refugee--Generally

While timing of anonymous telephone calls that Colombian national received, almost immediately after written death threat that was directly related to her political activity in Colombia, supported inference that telephone calls were also related to her political activity, they did not compel that conclusion, as required for Court of Appeals to disturb immigration judge's finding to the contrary on petition for review in asylum case, where none of telephone calls made any reference to her political activity, one caller told alien that she was target because her family had "always exploited the Colombian people," and another caller stated that she was target because, unlike other members of her family, she did not have bodyguard. *Silva v. U.S. Atty. Gen.*, C.A.11 2006, 448 F.3d 1229. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Retaliation for opposition to government corruption may, in appropriate circumstances, constitute persecution on account of political opinion within meaning of asylum statute when it transcends mere self-protection and represents a challenge to the legitimacy or authority of the ruling regime. *Zhang v. Gonzales*, C.A.2 2005, 426 F.3d 540. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

When government does not respect internationally recognized human right to engage in peaceful protest, punishment by government for politically motivated act may not be legitimate exercise of sovereign authority and may amount to persecution required for asylum. *Chanco v. I.N.S.*, C.A.9 1996, 82 F.3d 298. Aliens ↻ 53.10(3)

There are no safe places within nation for asylum applicant when it is nation's government that has engaged in acts of punishing opinion that have driven applicant to leave country. *Singh v. Moschorak*, C.A.9 (Cal.) 1995, 53 F.3d 1031. Aliens ↻ 53.10(3)

Asylum applicant was not required to declare affiliation to political party to claim persecution in Mexico on account of political opinion; rather, applicant's clear and outspoken efforts to defend human rights and to prosecute government corruption, including pursuing dangerous suit against Mexican government because she believed that all Mexicans had rights, constituted political acts. *Gonzalez Castro v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 35, 2005 WL 23424, Unreported. Aliens ↻ 53.10(3)

151. ---- Imputed political opinion, refugee

Alien established past persecution, supporting claim for asylum, where alien witnessed his father's murder based on membership in a tribal group and imputed political opinion, alien's sister disappeared, and alien was forced to live for six years as a refugee, and government officials' forces threatened alien and alien's family with death after alien returned to Liberia and campaigned against government official. *Brima Bah v. Gonzales*, C.A.8 2006, 448 F.3d 1019. Aliens, Immigration, And Citizenship ↻ 540

Guatemalan asylum applicant established well-founded fear of future persecution based on imputed political opinion, by providing evidence that he had been apolitical when he intervened in incident in which paramilitaries were assaulting human rights workers, that he was then put under surveillance by same paramilitaries, and that he believed he would be killed if he returned to Guatemala. *Chavarria v. Gonzalez*, C.A.3 2006, 446 F.3d 508. Aliens, Immigration, And Citizenship ↻ 53.10(3)

German alien, convicted for violation of German law proscribing incitement of racial hatred, failed to establish "persecution," as required to support asylum claim; evidence did not support his claim that prosecution was on account of imputed political opinion, and sentence imposed, which was well below statutory maximum, was not disproportionately severe. *Scheerer v. U.S. Atty. Gen.*, C.A.11 2006, 445 F.3d 1311. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Alien, an Indian citizen and native of northern Indian state of Jammu and Kashmir, suffered persecution on basis of imputed political opinion, and thus nexus existed between his past persecution and protected ground, on evidence that alien endured month-long detention and serious physical abuse as result of Jammu and Kashmir police's mistaken belief that he was associated with Muslim terrorist group. *Kumar v. Gonzales*, C.A.9 2006, 444 F.3d 1043. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Substantial evidence did not support conclusion, in asylum proceeding, that any persecution suffered by alien in Cote d'Ivoire was not on account of any protected ground, even though he did not belong to any political party; alien was initially imprisoned for reading opposition newspapers at work, indicating that the government was aware of his opposition sympathies, his wife's political activities might have been attributed to him, and statements made by his persecutors indicated a political and ethnic motivation. *Toure v. Attorney General of U.S.*, C.A.3 2006, 443 F.3d 310. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Board of Immigration Appeals' (BIA) finding that asylum applicant did not suffer past persecution in the Ivory Coast due to imputed political opinion was not supported by substantial evidence; the evidence demonstrated that, although rebel attack on the gendarme camp occurred in the context of general civil unrest, it was motivated, at least in part, by a desire to kill presumed government loyalists such as applicant, whose father was a gendarme.

8 U.S.C.A. § 1101

Konan v. Attorney General of U.S., C.A.3 2005, 432 F.3d 497. Aliens ↪ 54.1(4.1)

Asylum applicant's credible testimony that both he and his father, a known member of political party advocating a separate Sikh state in India, had been taken into custody by Indian police, and that, during beating of father and applicant by police officers, they had repeatedly mentioned father's activities in support of this political party, was sufficient to compel conclusion that police had imputed father's separatist political opinions to applicant. Singh v. Gonzales, C.A.3 2005, 406 F.3d 191. Aliens ↪ 54.1(4.1)

Asylum applicant's credible testimony that both he and his father, a known member of political party advocating a separate Sikh state in India, had been taken into custody by Indian police, and that, during beating of father and applicant by police officers, they had repeatedly mentioned father's activities in support of this political party, was sufficient to compel conclusion that police had imputed father's separatist political opinions to applicant. Singh v. Gonzales, C.A.3 2005, 406 F.3d 191. Aliens ↪ 54.1(4.1)

Asylum applicant satisfied burden of showing that past persecution that he experienced in Senegal, his country of origin, was on account of political beliefs imputed to him by his government persecutors, notwithstanding widespread civil unrest in Senegal and fact that asylum applicant's arrest, following an allegedly "rebellious manifestation" by persons advocating independence for certain section of country, was part of widespread and apparently indiscriminant arrest of 100 to 400 residents of city where applicant lived. Ndom v. Ashcroft, C.A.9 2004, 384 F.3d 743. Aliens ↪ 53.10(3)

Regardless of whether Guatemalan soldiers who raped her knew of her brother's forced conscription by insurgent guerillas ten years earlier, evidence that soldiers, as result of widespread conscription of young men in village by these insurgents, had mistakenly inferred that village was attempting to aid guerillas and had retaliated on village-wide basis by systematically targeting villagers as whole was sufficient to compel conclusion that gang rape of alien by soldiers was motivated, at least in part, by imputed political opinion and to support her asylum claim, although soldiers had also provided another motive for their assault by stating, prior to rape, that they wanted "to be with a woman." Garcia-Martinez v. Ashcroft, C.A.9 2004, 371 F.3d 1066. Aliens ↪ 54.1(4.1)

Persecution risked by asylum applicant in form of retaliation by New People's Army (NPA) in Philippines against him for testifying against NPA leaders was on account of imputed political opinion, not merely on account of personal revenge, inasmuch as threats were "revenge plus," that is, revenge partly motivated by, and thus on account of, imputed adverse political opinion. Lim v. I.N.S., C.A.9 (Cal.) 2000, 224 F.3d 929. Aliens ↪ 53.10(3)

Although a well-founded fear of persecution may be established by the persecution of an estranged spouse whose views are imputed to the asylum applicant, a former relationship alone is insufficient; there must be an evidentiary nexus between the spouse's persecution and the applicant's fear. Belayneh v. I.N.S., C.A.9 (Cal.) 2000, 213 F.3d 488. Aliens ↪ 53.10(3); Aliens ↪ 54.1(4.1)

Finding of Board of Immigration Appeals (BIA) that Guatemalan authorities did not impute anti-government or subversive political opinion to asylum applicant because of his involvement with labor union was supported by substantial evidence; although reports from international human rights organization indicated that union leaders were threatened and that union members occupying factory were violently dislodged, applicant was not union leader and was not in factory when union members were dislodged. Morales v. I.N.S., C.A.1 2000, 208 F.3d 323. Aliens ↪ 54.1(4.1)

Asylum applicant's persecution by Guatemalan military was based on military's incorrect belief that applicant supported guerillas, and thus was on account of protected ground of imputed political opinion, where military accused applicant of being guerrilla and demanded information about his "guerrilla friends" while beating him, and there was no evidence that military wanted to punish him for not joining their ranks. Chanchavac v. I.N.S., C.A.9 (Cal.) 2000, 207 F.3d 584. Aliens ↪ 53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Alien's abduction and beating by guerrilla in Guatemala was on account of imputed political opinion, and she thus established past persecution for purposes of asylum claim, where abductor informed her that her teaching of adult literacy on behalf of government was undermining guerrillas' recruitment efforts, and told her that she would have to decide whether she was going to work with guerrillas or government. *Cordon-Garcia v. I.N.S.*, C.A.9 2000, 204 F.3d 985. Aliens ↻ 53.10(3)

Persecution on account of imputed political opinion satisfies motive requirement for asylum eligibility, whether or not that imputation is accurate. *Lopez-Galarza v. I.N.S.*, C.A.9 1996, 99 F.3d 954. Aliens ↻ 53.10(3)

Even if Board of Immigration Appeals was required to focus on Iranian government's perception of Iranian national's political opinion rather than demanding that national possess some belief or opinion, in determining whether national was entitled to asylum on ground of fear of persecution, national, who distributed western motion pictures and concert videos, failed to show that he had done or said anything that could have come to the attention of Iranian government that would cause it to impute political or religious belief to him for which he might be persecuted, and thus failed to establish well-founded fear of persecution. *Abedini v. U.S. I.N.S.*, C.A.9 1992, 971 F.2d 188, as amended. Aliens ↻ 54.1(4.1)

Guatemalan seeking asylum failed to make preliminary showing that either political opinion or open political neutrality might be erroneously imputed to him, and thus, that he was threatened with political persecution; alien had not publicly articulated his political neutrality and did not have relatives whose political opinions might be attributed to him. *Arriaga-Barrientos v. U.S.I.N.S.*, C.A.9 1991, 937 F.2d 411, rehearing denied. Aliens ↻ 53.10(3)

Alien, who presented evidence of successive and specific threats on his life, based on imputed political opinion, in context of systemic human rights abuses linked to extortion by government security police, established eligibility for asylum. *Desir v. Ilchert*, C.A.9 (Cal.) 1988, 840 F.2d 723. Aliens ↻ 54.1(4.1)

In deciding whether anyone has well-founded fear of persecution or is in danger of losing life or liberty because of a political opinion necessary to withhold deportation, one must look at person from perspective of persecutor; if persecutor thinks person guilty of political opinion, then the person is at risk. *Lazo-Majano v. I.N.S.*, C.A.9 1987, 813 F.2d 1432. Aliens ↻ 53.10(3)

Evidence that aliens who were members of ethnic minority in Sri Lanka were arrested and beaten, were accused of membership in or support of separatist group, and were asked about the membership and activities of that group was sufficient to establish that aliens were persecuted on account of their imputed political opinion, as required to establish statutory eligibility for asylum. *Rajaratnam v. Moyer*, N.D.Ill.1993, 832 F.Supp. 1219.

Aliens established that persecution they suffered in Suriname was on account of imputed political opinion, for purposes of asylum eligibility; according to aliens' credible statements and State Department report, former military dictator of Suriname remained a powerful politician who led criminal syndicate and had close ties to military officers, aliens alleged they witnessed former dictator's political assassination of police inspector who was leading criminal investigation against former dictator, and aliens' potential testimony challenging legitimacy and authority of a man who was politically and militarily influential appeared to be motivation for their persecution. *Karijenggolo v. Gonzales*, C.A.2 2006, 2006 WL 755795, Unreported. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Substantial evidence supported immigration judge's determination that alien did not have a well-founded fear of future persecution in China on account of a political opinion imputed to him, as required for asylum eligibility; alien's testimony that he was beaten because he was assisting his aunt to evade an abortion, and that he would be prosecuted because he punched a police officer in the ensuing fracas did not establish that his potential punishment for punching a government official would result from an imputed political opinion. *Li v. U.S. Dept. of Justice*,

8 U.S.C.A. § 1101

C.A.2 2005, 158 Fed.Appx. 341, 2005 WL 3420172, Unreported. Aliens ↪ 53.10(3)

Two pre-election incidents with unidentified members of suspected political group opposing former regime, which asylum applicant had supported, did not compel conclusion that applicant suffered past persecution as result of imputed political opinion. *Para v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 81, 2004 WL 2915229, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) determination that asylum applicant did not establish past persecution or well-founded fear of persecution in Peru, absent showing that any mistreatment was or would be on account of statutorily protected ground; specifically, applicant's testimony that she had temporarily provided housing for family member who was police officer did not compel conclusion that threats and harassment by unidentified men were on account of imputed political opinion, or that she would be targeted upon return to Peru on account of imputed political opinion. *Fuentes v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 573, 2004 WL 2913343, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) decision that Guatemalan alien was ineligible for asylum and withholding of removal based on imputed political opinion; alien's two encounters with guerrillas in Guatemala were not on account of imputed political opinion or any other statutorily protected ground. *Escobar Calderon v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 544, 2004 WL 2856254, Unreported. Aliens ↪ 53.10(3)

In the absence of charges and a prosecution, police focus on whether alien was a member of militant group compelled conclusion, for asylum purposes, that their abuse of alien occurred at least in part on account of alien's imputed political opinion. *Singh v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 835, 2004 WL 2668576, Unreported. Aliens ↪ 53.10(3)

Alien's past persecution was "on account of" imputed political opinion, as required to support her claim for asylum; attackers who assaulted both her and her husband, and administered beating from which her husband died, specifically told her husband while they were beating him that they would destroy his family if he did not get out of political party, thus supporting political basis of persecution, which was not negated by fact that armed men took some jewelry items from alien during the beating. *Davtyan v. Ashcroft*, C.A.9 2004, 112 Fed.Appx. 620, 2004 WL 2404079, Unreported. Aliens ↪ 53.10(3)

Alien seeking asylum established past persecution on account of imputed political opinion; alien was specifically accused of being a militant, detained for 12 to 13 days and physically abused by police, after which time he received medical treatment for his injuries, and police showed a continuing interest in him. *Singh v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 931, 2004 WL 2203851, Unreported. Aliens ↪ 53.10(3)

Alien's testimony that he was taken from his home in the night by soldiers, beaten with sticks severely enough that he later required stitches, forced to run back to his home naked, and accused him of being associated with guerrilla group, was sufficient to establish his persecution on account of an imputed political opinion, demonstrating his entitlement to asylum. *Guillen-Meza v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 889, 2004 WL 2163178, Unreported. Aliens ↪ 53.10(3)

Alien seeking asylum proved past persecution on account of imputed political opinion by presenting evidence that army twice physically mistreated her after accusing her of belonging to political organization. *Thangaraja v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 815, 2004 WL 1922161, Unreported. Aliens ↪ 53.10(3)

Alien's testimony that, because of weapons for which he was responsible ending up in the hands of a group that was plotting a coup against his country's leader, support of that cause was imputed to him, and he was therefore sentenced to death, was sufficient to establish persecution on account of imputed political opinion, as required for asylum. *Abdulnoor v. Ashcroft*, C.A.6 2004, 107 Fed.Appx. 594, 2004 WL 1894731, Unreported. Aliens ↪

8 U.S.C.A. § 1101

53.10(3)

Substantial evidence supported IJ's determination at asylum proceeding that alien did not establish a well-founded fear of persecution on account of her imputed political opinion; alien's testimony provided only a highly speculative link between her mishaps in the United States and her country's government, and alien testified that she was not political, that she was not affiliated with any group that might be mistaken for political, that her friends and family were not subjected to harsh treatment, and that she did not believe she was important enough to merit the attention of the former leader's intelligence service. *Najmabadi v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 98, 2004 WL 1869307, Unreported. Aliens ↩ 54.1(4.1)

Alien failed to show that her brother's murder, which allegedly occurred as retaliation for death that took place when alien's father was evicting squatters from land, was result of imputed political opinion, such as to warrant conclusion that alien suffered past persecution which would entitle her to asylum; alien did not present evidence to show that her father's actions in evicting the squatters constituted a political opinion, and alien's sister testified that her brother was not politically active. *Paraense-Almeida v. Ashcroft*, C.A.1 2004, 105 Fed.Appx. 295, 2004 WL 1852885, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien's claim of persecution was premised on imputed political opinion due to his cousin's membership in militant separatist organization; alien presented inconsistent evidence as to how he learned that his cousin was a member of organization, how he learned that his cousin had been killed, and with respect to the timing and frequency of his cousin's visits to his home. *Singh v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 627, 2004 WL 1831440, Unreported. Aliens ↩ 54.1(4.1)

Alien's testimony in asylum proceeding that police arrested, beat, threatened, and detained him for several days on four separate occasions because they suspected he had information about Sikh militants, despite the fact that he did not associate with the militants or support their means of achieving Sikh sovereignty established the requisite past persecution on account of an imputed political opinion, and thus alien was entitled to the presumption of a well-founded fear of future persecution upon his return to India. *Singh v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 180, 2004 WL 1447686, Unreported. Aliens ↩ 54.1(2)

Alien failed to demonstrate that persecutors actually imputed political opinion to him and persecuted him on account of that opinion, as required to support his asylum claim; although alien contended that he was persecuted because of political activities of his parents, his father died long before alien was arrested, and government did not target alien's mother after her release from prison. *Ba v. I.N.S.*, C.A.6 2004, 102 Fed.Appx. 464, 2004 WL 1376605, Unreported. Aliens ↩ 53.10(3)

Alien who was Colombian native did not establish that Autodefensas Unidas de Colombia (AUC), which allegedly persecuted her, possessed information that alien held any particular political opinion, and so did not establish she was entitled to asylum, even if AUC believed that alien called police to arrest some of their members; alien did not provide any evidence that she made political position known to AUC members at any time or evidence to show that AUC could have imputed political opinion to her. *Gonzalez-Hernandez v. Ashcroft*, C.A.5 2004, 98 Fed.Appx. 345, 2004 WL 1161823, Unreported, certiorari denied 125 S.Ct. 882, 543 U.S. 1051, 160 L.Ed.2d 773. Aliens ↩ 53.10(3)

Denial of application for asylum was not warranted; evidence showed that alien was persecuted in his native country on account of imputed political opinion, in that police believed that alien was associated with anti-government group, and although alien did not submit corroborating evidence, alien was not required to do so because his credibility could not validly be questioned. *Singh Shergill v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 644, 2004 WL 1104874, Unreported. Aliens ↩ 53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Alien failed to establish an objectively reasonable well-founded fear of future persecution if returned to Albania, as required to support his application for asylum; although alien guarded members of democratic party in Albania and leader of socialist party noticed him serving in this capacity, there was no evidence that leader threatened him, alien failed to show that father's well-known political opinions were imputed to him, alien was allowed to enter police academy despite father's political opinions, and alien attempted to enter United States on a false passport affecting his credibility. *Shaholli v. Ashcroft*, C.A.7 2004, 86 Fed.Appx. 171, 2004 WL 102936, Unreported. Aliens ↪ 53.10(3)

Alien established a well-founded fear of future persecution on account of an imputed political opinion, as required for asylum, although he was not persecuted in the past, where evidence showed that his co-workers, who had received similar threats from Colombian guerillas for rebelling and allegedly providing army with information, were executed by guerillas. *Caiza v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 33, 2003 WL 23098177, Unreported. Aliens ↪ 53.10(3)

Alien, a citizen of India, demonstrated well-founded fear of persecution that was both objectively reasonable and subjectively genuine, as required for asylum; alien testified that he was afraid that Punjab police would persecute him on account of an imputed, pro-extremist political opinion if he returned to India, and that police threatened to harm him, had repeatedly harmed his friends and family during their attempt to find him, and were currently searching for him. *Matharu v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 313, 2003 WL 22435189, Unreported. Aliens ↪ 53.10(3)

Substantial evidence compelled finding that alien seeking asylum suffered past persecution on basis of imputed political opinion when alien, whose credibility was not questioned by either immigration judge (IJ) or Board of Immigration Appeals (BIA), testified that his father's murderer, who was guerilla leader, threatened to kill alien if alien turned him in or told anyone that he was a guerilla, and that murderer, based on erroneous belief that alien had informed upon him, began looking for alien, causing alien to flee the country; such evidence showed murderer's belief that alien was aligned with government and anti-guerilla, and pursued alien on that basis. *Pascual-Garcia v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 232, 2003 WL 21805243, Unreported. Aliens ↪ 54.1(4.1)

Alien's fear of future persecution was not objectively well-founded, as required in his application for asylum and withholding of removal; alien did not adduce credible, direct, and specific evidence in the record, of facts that would support a reasonable fear of persecution, and he offered no evidence that his alleged persecutors imputed a political opinion to him. *Maldonado de Leon v. Ashcroft*, C.A.9 2003, 65 Fed.Appx. 155, 2003 WL 21153474, Unreported. Aliens ↪ 54.1(4.1)

Finding of Board of Immigration Appeals (BIA), that asylum applicant of Romanian descent failed to establish past persecution in Serbia based upon imputed political opinion resulting from her son's draft evasion, was supported by substantial evidence, where she testified only to army representatives' inquiries regarding her son, and did not suggest that she suffered physical harm or threats of harm. *Caran v. Ashcroft*, C.A.3 2003, 55 Fed.Appx. 601, 2003 WL 152847, Unreported. Aliens ↪ 54.1(4.1)

Alien could not show past persecution based on the alleged imputation of her father's political opinion to her, and thus, she was not entitled to presumption that she had well-founded fear of future persecution, and her asylum application was properly denied, even though alien's house was burned when she was a child and threats were made against her, where the severity of the fire was questionable given that the family moved back into the house two days later, and it seemed unlikely that those who perpetrated the fire were targeting an 11-year-old child for political beliefs they attributed to her, and the only things known about the threats was that the person(s) making them seemed to be looking for her father, which did not suggest that anyone attributed any political belief to her. *Saldivar-Lopez v. I.N.S.*, C.A.9 2002, 54 Fed.Appx. 893, 2002 WL 31890939, Unreported. Aliens ↪ 54.1(2)

8 U.S.C.A. § 1101

152. ---- Low level individuals, political opinion, refugee

Denial of asylum to Nigerian applicant was supported by substantial evidence, including fact that arrests, interrogations, and physical abuse to which he testified were absent from his asylum application, his failure to present his passport, his testimony that he was low-level volunteer in political organization, and country conditions report indicating that only party leaders and those plotting against government were at serious risk of persecution. *Disu v. Ashcroft*, C.A.1 2003, 338 F.3d 13. Aliens ↻ 54.1(4.1)

Determination by Board of Immigration Appeals (BIA), that Immigration and Naturalization Service (INS) rebutted presumption that asylum applicant had well-founded fear of future persecution, was supported by substantial evidence, including 1997 country report indicating that only high-level political figures were now subject to persecution on account of political opinion in Guatemala, and that in any event such leaders could safely relocate within Guatemala. *Gonzalez-Hernandez v. Ashcroft*, C.A.9 2003, 336 F.3d 995. Aliens ↻ 54.1(4.1)

Evidence did not compel conclusion that asylum applicant had well-founded fear of future persecution in Guatemala; although there were reports of recent violence against leaders of other unions in Guatemala, applicant was not union leader, rather, at best he was rank-and-file member, his most prominent role having been organizing sporting events, his membership was long expired, there was no evidence of recent violence directed against his own union, and applicant never testified at his asylum hearing that if he were to return to Guatemala he would be active in same or any other union. *Ortiz-Palma v. Ashcroft*, C.A.7 2005, 121 Fed.Appx. 154, 2005 WL 272921, Unreported. Aliens ↻ 53.10(3)

In alien's claim for asylum, Immigration Judge (IJ) erred in finding, based on State Department country report, that rank-and-file members of an Armenian political party to which alien's husband belonged were not subject to persecution; alien was not required to establish the existence of systematic persecution to support her claim, and report established that episodic acts of political intimidation against party members continued. *Ambartsoumian v. I.N.S.*, C.A.9 2003, 70 Fed.Appx. 407, 2003 WL 21480319, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, that alien did not have well-founded fear of persecution based on combination of her political activities and her father's service as high ranking minister in former Gambian government, even though her father had been arrested; new government had not engaged in wide-spread arrests and generally detained only high-ranking ministers of former government and alien had not been high level official. *Sonko v. Ashcroft*, C.A.9 2003, 65 Fed.Appx. 644, 2003 WL 21318327, Unreported. Aliens ↻ 54.1(4.1)

153. ---- Neutrality, political opinion, refugee

Asylum applicant's expression of political neutrality to guerrillas in Perquin, El Salvador in 1980, when they forced her to provide nursing services to wounded, was not causally connected to bombing of her house by guerrillas in San Miguel, El Salvador in 1989, which followed guerrillas' discovery that she was nurse and her refusal to join them, and she thus was not persecuted because of her neutrality; record contained no evidence that applicant expressed political neutrality in the eight years between the two incidents, and she expressed no political views to guerrillas in 1989. *Rivera-Moreno v. I.N.S.*, C.A.9 (Cal.) 2000, 213 F.3d 481. Aliens ↻ 53.10(3)

Alien who claimed he would be persecuted if he returned to his home country for remaining neutral in conflict between guerrillas and the government could bring himself within the terms of the asylum statute only if he could demonstrate that a reasonable person would fear that a group with the power to persecute him intended to do so specifically because the group disliked neutrals, or that the group intended to persecute him because he would not accept the group's political point of view, or that one or more such groups intended to persecute him because each incorrectly believed that he held the political views of the other side. *Novoa-Umania v. I.N.S.*, C.A.1 1990, 896 F.2d 1. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

A political asylum applicant's fear of persecution by El Salvadoran guerillas due to political neutrality was based on "political opinion" within the meaning of immigration laws governing political asylum; the guerillas were a political entity, and the applicant's refusal to join them was a manifestation of his neutrality. *Maldonado-Cruz v. U.S. Dept. of Immigration and Naturalization*, C.A.9 1989, 883 F.2d 788. Aliens ↻ 53.10(3)

Substantial evidence supported denial of alien's application for asylum and withholding of removal; alien failed to show past persecution or a well-founded fear of future persecution, in that there was no evidence that threats she received were based on her neutral political opinion, she never experienced any physical harm or significant suffering from the threats, and she had had no contact with ex-boyfriend who was kidnapped. *Pena Alvarez v. Ashcroft*, C.A.8 2003, 78 Fed.Appx. 551, 2003 WL 22350612, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported decision to deny asylum to Lebanese citizen; evidence that alien was forced to provide camouflage cloth for a militia group did not compel a finding of past persecution or a well founded fear of future persecution on account of alien's neutral political opinion. *Zaarour v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 285, 2003 WL 21995195, Unreported. Aliens ↻ 54.1(4.1)

154. ---- Coercive population control, political opinion, refugee

Substantial evidence supported adverse credibility determination, warranting denial of Mauritanian alien's asylum application; alien gave inconsistent testimony at two separate hearings regarding which family members he was reunited with at refugee camp, how he lost his teeth, and the details of his alleged arrest. *Diallo v. Gonzales*, C.A.10 2006, 447 F.3d 1274. Aliens, Immigration, And Citizenship ↻ 643

Removing an IUD (intra-uterine device) against China's official one-child policy could be considered "other resistance" to a coercive population control program within meaning of asylum statute. *Yang v. U.S. Atty. Gen.*, C.A.11 2005, 418 F.3d 1198. Aliens ↻ 53.10(3)

Parents or parents-in-law of person subjected to a coercive family planning policy were not per se political refugees, and thus were not per se eligible for political asylum for that reason; right at issue was right to procreate and persecution of child or child's spouse did not impinge upon parents' or parents-in-law's right to procreate. *Yuan v. U.S. Dept. of Justice*, C.A.2 2005, 416 F.3d 192. Aliens ↻ 53.10(3)

Testimony of Chinese national that, while working as pediatrician at hospital in China, she had discovered that it was hospital's practice, as means of implementing China's population control policies, to allegedly kill newborn babies by injecting them with alcohol if their parents did not have necessary permits, and that she had been persecuted by government for attempting to expose this practice to news media, would establish, if credible, that she had been persecuted for "other resistance" to China's coercive population control program, within meaning of provision of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) making her automatically eligible for grant of asylum. *Cao v. Attorney General of U.S.*, C.A.3 2005, 407 F.3d 146. Aliens ↻ 53.10(3)

Any persecution of asylum applicant's parents in China, based on their violation of one-child policy, was not persecution of applicant on account of political opinion, inasmuch as applicant's interest in birth of child to his parents was only interest of potential sibling, and thus was remote. *Wang v. Gonzales*, C.A.3 2005, 405 F.3d 134. Aliens ↻ 53.10(3)

Board of Immigration Appeals' (BIA) interpretation of asylum statute to mean that severe government sanctions for asylum applicant's violations of its population control policy did not necessarily constitute persecution on account of political opinion, was not unreasonable interpretation of asylum statute. *Chen Zhou Chai v. Carroll*, C.A.4 (Va.) 1995, 48 F.3d 1331. Aliens ↻ 53.10(3)

Since Illegal Immigration Reform and Immigrant Responsibility Act subsection providing that a person who had

8 U.S.C.A. § 1101

been forcibly sterilized was "deemed to have been persecuted on account of political opinion" and was therefore presumptively eligible for asylum was retroactive, and effectively overruled primary basis on which Immigration Judge rested her decision denying alien asylum, alien was entitled to reopen her case to introduce evidence to support of her claim of forced sterilization. *Zhang v. Reno*, S.D.N.Y.1998, 27 F.Supp.2d 476. Aliens ↻ 40; Aliens ↻ 54(5)

Alien arguably manifested "political opinion," within meaning of statute providing for asylum on basis of persecution on account of political opinion, where he expressed his opposition to coercive family planning policies by having second child and refusing to submit to sterilization. *Yang v. Carroll*, E.D.Va.1994, 852 F.Supp. 460, affirmed 70 F.3d 114. Aliens ↻ 53.10(3)

Alien, who was citizen of Peoples Republic of China, proved that he met statutory criteria for political asylum, as alien fled his country to avoid arrest, imprisonment, and involuntary sterilization because he and his wife opposed and would not obey their country's policy of coercive population control through involuntary sterilization and abortion, and alien made overt manifestation of his opposition to policy and had been persecuted for expressing that opposition; therefore, whether to grant or deny request for asylum was within Attorney General's discretion. *Guo Chun Di v. Carroll*, E.D.Va.1994, 842 F.Supp. 858, reversed 66 F.3d 315.

The forced abortion of girlfriend of alien, a native of China, did not constitute "past persecution" on account of political opinion, and thus, alien was not entitled to asylum on that basis. *You v. U.S. Attorney General*, C.A.11 2005, 150 Fed.Appx. 939, 2005 WL 2470665, Unreported. Aliens ↻ 53.10(3)


Alien, a Chinese citizen, with four children, presented prima facie claim for asylum, based on well-founded fear of future persecution on account of his political opinion, in light of China's one-child and forced sterilization policy, and thus immigration judge (IJ) erred in failing to consider claim, due to adverse credibility finding because alien had submitted unrelated false asylum application approximately seven years earlier. *Zheng v. Gonzales*, C.A.3 2005, 145 Fed.Appx. 780, 2005 WL 2106578, Unreported. Aliens ↻ 54.1(4.1)


Substantial evidence supported finding by immigration judge (IJ) that alien, who was Chinese national, did not suffer past persecution or have well-founded fear of persecution based on his political opinion, and thus did not qualify for asylum, withholding of removal, or relief under Convention Against Torture (CAT), given that IJ had grounds for questioning testimony in which alien claimed that he fought with government officials who came to take his sister for forced abortion, in light of fact that alien was never arrested or harmed for such conduct during year he remained in China, that alien did not seek asylum for four years after leaving China illegally, that country reports indicated that Chinese government opposed coercive methods of implementing family planning policies, and that Chinese government accepted repatriated asylees who left country illegally, punishing first-time offenders with a fine. *Jiang v. U.S. Attorney General*, C.A.11 2005, 130 Fed.Appx. 406, 2005 WL 1052604, Unreported. Aliens ↻ 54.1(4.1)

Alien lacked well-founded fear that he would be persecuted for resisting coercive population control program if he was removed to China, and thus, alien was not entitled to asylum; alien's altercation with family planning officials in China had occurred more than five years ago, altercation did not involve physical attack or threat of physical harm, altercation was alien's single incident of speaking out against Chinese government or its birth control policy, and there was no evidence of a warrant for alien's arrest in China. *Zhang v. Attorney Gen. of U.S.*, C.A.3 2005, 128 Fed.Appx. 287, 2005 WL 957339, Unreported. Aliens ↻ 53.10(3)


Alien failed to demonstrate that his life or freedom would be threatened in China on account of his alleged political opinion concerning family planning policies, and therefore substantial evidence supported decision that he was ineligible for asylum; there were numerous discrepancies in alien's evidence concerning his reasons for leaving China, alien's girlfriend did not suffer sterilization or abortion, and even if girlfriend had been so persecuted, alien was not entitled to protection on such basis since she was not his spouse. *Qing Sho Liu v. Ashcroft*, C.A.3 2003, 84


8 U.S.C.A. § 1101

Fed.Appx. 169, 2003 WL 22931321, Unreported. Aliens  53.10(3)


Substantial evidence did not support conclusion that alien was not eligible for asylum, even if alien's arrest and detention were in part of result of his combative attitude toward Chinese police; alien's arrest and mistreatment, for interfering with police efforts to take his aunt forcibly for an involuntary abortion, constituted compelling evidence of persecution on account of his political opposition to China's birth control policies. *Zhou v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 566, 2003 WL 22928794, Unreported. Aliens  53.10(3)


155. ---- Corruption, political opinion, refugee


Board of Immigration Appeals' (BIA) conclusion, that Albanian asylum applicant's decision to inform his superiors of alleged corruption was not cause of his dismissal from position of brigadier general, for purposes of his claim of fear of persecution based on political opinion, was supported by substantial evidence, where applicant was left in his post after so informing his superiors, and, although he was returned to civilian life after 30 years in military, he failed to show that such period of time was unusually soon for generals in Albania. *Musabelliu v. Gonzales*, C.A.7 2006, 442 F.3d 991. Aliens, Immigration, And Citizenship  54.1(4.1)


Asylum applicant established nexus between his imputed political opinion based on his government employment as a tax auditor and threats and acts made by private company's henchmen after he reported company's illegal tax-evasion scheme, and thus that he was persecuted on account of protected ground; applicant enforced government's policy of eroding government corruption by reporting company's scheme despite company's attempts at bribery and intimidation. *Sagaydak v. Gonzales*, C.A.9 2005, 405 F.3d 1035. Aliens  53.10(3)

156. ---- Desertion, political opinion, refugee

Substantial evidence supported decision, in asylum proceeding, that alien's conscription into the Serbian armed forces and his possible imprisonment for desertion did not amount to persecution; comments of other soldiers, relishing the prospect of killing Muslims, were not directed at alien personally. *Djedovic v. Gonzales*, C.A.7 2006, 441 F.3d 547. Aliens, Immigration, And Citizenship  53.10(3)

Mere fact that soldier in Eritrean military, in fleeing country in order to avoid continued persecution for his political opinions, may have committed criminal act of desertion, for which he could lawfully be punished, did not preclude him from showing well-founded fear of future persecution based upon his political opinion, as required to make him eligible for asylum, on theory that any persecution to which he might be exposed if returned to Eritrea would be for his criminal offense of desertion and not for his political opinion; given nature and extent of persecution to which he was subjected in past based upon his opposition to war, and lack of evidence of change in country conditions, alien had well-founded fear of future persecution based, at least in part, on his political opinion. *Nuru v. Gonzales*, C.A.9 2005, 404 F.3d 1207. Aliens  53.10(3)

Substantial evidence supported finding, in asylum proceeding, that alien did not have a well-founded fear of persecution on account of a political opinion; there was no evidence that his punishment for desertion from the Army would be disproportionately severe due to a political opinion, and there was substantial evidence that his desertion was unrelated to politics. *Nivongso v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 623, 2004 WL 78175, Unreported. Aliens  53.10(3)

Evidence that alien had deserted the Russian army, and that military had come looking for him at his parents' house, did not establish well-founded fear of persecution in Russia based on alien's political opinions, as basis for asylum; there was no evidence Russian military would have perceived his desertion as an expression of political opinion or as a desire to stay politically neutral. *Kaptsov v. Ashcroft*, C.A.9 2003, 64 Fed.Appx. 84, 2003 WL 2008145, Unreported. Aliens  53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

157. ---- Drug trafficking, political opinion, refugee

Colombian businessman who regularly traveled to the United States and who, after becoming indebted to alleged drug trafficker, had refused to assist drug trafficker in his drug trafficking activities failed to show that persecution to which he was exposed was on account of any imputed political opinion, as required to support his asylum or withholding-of-removal claims. *Ochoa v. Gonzales*, C.A.9 2005, 406 F.3d 1166. Aliens ↻ 53.10(3)

Persecution by drug criminals, which asylum applicant feared would occur upon his return to Columbia based on his association in United States with Drug Enforcement Agency (DEA) and his employment by one of its informants, was not on account of political opinion, in that his initial acceptance of job offer, his continued employment after it became clear that employer trafficked in narcotics, and his attempt to avoid removal by cooperating with DEA were not motivated by anything other than self-regarding ends, and, even if applicant's cooperation with DEA stemmed from disapproval of drug cartel, such stance could not constitute political opinion. *Saldarriaga v. Gonzales*, C.A.4 2005, 402 F.3d 461, certiorari denied 126 S.Ct. 1330, 164 L.Ed.2d 47. Aliens ↻ 53.10(3)

Evidence supported finding that alien was not "refugee" within meaning of Immigration and Nationality Act and, thus, alien was ineligible for asylum; revolutionary group in alien's homeland had attempted to recruit alien due to his prior drug smuggling, and possible persecution was result of his refusal to participate in drug smuggling rather than from his political beliefs. *Bartesaghi-Lay v. I.N.S.*, C.A.10 1993, 9 F.3d 819. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that alien failed to establish that attack by drug traffickers was due to anti-drug trafficker political opinion or other protected ground which would entitle him to asylum. *Cardona-Rodriguez v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 388, 2004 WL 2903588, Unreported. Aliens ↻ 54.1(4.1)

158. ---- Family members, political opinion, refugee

Asylum applicant failed to establish that she was persecuted on account of a protected ground, as required to support her application; applicant never identified who entered her home and beat her and had no foundation to believe attack was in retribution for husband's political activities, applicant lived peacefully in Albania for three years after attack, and applicant could not identify strange men who stared at her daughter and had no basis to believe they would kidnap her in retribution for applicant's political activities. *Ruzi v. Gonzales*, C.A.8 2006, 441 F.3d 611, rehearing and rehearing en banc denied. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Asylum applicant, who was citizen of Guatemala, failed to establish past persecution or well-founded fear of future persecution based on his prior work with opposing political party in Guatemala, as required to qualify as a refugee entitled to asylum; applicant was never physically harmed or threatened on account of his refusal to join military, applicant was unable to show that brother's death was based on his political opinions or that it was tied to applicant, and nothing indicated that Guatemalan government would persecute applicant for evading military service or for his involvement with now defunct political party. *Rodriguez v. Gonzales*, C.A.8 2006, 441 F.3d 593. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Substantial evidence did not support immigration judge's finding that alien was not persecuted for political reasons, as required for asylum claim; although alien stated to Ugandan soldiers that she was "only the maid" for a political family, the statement was made while the alien was at gunpoint in the midst of an attack by the soldiers, and, further, testimony from the political family members, who were granted asylum, indicated that alien was considered a family member. *Nakibuka v. Gonzales*, C.A.7 2005, 421 F.3d 473. Aliens ↻ 54.1(4.1)

The status of alien's family was irrelevant to an inquiry into whether alien's own fear of persecution by paramilitary organizations on account of his membership in a particular social group, upon return to his native country, was

8 U.S.C.A. § 1101

subjectively and objectively reasonable, in asylum proceeding, where alien did not claim that the persecution he allegedly faced was on account of kinship ties. *Vente v. Gonzales*, C.A.3 2005, 415 F.3d 296. Aliens ↻ 53.10(3)

Immigration judge's finding that citizen of the Democratic Republic of Congo (DRC) had not established that it was more likely than not that he would be tortured or persecuted if removed to the DRC was supported by substantial evidence, notwithstanding alien's credible testimony as to his family's association with former ruling regime, where none of alien's remaining family members in the DRC have been physically harmed following change in government, and where State Department reported that it was "not aware of family members of former [regime] being mistreated by the [new] government"; accordingly, immigration judge's denial of alien's applications for withholding of removal and protection under the Convention Against Torture (CAT) would not be disturbed. *Mompongo v. Gonzales*, C.A.8 2005, 406 F.3d 512, certiorari denied 126 S.Ct. 425, 163 L.Ed.2d 323. Aliens ↻ 54.1(4.1)

Asylum applicant failed to establish a well-founded fear of persecution on account of membership in his family, even though applicant's mother was wounded and father was murdered due to their involvement in political group; unlike his parents, applicant was apolitical and not a member of political group and alien did not establish that he would be targeted due to his familial ties. *Akhtar v. Gonzales*, C.A.6 2005, 406 F.3d 399, rehearing and rehearing en banc denied. Aliens ↻ 53.10(3)

Columbian asylum applicant failed to present any supporting evidence to establish his claim of past persecution based on political opinion; telephone calls that allegedly came from guerillas were merely a few isolated incidents of verbal harassment, single incident in which two men allegedly threatened applicant at gunpoint did not establish past persecution, and incidents involving his family members did not establish that applicant suffered past persecution based on his political opinion. *Marquez v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 1228998, Unreported. Aliens, Immigration, And Citizenship ↻ 530(1)

Harm that alien claimed to have suffered in Albania qualified as past persecution, so as to establish rebuttable presumption of well-founded fear of future persecution for purposes of asylum eligibility; alien testified to two incidents in which she or members of her immediate family were beaten and threatened in their own home by men who identified themselves as government officials and who made explicit reference to the family's support for the Democratic Party. *Ciftja v. Gonzales*, C.A.2 2006, 176 Fed.Appx. 213, 2006 WL 1049080, Unreported. Aliens, Immigration, And Citizenship ↻ 639

Substantial evidence supported immigration judge's (IJ) conclusion that Albania national had not established reasonable fear of future persecution based on his membership in opposition political party, and thus was not entitled to asylum or withholding of removal, where alien's family members, who belonged to same political party, resided peacefully in Albania, and alien's descriptions of past persecution were not credible. *Alimadhi v. Gonzales*, C.A.1 2006, 2006 WL 964776, Unreported. Aliens, Immigration, And Citizenship ↻ 642

Substantial evidence supported determination of immigration judge that harm alien suffered in Albania did not constitute persecution on account of alien's own political opinion or that of his father, as required for asylum eligibility; alien's father continued to work as police officer in Albania while different political parties were in power there, and father testified that his political beliefs were that he always worked for the right and for the law, and that the fact that he was an honest police officer was one of the reasons alien was kidnapped and threatened with death if his father did not stop his activities against political leader who was involved in illegal activities. *Cela v. Gonzales*, C.A.6 2006, 171 Fed.Appx. 493, 2006 WL 707429, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Alien failed to establish that she suffered past persecution, or had well-founded fear of future persecution in Guatemala on account of her political opinion, as required for asylum eligibility; alien presented evidence that when she was 12 years old, her cousin left Guatemalan army and was murdered by military, that she later witnessed

8 U.S.C.A. § 1101

the murder of cousin's mother, that army personnel left letter in front of her home warning her to leave the country or be killed, that men came to her home and told her to disappear, and that her female cousin was killed and a note left on her body addressed her by alien's name, but alien did not indicate that she held any political opinion or that military attributed to her any political opinion. *Top v. Gonzales*, C.A.9 2006, 2006 WL 527342, Unreported. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Inconsistencies between alien's testimony and her documentary evidence which went to heart of her claim, including whether political organization she belonged to was commonly referred to as "AISSF" and whether she was married to a man who was killed by authorities for his political involvement, provided basis for adverse credibility finding at asylum proceeding. *Panag v. Gonzales*, C.A.9 2005, 148 Fed.Appx. 639, 2005 WL 2812826, Unreported. Aliens ↻ 54.1(4.1)

Attempted kidnapping of alien's child, search of her home, detention, threatening telephone calls, and a fire at business of alien's husband did not have requisite nexus to alien's whistle-blowing activities to establish persecution "on account of" alien's political opinion, for asylum purposes. *Gyonjyan v. Gonzales*, C.A.9 2005, 141 Fed.Appx. 604, 2005 WL 1898510, Unreported. Aliens ↻ 53.10(3)

Alleged drive-by-shooting of alien's cousin, whose father was involved in politics, did not rise to level of past persecution as would support alien's application for asylum and withholding of removal, even considering country conditions prevailing in Mexico at that time and threats made against alien's family; alien testified that he was merely speculating as to why his cousin was killed, using deductive reasoning. *Jaimes-Cornejo v. Gonzales*, C.A.9 2005, 133 Fed.Appx. 426, 2005 WL 1316996, Unreported. Aliens ↻ 53.10(3)

159. --- Government employees, political opinion, refugee


Although key findings by immigration judge (IJ) were not supported by the record and were based on pure speculation or conjecture, citizen of the Democratic Republic of Congo was not entitled to asylum because she was not persecuted on "account of" any of the five reasons enumerated under applicable statute; even if the Congo investigators believed that she was involved in a political conspiracy to overturn the regime and even if government employees met the definition of "social group," she was investigated solely because she was a criminal suspect, and was not imprisoned "because" she was a government employee. *Mwembie v. Gonzales*, C.A.5 2006, 443 F.3d 405. Aliens, Immigration, And Citizenship ↻ 53.10(3)


Asylum applicant established nexus between his imputed political opinion based on his government employment as a tax auditor and threats and acts made by private company's henchmen after he reported company's illegal tax-evasion scheme, and thus that he was persecuted on account of protected ground; applicant enforced government's policy of eroding government corruption by reporting company's scheme despite company's attempts at bribery and intimidation. *Sagaydak v. Gonzales*, C.A.9 2005, 405 F.3d 1035. Aliens ↻ 53.10(3)


Alien, who had been government employee in native country, failed to establish that supervisor interpreted her refusal to submit false balance sheets as based on an expression of her political opinion in opposition to government corruption, as required to support her application for asylum based on political opinion persecution; alien never denounced corruption in public or at work, alien testified that her motive for not submitting false sheets was a desire to not go to jail, and employer was partially privately owned. *Marku v. Ashcroft*, C.A.6 2004, 380 F.3d 982. Aliens ↻ 53.10(3)


Alien, who had been government employee in native country, failed to establish that her submission of accurate balance sheets for employer was motivated by political opinion, as required to support her application for asylum based on political opinion persecution; alien did not publicly oppose corruption, alien testified that her motive to submit accurate sheets was a desire to not go to jail, no evidence established that refusal to submit false sheets was done in opposition to government corruption, alien never counseled employer against engaging in corrupt


8 U.S.C.A. § 1101


activities, and alien did not attempt to expose corruption. *Marku v. Ashcroft*, C.A.6 2004, 380 F.3d 982. Aliens  53.10(3)


Asylum applicant, who was a Russian citizen, and who had been victim of harassment after he failed to approve sale of nuclear materials and technology to Iran in his position as a nuclear engineer, had been made subject to past persecution by reason of his actual or imputed political beliefs, as would qualify him as a refugee eligible for grant of asylum; numerous incidents of harassment, including theft of vehicle and automobile accident, had occurred in span of two and one-half months and thus could not be viewed as coincidence, numerous other incidents, including threatening phone calls and following of applicant, were not chance misfortune, and applicant's employer was an arm of Russian government. *Chouchkov v. I.N.S.*, C.A.9 2000, 220 F.3d 1077. Aliens  53.10(3)

Substantial evidence supported findings of Board of Immigration Appeals (BIA), that alien failed to show the persons who threatened him for failing to cause explosion at Algerian government facility where he worked were members of armed Islamist insurgency, and that he thus was not targeted on basis of one of the grounds for asylum listed in statute; alien stated, inter alia, that he believed the persons all came from the same organization because there were problems in Algeria and automatically the people making the threats belonged to an organization. *Debab v. I.N.S.*, C.A.1 1998, 163 F.3d 21. Aliens  54.1(4.1)


Alleged embezzlement alien reported at her place of employment, a state social services agency, was not considered "opposition to a government institution," for asylum purposes, but opposition toward specific individuals in the agency where she worked. *Gyonjyan v. Gonzales*, C.A.9 2005, 141 Fed.Appx. 604, 2005 WL 1898510, Unreported. Aliens  53.10(3)


Alien's alleged dismissal from his job as driver for Chinese government for making statements about China-Taiwan relations, and claim that he was required to report for "reeducation," did not rise to level of persecution supporting alien's application for asylum and withholding of removal. *Li v. Gonzales*, C.A.2 2005, 132 Fed.Appx. 938, 2005 WL 1332628, Unreported. Aliens  53.10(3)

Alien's resignation from his overseas government job as result of non-payment of salary was not an expression of political opinion which would make alien statutorily eligible for asylum or withholding of removal. *Mane v. Ashcroft*, C.A.3 2004, 84 Fed.Appx. 236, 2004 WL 46621, Unreported. Aliens  53.10(3)

Substantial evidence supported IJ's conclusion that alien failed to establish past persecution or well-founded fear of persecution required for asylum; alien was unable to point to any overt act by his country's government that suggested he was a target for political repression, and in fact, alien held a high position in the government, belonged to ruling political party, and his family traveled freely and were never questioned, detained, or tortured. *Al-Ayoubi v. Ashcroft*, C.A.6 2003, 79 Fed.Appx. 752, 2003 WL 22416910, Unreported. Aliens  54.1(4.1)

160. ---- Guerilla groups, political opinion, refugee

Allegedly political nature of Guatemalan guerrillas' recruitment did not render forced recruitment "persecution on account of political opinion" within meaning of statute permitting asylum if alien is unable or unwilling to return to home country because of persecution or well-founded fear of persecution on account of political opinion. *I.N.S. v. Elias-Zacarias*, U.S.1992, 112 S.Ct. 812, 502 U.S. 478, 117 L.Ed.2d 38. Aliens  53.10(3)

Columbian asylum applicant failed to establish nexus between his persecution by Fuerzas Armadas Revolucionarias de Colombia (FARC) and statutory ground for relief, inasmuch as FARC targeted him because they viewed him as part of Colombian National Police (CNP), not as result of any specific or personal belief imputed to him in that role. *Tamara-Gomez v. Gonzales*, C.A.5 2006, 447 F.3d 343. Aliens, Immigration, And Citizenship  53.10(3)

8 U.S.C.A. § 1101

Alien's failure to cooperate with guerillas was neither political opinion nor basis for imputed political opinion which would provide basis for asylum. *Hernandez-Baena v. Gonzales*, C.A.7 2005, 417 F.3d 720. Aliens 53.10(3)

Immigration judge's finding that rebel group's conduct, in allegedly burning alien's home in Sierra Leone and forcing him to act as porter for group, was not persecution on account of any actual or imputed political opinion, of kind sufficient to support alien's application for asylum, but was instead motivated solely by group's need for porter, was supported by substantial evidence and would not be disturbed on petition for judicial review; while rebel group might have had its own political agenda, this fact, without more, was insufficient to show that its conduct toward alien was motivated by his actual or imputed political opinion. *Turay v. Ashcroft*, C.A.8 2005, 405 F.3d 663. Aliens 54.1(4.1)

Alien was not entitled to withholding of removal where there was no evidence establishing alien's actual or imputed political opinion, much less any nexus between her political opinion and the guerilla group's alleged persecution in her native country. *Sanchez v. U.S. Atty. Gen.*, C.A.11 2004, 392 F.3d 434. Aliens 53.10(3)

Ethiopian national who had been conscripted for service in the Eritrean liberation movement before it succeeded in winning its independence from Ethiopia, and who had successfully escaped from service in incident in which two members of this liberation movement were shot, failed to establish any well founded fear that he would be persecuted for his political beliefs if he were returned to Eritrea, as required for him to be eligible for asylum; adverse action against him would be on account of his desertion from liberation movement rather than his politics, or for his failure to contribute money to the Eritrean government rather than for his political opinion. *Habtemicael v. Ashcroft*, C.A.8 2004, 370 F.3d 774. Aliens 53.10(3)

Finding of immigration judge on application for asylum filed by Ethiopian national conscripted for service in the Eritrean liberation movement, that alien's conscription, and his pursuit by persons in liberation movement following his escape, were for reasons other than his political beliefs, such that alien had failed to demonstrate any past persecution on account of his political beliefs, was supported by substantial evidence, including testimony offered on behalf of alien that, at time of his conscription, the liberation movement was "desperate for manpower" and that its criterion for forcing individuals into military service was whether they had "two legs that could move." *Habtemicael v. Ashcroft*, C.A.8 2004, 370 F.3d 774. Aliens 54.1(4.1)

Alien, a citizen of Guatemala, failed to establish that he was specifically targeted by guerillas in Guatemala because of his opposition to the guerilla movement to establish a well founded fear of future persecution based on actual or imputed political opinion, as required to support alien's application for asylum. *Samayoa Cabrera v. Ashcroft*, C.A.1 2004, 367 F.3d 10. Aliens 53.10(3)

Asylum applicant satisfied the "on account of" element of asylum claim where the persecution which he suffered was a punishment for his politically-based refusal to cooperate with guerrillas' efforts against Guatemalan government. *Lopez v. Ashcroft*, C.A.9 2004, 366 F.3d 799. Aliens 53.10(3)

Finding of immigration judge (IJ), that Eritrean asylum applicant was abducted and pursued by Eritrean People's Liberation Front (EPLF) for reasons other than his political beliefs, and thus failed to demonstrate past persecution on account of his political beliefs, was supported by substantial evidence, including professor's testimony on behalf of applicant that EPLF was "desperate for manpower" and that its criterion for forcing individuals into military service was that merely they had "two legs that could move." *Habtemicael v. Ashcroft*, C.A.8 2004, 360 F.3d 820, superseded 370 F.3d 774. Aliens 54.1(4.1)

Under statute permitting asylum if alien is unable or unwilling to return to home country because of persecution or well-founded fear of persecution on account of political opinion, supporting the government is political; refusing to join a guerilla fighting force for reasons such as fear of combat is not. *Melecio-Saquil v. Ashcroft*, C.A.8 2003, 337

8 U.S.C.A. § 1101

F.3d 983. Aliens ↻ 53.10(3)

Decision of Board of Immigration Appeals (BIA), that any persecution feared by Guatemalan asylum applicant, as result of two men threatening to make him "disappear" if he did not join Guerilla Army of the Poor, was not based on his political opinion, was supported by substantial evidence, including applicant's testimony that he refused to join guerillas because he was afraid he would be killed. *Dominguez v. Ashcroft*, C.A.8 2003, 336 F.3d 678. Aliens ↻ 54.1(4.1)

Alien's persecution by New People's Army (NPA) revolutionary group in the Philippines was at least in part because of her political opinion, for purposes of determining whether she was eligible for asylum, even though NPA began recruiting her and demanding that she pay "revolutionary tax" before they knew her political views, where it was not until she told NPA of her opposition to communism that NPA operatives threatened her life, kidnaped her, beat her, held her without food, and pursued her to distant city. *Tarubac v. I.N.S.*, C.A.9 1999, 182 F.3d 1114. Aliens ↻ 53.10(3)

Finding of Board of Immigration Appeals (BIA), that guerrilla who allegedly threatened alien in El Salvador did not impute to him an antiguerrilla political opinion, and that alien thus was not entitled to asylum, was supported by substantial evidence; although alien allegedly gave taxi ride to guerillas, witnessed events leading to assassination, and cooperated with police, there was no suggestion that alleged threats flowed from belief that alien was acting out of political animus. *Vasquez v. I.N.S.*, C.A.1 1999, 177 F.3d 62. Aliens ↻ 54.1(4.1)

Alleged persecution of alien by El Salvadoran guerilla organization was not sufficiently linked to his political views to be basis for refugee status; alien testified that he never divulged his political leanings when guerillas attempted to recruit him, alien introduced no evidence as to motive behind attacks from which alien allegedly was attempting to protect townspeople while in civil defense patrol (CDP), alleged threats against his family could have been attempts to gain financial support, and alleged slaying of his older brother could have been result of personal animosity. *Aguilar-Solis v. I.N.S.*, C.A.1 (Mass.) 1999, 168 F.3d 565. Aliens ↻ 53.10(3)

Threats made by members of Sendero Luminoso guerilla organization against alien while he served as president of Peruvian street vendors' cooperative, arising from his support of construction of permanent building for vending, were on account of imputed political opinion, and thus were basis for refugee status; Sendero Luminoso opposed construction project, and government supported such project, because the presence of street vendors facilitated guerillas' ability to hide and disseminate political information. *Vera-Valera v. I.N.S.*, C.A.9 1998, 147 F.3d 1036. Aliens ↻ 53.10(3)

Alien was persecuted in Peru on account of actual or imputed political opinion, as required for asylum eligibility; alien opposed Shining Path guerilla movement because of its communist principles, friends and co-workers referred to her as a spy because of her husband's role in capturing guerilla leaders, and Shining Path attempted to kill her on two occasions, attempted to kill her children, bombed her in-laws' home, and abducted and killed her husband's brother. *Meza-Manay v. I.N.S.*, C.A.9 1998, 139 F.3d 759. Aliens ↻ 53.10(3)

Substantial evidence supported finding that alien was not eligible for asylum, where the authenticity of some of alien's documents relating to her alleged kidnapping and rape by Colombian guerillas was called into doubt by finding that her testimony as to those events was not credible; in any case, documents did not show how alien was singled out for persecution on account of a statutory factor. *Valderrama v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 1410022, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Guerilla organization's threats against Columbian asylum applicant, when taken together with the facts of his political activism, such as hosting political party meetings in his office, publicly opposing guerilla organization, and assisting social welfare programs, compelled a conclusion that applicant was targeted, at least in part, on account of his political opinion. *Hernandez Moncada v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 1004274,

8 U.S.C.A. § 1101

Unreported. Aliens, Immigration, And Citizenship ↻ 540

Substantial evidence supported immigration judge's finding that alien did not establish that he suffered past persecution in Colombia on account of his political opinion, as required for asylum eligibility; alien testified he was kidnapped by members of Revolutionary Armed Forces of Colombia (FARC), who tried to recruit him to their cause, and that after he was released for promising to join their cause, FARC members made harassing phone calls to his house, but although alien testified that his political opinion and related activities were contrary to mission of FARC, there was no indication that FARC was aware of alien's political opinion. *Cuartas v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 891031, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported immigration judge's determination that harm alien suffered in Sierra Leone did not constitute persecution on account of his political opinion, for purposes of asylum eligibility; alien testified that rebels came into his village and held him captive along with other villagers for two days, that rebels threatened to burn down entire village, and that they expelled alien and other villagers from village, but there was no evidence that alien or other villagers were targeted because of their membership in Sierra Leone People's Party. *Barrie v. Atty. Gen. of U.S.*, C.A.3 2006, 169 Fed.Appx. 706, 2006 WL 539355, Unreported. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Alien, a citizen of the Philippines seeking asylum, failed to demonstrate that campaign of harassment and intimidation by particular organization and guerillas against him was "on account" of political opinion or another statutorily protected ground; alien did not tell organization that he was resigning for political reasons, and testified that he was recruited into the organization by its president, with whom he formed close relationship, such that harassers' repeated use of term "traitor" could have referred to personal betrayal president felt upon alien's resignation. *Palaca v. Gonzales*, C.A.9 2005, 153 Fed.Appx. 443, 2005 WL 3020013, Unreported. Aliens ↻ 53.10(3)

Immigration judge's finding that Colombian national had not established "well-founded fear of persecution" based on actual or imputed political opinion if she were returned to Colombia was supported by substantial evidence, so that judge's denial of her application for asylum would not be disturbed, where there was nothing in record to suggest that guerilla group from which she allegedly feared persecution was even aware of her political opinions, and alien's fears of group were based, not on any political opinion she held or might be thought to hold, but on her brother's refusal to utilize his position as import-export coordinator to assist guerilla group in drug smuggling. *Mejia v. U.S. Atty. Gen.*, C.A.11 2005, 153 Fed.Appx. 632, 2005 WL 2840308, Unreported. Aliens ↻ 53.10(3)

Alien, a citizen of Columbia seeking political asylum, failed to establish that he was persecuted by guerillas because of his political opinion, or that relocating within his country would not remove his fear of future persecution; alien's own testimony established that guerillas threatened him to use his access to transportation, with fact that alien was stopped at a roadblock suggesting that the threat was more random and that guerillas did not target alien, and alien had been able to avoid the guerillas' threats by relocating to area 22 hours away. *Garrido v. U.S. Attorney General*, C.A.11 2005, 145 Fed.Appx. 352, 2005 WL 2375229, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding at asylum proceeding that alien, a Columbian national, failed to establish past political persecution by guerillas; alien's own testimony indicated that he never had any direct contact with guerillas, only threats alien received were phone calls to his father's home, where alien did not live, and alien was never harmed or personally confronted by anyone claiming to be guerilla. *Silva-Sieger v. U.S. Atty. Gen.*, C.A.11 2005, 145 Fed.Appx. 658, 2005 WL 2335373, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien, a native of Guatemala, was not persecuted on account of political opinion, as would warrant grant of asylum; although alien claimed that guerilla organization attempted to forcibly recruit him, there was no showing that he was a target for recruitment based on his political opinion. *Oliva Alvarez v. Gonzales*, C.A.9 2005, 149 Fed.Appx. 653, 2005 WL 2271795, Unreported. Aliens ↻ 53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Substantial evidence supported finding at asylum proceeding that threatening telephone calls received by alien, a citizen of Peru, during three year period, allegedly from terrorist group, and attempted home invasion, which alien believed was perpetrated by terrorist group, did not amount to political persecution required for asylum. *Giocchio v. U.S. Attorney General*, C.A.11 2005, 143 Fed.Appx. 263, 2005 WL 2130217, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to show past political persecution; alien testified that he and his family were not members of any political organization, military, or civil forces, and offered no evidence to support his belief that guerillas were involved in shooting of his father, or to show that guerillas forced his mother to flee after his father's death, and while prehearing sworn statement indicated that alien told guerillas he wanted to remain neutral and alien testified that he refused to join guerillas and had heard they came looking for him after he left, alien also testified that guerillas targeted his family because they were seeking information about people in the community who had money. *Chajon v. Gonzales*, C.A.8 2005, 138 Fed.Appx. 888, 2005 WL 1645556, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that single beating and two threatening telephone calls alien received from guerillas were on account of alien's appearance as an actor in an army television production in which he portrayed a guerilla, rather than on account of his political opinion. *Yunda v. U.S. Attorney General*, C.A.11 2005, 140 Fed.Appx. 50, 2005 WL 1635298, Unreported. Aliens 53.10(3)

Alien failed to prove that he was subjected to past persecution in Sierra Leone on account of his political opinion, since there was no evidence that Revolutionary United Front (RUF), rebel group that took alien and his neighbors captive and tortured alien, ascribed any particular political views to alien and their other captives. *Ba v. Gonzales*, C.A.10 2005, 139 Fed.Appx. 44, 2005 WL 1526125, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien was targeted by guerillas not because of her status as member of social group consisting of convenience store owners but because of economic and monetary reasons; alien admitted in her credible fear interview that "criminal leftists" stole from her and made threatening phone calls demanding that she pay them money as a tax or protection money, further stating that she was threatened by guerillas who demanded money from her and threatened to kidnap her children, and admitting that two other times her family had come into contact with guerillas, guerillas either stole something or stole money from her store. *Hincapie-Cadavid v. U.S. Attorney General*, C.A.11 2005, 137 Fed.Appx. 291, 2005 WL 1519356, Unreported. Aliens 53.10(3)

Alien's lack of fluency in his country's native language did not provide basis for adverse credibility finding at asylum proceeding, where alien offered reasonable explanation for speaking and understanding a different language better. *Abdullah v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 570, 2005 WL 1140485, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's finding that alien failed to show past persecution on account of her father's political opinion and opposition to guerillas; although alien contended that guerillas targeted her family on account of her father's membership in community action group and conservative political group, alien provided no evidence demonstrating that her father expressed his political opinion to guerillas or that guerillas were even aware of his political opinion. *Ramirez-Cardona v. U.S. Atty. Gen.*, C.A.11 2005, 126 Fed.Appx. 938, 2005 WL 913116, Unreported. Aliens 53.10(3)

Alien's alleged persecution at hands of guerilla group, which tried to forcibly recruit her, was not actually motivated by her political beliefs, as required to support her application for asylum; alien did not hold political opinion, was not member of political organization, nor did she participate in political activity, nor did group ask her about or comment on her political beliefs, or impute any such beliefs to her, nor did alien express any political views to group. *Ocampo v. Ashcroft*, C.A.9 2005, 121 Fed.Appx. 245, 2005 WL 281416, Unreported. Aliens 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported IJ's finding that alien was not persecuted on account of any political opinion, real or imputed, which would entitle him to asylum; alien testified that guerillas were pursuing him because of his youth, agility, and military expertise, which testimony was supported by letter guerillas sent to him demanding that he join their cause, and alien undermined the basis for concluding that his relatives' political opinions were imputed to him by insisting that reason they were killed was that they would not assist guerillas in finding him. *Garcia Perez v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 735, 2005 WL 221903, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported IJ's finding that guerrillas did not persecute alien on account of actual or imputed political beliefs which would entitle alien to asylum; all of evidence indicated that alien's family was threatened solely because alien's father was currently employed by military. *Ajanel v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 729, 2005 WL 221876, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported determination that alien did not qualify for asylum; alien was not subjected to persecution by a terrorist group in the past on account of her political opinion, but because of her nursing skills, and alien had no well-founded fear of future persecution, given that her family continued to reside in the Philippines unharmed and the terrorist group's presence and influence had been significantly reduced. *Carreon v. I.N.S.*, C.A.9 2004, 119 Fed.Appx. 888, 2004 WL 2980589, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported decision, in asylum proceeding, that alien was not subjected to past persecution by guerrilla forces in Columbia; alien's treatment at the hands of the guerrillas resulted from his failure to provide them with monetary and other assistance rather than his personal political views. *Nieto-Nieto v. Ashcroft*, C.A.5 2004, 118 Fed.Appx. 858, 2004 WL 2980354, Unreported. Aliens ☞ 53.10(3)

Board of Immigration Appeals' (BIA) finding, that asylum applicant's forcible recruitment into military service by guerillas did not constitute persecution on account of political opinion, was not supported by substantial evidence; BIA failed to consider applicant's credible testimony that he believed civil war in which guerillas were engaged was unjust, that guerilla group viewed those who did not follow group as supporting other groups, and that people caught escaping military service, as applicant had, were killed. *Johnson v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 849, 2004 WL 2966435, Unreported, opinion after remand 416 F.3d 205. Aliens ☞ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) conclusion that any mistreatment alien suffered at hands of guerillas was due to his refusal to join guerillas and not due to his political opinion, real or imputed, as would support his application for asylum and withholding of removal; guerillas did not search for alien by name, they had no reason to know his late father was once member of civil defense patrol, and alien himself never belonged to political party or served in either police, military or civil defense patrol. *Santos-Lopez v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 138, 2004 WL 2711692, Unreported. Aliens ☞ 53.10(3)

Alien was threatened by guerrillas not due to his status as a former policeman or membership in political party, but due to his refusal to comply with demand that he provide intelligence about police activities, and thus threats were not on account of political opinion which would entitle alien to asylum. *Mancilla-Carabali v. Ashcroft*, C.A.5 2004, 112 Fed.Appx. 370, 2004 WL 2537090, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported IJ's finding that alien failed to establish that guerrillas were motivated by protected ground in their actions toward him, so as to entitle him to asylum; record did not establish that alien expressed political opposition to the guerrillas, or that guerrillas imputed a political opinion to alien. *Padilla Maulino v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 467, 2004 WL 1931788, Unreported. Aliens ☞ 53.10(3)

Alien failed to show that recruitment efforts by guerrillas were motivated by a desire to persecute him because of his political opinion or any other statutorily protected ground which would entitle him to asylum. *Flores v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 128, 2004 WL 1859806, Unreported. Aliens ☞ 53.10(3)

8 U.S.C.A. § 1101

Alien's claim at asylum proceeding that he was persecuted on account of his political opinion was belied by his own testimony that alleged guerrillas never accused him or his father of belonging to the national government and never imputed a political opinion to them. *Hernandez-Flores v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 612, 2004 WL 1826479, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's finding that alien's encounters with guerrillas were not on account of political opinion, affirmative or imputed, or membership in a particular social group which would entitle him to withholding of removal. *Melo-Giraldo v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 607, 2004 WL 1826195, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported finding of Board of Immigration Appeals (BIA) that alien seeking withholding of deportation failed to establish that his fear of future persecution, premised on fact that guerrilla organization had previously attempted to conscript him into its military forces, was on account of political opinion; apart from alien's statements that he had resisted conscription by the guerrillas because he did not want to be a "communist assassin" and that the army was the "good side," there was no evidence that alien was or would be persecuted because of his political opinion. *Gutierrez Antonio v. Ashcroft*, C.A.5 2004, 103 Fed.Appx. 836, 2004 WL 1690182, Unreported. Aliens ↪ 53.10(3)

Assuming she was credible, alien seeking asylum established that she was persecuted by guerrillas at least in part because of her actual or imputed political opinion; alien testified that her religion caused her to disapprove of guerrillas, that she confronted her husband about guerrilla literature she found in her house which revealed that he was a guerrilla, and that after she rebuffed her husband's request to join the guerrillas, his guerrilla companions came to the house, told her that they wanted her to join them to ensure that she did not reveal her husband's identity to authorities, and beat, raped, and kidnapped her when she refused to go with them. *Alcon-Ailon v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 31, 2004 WL 1595347, Unreported. Aliens ↪ 53.10(3)

Evidence that guerillas sought to recruit alien was insufficient to demonstrate that alien suffered past persecution based on political opinion which would entitle him to asylum. *Mateo v. Ashcroft*, C.A.8 2004, 102 Fed.Appx. 519, 2004 WL 1595096, Unreported. Aliens ↪ 53.10(3)

Testimony by alien, a former teacher, that guerillas tried to force him to lend them his students to act as messengers for them was insufficient to demonstrate past persecution on account of political opinion or well-founded fear of future persecution which would entitle him to asylum. *de Jesus Male Fonceca v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 265, 2004 WL 1594812, Unreported. Aliens ↪ 53.10(3)

Recruitment efforts by guerillas were insufficient to constitute persecution on account of political opinion which would entitle alien to asylum. *Orozco v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 197, 2004 WL 1447755, Unreported. Aliens ↪ 53.10(3)

Evidence did not compel conclusion that alien was persecuted by guerrillas in his native country of the Philippines on account of political opinion they imputed to him, as required to reverse Board of Immigration Appeals' (BIA) denial of his application for asylum; according to alien's testimony, guerrillas threatened and recruited him because they wanted to continue logging illegally, not because they imputed any political opinion to him. *Catimbang v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 701, 2004 WL 1194141, Unreported. Aliens ↪ 54.1(4.1)

Alien who was allegedly subjected to an abduction attempt after he refused to comply with a demand, by a member of a guerilla group, that alien hire a member of the group, and who later received threatening phone calls, was not persecuted for political reasons and thus was not eligible for asylum; attempts were made without regard for alien's political opinions. *Rangel Quinonez v. Ashcroft*, C.A.10 2004, 102 Fed.Appx. 114, 2004 WL 1167383, Unreported, certiorari denied 125 S.Ct. 355, 543 U.S. 943, 160 L.Ed.2d 256. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

Alien was not entitled to asylum; there was no evidence that alien was ever persecuted "on account of" a protected ground, alien testified that only political opinion she had was not to be of the guerillas' opinion, and there was no evidence alien was approached by guerillas because of her membership in particular social group. *Castillo-Osorio v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 584, 2004 WL 785301, Unreported. Aliens ↪ 53.10(3)

Alleged persecution of Palestinian applicant who had fled efforts by armed men to recruit him for his singing ability and American education was not on account of political opinion, and, thus, the applicant was not entitled to asylum; the applicant conceded that the men were interested in the applicant's participation in the armed and violent uprising regardless of applicant's actual views or wishes, and the applicant only showed heavy-handed recruiting visit. *Said v. Ashcroft*, C.A.7 2004, 93 Fed.Appx. 83, 2004 WL 604227, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding, in asylum proceeding, that alien was not persecuted on account of any political opinion; alien was enslaved by guerrillas in order to augment their supply of labor, rather than for his political opinion. *Mateo-Pedro v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 460, 2004 WL 515575, Unreported. Aliens ↪ 54.1(4.1)

Threats by guerrillas, that they would kill alien and her children if she did not convince her companion, a government employee, to help them, did not imply that guerrillas believed alien's political beliefs to be contrary to their own, and therefore substantial evidence supported finding, in asylum proceeding, that alien was not persecuted on account of actual or imputed political opinion. *Pena v. Ashcroft*, C.A.9 2004, 90 Fed.Appx. 979, 2004 WL 473973, Unreported. Aliens ↪ 53.10(3)

Alien, a native and citizen of Guatemala, failed to establish that he was eligible for asylum; alien testified that he deserted military school because he did not like the school and that shortly thereafter guerillas kidnaped and attempted to recruit him because of his military experience, not because of his political opinion, real or imputed. *Rodas v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 96, 2004 WL 363426, Unreported. Aliens ↪ 53.10(3)

Evidence was insufficient, in asylum proceeding, to compel conclusion that alien was subjected to past persecution by a terrorist group on account of her political affiliation; alien was threatened due to her refusal to comply with demand that she grant work release to certain prisoners who were members of the terrorist group. *Sanchez v. Ashcroft*, C.A.5 2004, 90 Fed.Appx. 752, 2004 WL 335190, Unreported. Aliens ↪ 53.10(3)

Attacks against alien by rebel forces that governments of the Philippines and the United States were unable to control amounted to past persecution on account of his political opinion, as would support alien's application for asylum. *Ganut v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 38, 2003 WL 23098582, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) conclusion that alien seeking asylum and withholding of removal failed to establish a well-founded fear of future persecution, where evidence showed that alien was not targeted by Guatemalan guerrillas because of an imputed political opinion, and that he had relocated and lived undisturbed in Guatemala City for at least a year, possibly two and a half years, even before country conditions improved. *Veliz v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 857, 2003 WL 23098139, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported conclusion that alien failed to establish that he was persecuted, or had a well-founded fear of future persecution, on account of an enumerated ground, as required in his application for asylum, even though alien testified that guerillas beat him on two occasions and sent him anonymous threatening letters because he resisted recruitment; treatment was not on account of alien's actual or imputed political opinion. *Ceron-Pineda v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 834, 2003 WL 23097609, Unreported. Aliens ↪ 53.10(3)

Ruling that alien seeking asylum did not suffer past persecution on account of his political opinion was supported

8 U.S.C.A. § 1101

by substantial evidence; the threatening letters he received, while based on his political opinion, were not so menacing as to cause significant actual suffering or harm, and even if he was persecuted when guerrillas coerced him to provide them with medical treatment, there was nothing in the record which indicated that the guerrillas persecuted him on account of his political opinion. *Westerheyde v. I.N.S.*, C.A.9 2003, 71 Fed.Appx. 746, 2003 WL 21872541, Unreported. Aliens ↪ 54.1(4.1)

Guerrilla organizations' alleged attempts to forcibly recruit alien did not compel finding of persecution on account of political opinion necessary to support asylum application, absent evidence that guerrillas imputed any political beliefs to him. *Gonzalez-Quevedo v. I.N.S.*, C.A.9 2003, 71 Fed.Appx. 671, 2003 WL 21771572, Unreported. Aliens ↪ 53.10(3)

Alien who alleged that guerrillas threatened to forcibly conscript him did not establish that he was targeted because of his political opinion, and therefore was not eligible for asylum and withholding of deportation; alien was only subjected to a general threat which was not based on his political beliefs. *Del Cid Mayen v. Ashcroft*, C.A.9 2003, 66 Fed.Appx. 693, 2003 WL 21186350, Unreported. Aliens ↪ 53.10(3)

Alien's conversation with certain individual, the phone calls he received from the New People's Army (NPA) in Philippines threatening him for being a government informant, and the subsequent shooting of alien's water tank together compelled the conclusion that the NPA knew that alien supported the government, such that risk of persecution was on account of political opinion, as was required by asylum statute, even if persecutors were also motivated by economic reasons, whether or not he suffered physical injury. *Kho v. I.N.S.*, C.A.9 2003, 62 Fed.Appx. 785, 2003 WL 1870885, Unreported. Aliens ↪ 53.10(3)

Guatemalan citizen was not entitled to asylum, even if guerrillas had come into her family's store, stolen items, and threatened to kill her if she reported them, absent evidence that persecution she suffered, or would suffer upon her return, was based on political opinion that she was known to have or was imputed to her. *Juarez-Guerra v. Ashcroft*, C.A.9 2003, 60 Fed.Appx. 115, 2003 WL 840365, Unreported. Aliens ↪ 53.10(3)

In action for review of denial, by Board of Immigration Appeals (BIA), of application for asylum and withholding of removal, alleged persecution by rebel group did not warrant asylum; petitioner's refusal to join rebel group did not, without more, constitute an expression of political opinion, petitioner did not show that rebel group imputed a particular political opinion to him, and petitioner could reasonably relocate to an area of country in which rebels had no control. *Sene v. Ashcroft*, C.A.3 2002, 54 Fed.Appx. 753, 2002 WL 31781089, Unreported. Aliens ↪ 53.10(3)

161. ---- Police officer, political opinion, refugee

Evidence was insufficient, in asylum proceeding, to find that alien was subject to persecution by terrorists due to any imputed political opinion, even though alien was a policeman who worked in the zone where the terrorists were active and worked on security for the judges in terrorism cases; alien's duties did not rise to level of being "politically charged". *Estrada-Escobar v. Ashcroft*, C.A.10 2004, 376 F.3d 1042. Aliens ↪ 54.1(4.1)

Substantial evidence supported finding of Board of Immigration Appeals (BIA) that persecution of Peruvian police officer by suspected members of guerilla organization was not "on account of" imputed political opinion, so as to be basis for asylum; guerillas referred to officer as "policeman" and "informant" when attacking him, and neither reference implied they believed he held political beliefs contrary to theirs. *Cruz-Navarro v. I.N.S.*, C.A.9 2000, 232 F.3d 1024. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's determination that alien did not suffer past persecution in China on account of her political opinion, as required for asylum eligibility; although alien testified that she was mistreated by police when she reported her manager's extortionate act, she did not articulate nature of political

8 U.S.C.A. § 1101

opinion that supposedly was basis for the mistreatment, arguing only that the extortion and beating by police appeared to be politically motivated, and isolated incident of harassment by police was not so menacing or extreme as to constitute persecution. *Zhu v. U.S. Atty. Gen.*, C.A.11 2005, 159 Fed.Appx. 959, 2005 WL 3455825, Unreported. Aliens ↪ 54.1(4.1)

Allegations by Indian alien, who was former police officer, that he would be persecuted by police because he opposed tactics used against suspected militants, did not establish persecution on account of statutorily protected ground, as required to support his application for asylum; alien did not express that political opinion to police nor would police impute that political opinion to him, given that he never refused to perform his job duties and always followed orders to beat suspected militants. *Singh v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 567, 2004 WL 2852559, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding at asylum proceeding that any past persecution suffered by alien as result of threats and attacks on him by politically connected gangsters who he was investigating and trying to arrest was motivated solely by alien's activities as a police officer rather than by his political opinion; there was no evidence that alien was a political activist or that political party gangsters belonged to was directly opposed to party to which alien belonged, and alien himself acknowledged that there was a direct connection between his job and his persecution. *Delva v. Ashcroft*, C.A.1 2004, 108 Fed.Appx. 648, 2004 WL 2107919, Unreported. Aliens ↪ 53.10(3)

162. ---- Military personnel, political opinion, refugee

Substantial evidence supported finding that alien's military demotion for campaigning for political party was insufficient harm to support finding of persecution required for asylum, given that alien testified that he was not significantly intimidated or abused in connection with demotion. *Pirgu v. Ashcroft*, C.A.6 2005, 121 Fed.Appx. 652, 2005 WL 361582, Unreported. Aliens ↪ 54.1(4.1)

Alien's membership in military did not constitute actual or imputed political opinion or membership in a particular social group, for purposes of asylum and withholding of removal. *Fructuoso Santiago v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 635, 2004 WL 1614887, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported determination, in asylum proceeding, that alien, an Albanian army officer, was not persecuted in Albania because of a political opinion; alien testified that his problems came not as a result of voicing opposition to military policies, but as a result of his refusal to carry out those policies. *Qorraj v. Ashcroft*, C.A.3 2004, 89 Fed.Appx. 318, 2004 WL 188327, Unreported. Aliens ↪ 53.10(3)

163. ---- Financial advantage, political opinion, refugee

In deciding whether alien had established requisite persecution or well-founded fear of future persecution based on his political opinions, as required to establish his eligibility for asylum, the Board of Immigration Appeals (BIA) should not have ignored or discounted political context of Iranian soldier's prior threats toward alien, in allegedly warning alien that he would report him for associating with rival political group persecuted by Iran's current government, simply because soldier, in suggesting that alien could purchase his silence by paying him large sum of money, had been motivated by his personal desire for financial gain; alien's evidence, viewed in its totality, clearly established causal connection between persecution, fear of future persecution, and alien's political opinion. *Jahed v. I.N.S.*, C.A.9 2004, 356 F.3d 991. Aliens ↪ 53.10(3)

Neither grant of asylum nor withholding of removal was warranted, absent evidence that deputy mayor in alien's native country of Ukraine, who was former communist party leader, extorted money from alien because of alien's political beliefs; evidence revealed that prospect of personal economic gain motivated mayor to extort money, and that mayor's attacks may have stemmed from personal disputes, and State Department reports on Ukraine cast

8 U.S.C.A. § 1101

doubt that former communists in current government positions would persecute those who had opposed communism. *Boyarintsev v. Ashcroft*, C.A.7 2004, 93 Fed.Appx. 960, 2004 WL 627009, Unreported. Aliens 53.10(3)

164. ---- Personal conflicts, political opinion, refugee

Substantial evidence supported IJ's finding at asylum proceeding that alien, a citizen of China, failed to establish past persecution or well-founded fear of future persecution based on his political opinion; alien's testimony was not supported by State Department's profile of asylum claims and country conditions, and alien did not establish that any persecution he might have suffered was on account of political opinion and not because of inter-family dispute or vendetta. *Hui Ming Li v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 1208041, Unreported. Aliens, Immigration, And Citizenship 642

Alien, a citizen of Turkey, failed to establish entitlement to political asylum; alien testified that his safety had been threatened because of an intra-family land dispute and because of his private attempts to collect a debt on behalf of a family member, and although he stated that he believed the police did not help him with the dispute because they shared the same political views as his family's adversaries, he testified that he had not participated in any political activities or belonged to any political parties and had not encountered any problems due to his family's political affiliations. *Ayaz v. Gonzales*, C.A.2 2005, 153 Fed.Appx. 12, 2005 WL 2812261, Unreported. Aliens 54.1(4.1)

Immigration Judge (IJ) did not err, in asylum proceeding, in determining that alien failed to establish the required causal nexus between the persons who allegedly targeted him and his political affiliation; alien said several times that the opposition party members who attacked him targeted him because they blamed him for the deaths of their friends, he acknowledged there was a tradition of blood feud in Albania, and he presented no evidence that his attackers were motivated by his political opinion. *Muci v. U.S. Atty. Gen.*, C.A.11 2005, 144 Fed.Appx. 5, 2005 WL 1506032, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's finding at proceeding for withholding of removal that attack alien suffered at hands of two men in his country was motivated by personal animus rather than political beliefs, even if spark for such flame may have been struck while alien's attackers and alien's brother, a retired army lieutenant, were on opposite sides of armed conflict. *Salguero-Recinos v. Ashcroft*, C.A.2 2005, 119 Fed.Appx. 359, 2005 WL 181292, Unreported. Aliens 54.1(4.1)

Substantial evidence supported finding that alien failed to establish past persecution or a well-founded fear of future persecution on account of an enumerated ground, as required in his application for asylum; any violence or threats alien suffered at the hands of guerrillas was job-related and not a ground for asylum, inasmuch as he was a former army officer, a former army colonel's personal vendetta against alien was not persecution on account of a political opinion, and fear of possible army action based on alien's desertion was not a valid basis for asylum. *Barillas v. Ashcroft*, C.A.9 2004, 96 Fed.Appx. 487, 2004 WL 886381, Unreported. Aliens 53.10(3)

Evidence, including lack of support for alien's assertion that he would be imprisoned if he returned to China and his concession that his family had not been harmed since he left, supported Immigration Judge's (IJ) determination, in asylum proceeding, that alien's injuries resulted from a personal land dispute with the chief of his village, rather than from his political views or actions, and therefore alien did not have a well-founded fear of future persecution, as required in his request for asylum. *Shi v. Ashcroft*, C.A.2 (N.Y.) 2004, 91 Fed.Appx. 187, 2004 WL 392953, Unreported. Aliens 53.10(3)

165. ---- Miscellaneous cases persecution shown, political opinion, refugee

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Asylum applicant's imprisonment in Pathet Lao concentration camp in Laos constituted past persecution based on political opinion, inasmuch as purpose of imprisonment was to make applicant more compliant to political dogma of authoritarian government, he was subjected to indoctrination meetings, denied contact with his family, and required to perform forced labor, and his imprisonment continued for four to six years with little change in treatment or conditions. *Phommasoukha v. Gonzales*, C.A.8 2005, 408 F.3d 1011. Aliens ↻ 53.10(3)

Persecution suffered by asylum applicant in Philippines was motivated at least in part by his political opinions, where attacks on him began after he spoke in support of his father's run for town councilor in opposition to Communist party, likely instigator was hit man for Communist party, and hammer-and-sickle emblems were left at sites of some attacks indicating that Communist party was accepting responsibility. *Deloso v. Ashcroft*, C.A.9 2005, 393 F.3d 858. Aliens ↻ 53.10(3)

Asylum applicant established persecution in Armenia based on her political opinion; applicant was arrested and beaten for participating in anti-government rally, applicant was beaten by government officials on three occasions in retaliation for applicant's political expression, one of the beatings caused applicant to lose consciousness for some time, applicant was threatened and beaten as result of articles she wrote in which she voiced opposition to corruption in ruling party, applicant's life was threatened by government authorities, and applicant's protests were directed towards policies and practices of governing party. *Mamouzian v. Ashcroft*, C.A.9 2004, 390 F.3d 1129. Aliens ↻ 53.10(3)

Persecution of Bangladeshi journalist, in response to her article criticizing local government leader, was on account of her political opinion, for purposes of her asylum claim, even though she did not espouse political theory in article, where article accused leader of organizing repressive cadre and misappropriating public funds, thus describing institutionalized level of corruption, and leader publicized need to punish journalist in terms of her identity as journalist, member of women's organization, and leader of "anti-Islamic activities," indicating his motives were not purely personal. *Hasan v. Ashcroft*, C.A.9 2004, 380 F.3d 1114. Aliens ↻ 53.10(3)

Asylum applicant established politically motivated past persecution that gave rise to presumption of well-founded fear of future persecution, in view of evidence that applicant, who had taken actions as employee of mine that was perceived as anti-labor, was kidnapped and threatened based on her perceived support for the government and her perceived opposition to communist guerilla group. *Agbuya v. I.N.S.*, C.A.9 2001, 241 F.3d 1224. Aliens ↻ 53.10(3)

Asylum applicant established politically motivated past persecution that gave rise to presumption of well-founded fear of future persecution, in view of evidence that applicant, who had taken actions as employee of mine that was perceived as anti-labor, was kidnapped and threatened based on her perceived support for the government and her perceived opposition to communist guerilla group. *Agbuya v. I.N.S.*, C.A.9 2000, 219 F.3d 962, opinion amended on denial of rehearing 241 F.3d 1224. Aliens ↻ 54.1(2)

Persecution of alien by members of El Salvador's military, including making death threats against him, shooting at him, murdering his aunt and uncle, and beating his mother, was on account of political opinion, for purposes of determining whether he was eligible for asylum; government conceded that murder of uncle was political, aunt had been married to member of Frente Farabundo Marti para la Liberacion Nacional (FMLN), soldiers who murdered aunt were aware that alien had distributed political materials, and soldiers' actions were not motivated solely by desire to avoid prosecution. *Navas v. I.N.S.*, C.A.9 2000, 217 F.3d 646. Aliens ↻ 53.10(3)

Alien was subjected to persecution by antigovernment faction in the Philippines, at least in part on account of her political opinion, and was thus eligible for asylum under the Immigration and Nationality Act, in view of evidence that alien articulated her political opposition to faction representatives as reason for her refusal to join; faction's demands for money did not render persecution nonpolitical. *Borja v. I.N.S.*, C.A.9 1999, 175 F.3d 732. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Clear nexus existed between Albanian alien's political activities and undisputed persecution, rendering him eligible for asylum, where alien was member of ousted Democratic party at time of persecution, he was specifically called a Democrat by assailants who beat and threatened him at gunpoint, and note with death threat that was subsequently left at alien's home again labeled him a Democrat. *Kalaj-Pali v. Gonzales*, C.A.6 2006, 174 Fed.Appx. 975, 2006 WL 988811, Unreported. Aliens, Immigration, And Citizenship ↻ 540

Alien's testimony was sufficiently detailed to satisfy her burden to establish, for purposes of asylum eligibility, that she was unwilling to return to Albania because she had suffered persecution due to her political opinions; alien testified that she was grabbed off the street and told she was being arrested because of her political convictions, because she was a member of Balli Kombtar party and against communism, that the men who arrested her took her to jail and beat her badly, and that she remained in custody for three weeks. *Pepaj v. Gonzales*, C.A.2 2006, 167 Fed.Appx. 239, 2006 WL 354633, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence did not support immigration judge's finding that alien, a native of the former Union of Soviet Socialist Republics and citizen of Ukraine, failed to establish that he was persecuted on account of a protected ground, as required to be eligible for asylum; alien testified that he was politically active and that his persecutors referenced his political involvement during several of the incidents he described. *Vorobets v. Gonzales*, C.A.9 2005, 155 Fed.Appx. 362, 2005 WL 3361266, Unreported. Aliens ↻ 53.10(3)

Alien's testimony and corroborating news articles established that vendetta and accompanying violence against him and his family members was caused, at least in part, by his family's continued political opposition to his alleged persecutors, a protected ground for asylum purposes. *Del Rio v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 877, 2005 WL 823893, Unreported. Aliens ↻ 54.1(4.1)

Asylum applicant established past persecution in Albania on account of political opinion based on incidents which occurred under post-Communist regime, regardless of any absence of connection between those incidents and the persecution he and his family experienced under Communist regime; under post-Communist regime, applicant was threatened at gunpoint when he represented Democratic Party and attempted to speak out against election frauds, when applicant spoke out about the incident at public meeting, he and his wife were stopped on their way home and beaten, and told to leave city or face dire consequences, his wife received threats at work and subsequently quit her job, and he was threatened, detained, and beaten by police officers. *Bibashani v. Ashcroft*, C.A.6 2005, 124 Fed.Appx. 361, 2005 WL 434470, Unreported. Aliens ↻ 53.10(3)

Alien met his burden of establishing his eligibility for asylum; alien was threatened on five or six occasions by members of army who told him to stop his work in propaganda advertising for particular political party, alien had a gun placed to his chest as threat was repeated on one occasion, alien's father was murdered for his involvement with political party, and alien testified that newspaper in which his work appeared was distributed through the entire country, thus making him unsafe from persecution anywhere in the country. *Jumique-Lopez v. I.N.S.*, C.A.9 2005, 118 Fed.Appx. 331, 2005 WL 79094, Unreported. Aliens ↻ 53.10(3)

Alien established sufficient nexus between persecution he suffered and his political opinion, as required to support his application for asylum; government soldiers disrupted meeting of political organization, of which alien was a member, which was dedicated to opposing government corruption and land reform efforts, accused members of being guerillas opposed to government, and killed alien's uncle when he acknowledged being leader of organization, and after meeting, during which time he was in hiding, government officials were looking for him and his uncle's family members and had arrested his aunt and nephew. *Matias-Zet v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 246, 2004 WL 2913577, Unreported. Aliens ↻ 53.10(3)

Aliens were persecuted on account of their political opinion based upon their status as new entrepreneurs in post-communist Russia, supporting grant of asylum, where persecution was perpetrated by individuals that the government was unable or unwilling to control, and not merely by business competitors. *Mikhailiuk v. Ashcroft*,

8 U.S.C.A. § 1101

C.A.9 2004, 112 Fed.Appx. 573, 2004 WL 2381109, Unreported. Aliens ↻ 53.10(3)

Aspects of alien's claim of persecution, such as threats and accompanying violence by government personnel aimed at halting alien's efforts to secure pension benefits, which included efforts to recall members of parliament who had voted to change the labor law, were motivated, at least in part, by an actual or implied protected ground. Ghazarian v. Ashcroft, C.A.9 2004, 109 Fed.Appx. 887, 2004 WL 2163176, Unreported. Aliens ↻ 53.10(3)

Alien seeking asylum demonstrated that he was persecuted on account of his political beliefs; alien was arrested, beaten, and threatened by police on four occasions, and police did those things to him because they wanted him to cease his political activities. Singh v. Ashcroft, C.A.9 2004, 109 Fed.Appx. 886, 2004 WL 2163170, Unreported. Aliens ↻ 53.10(3)

Alien's testimony that he was repeatedly beaten by a police officer, and harassed by other officers, due to his affiliation with political organization, was sufficient to establish that he suffered persecution which was motivated, at least in part, by political animus. Singh v. Ashcroft, C.A.9 2004, 106 Fed.Appx. 638, 2004 WL 1987343, Unreported. Aliens ↻ 53.10(3)

Alien's testimony that, as result of government's perception that she was a supporter of particular regime, she was detained in prison for nearly a month and suffered serious beatings during the first two days of her detention, causing her to lose consciousness, was sufficient to establish past persecution on account of a protected ground, as required for asylum. Gebrezgabhere v. Ashcroft, C.A.9 2004, 108 Fed.Appx. 514, 2004 WL 1941282, Unreported. Aliens ↻ 53.10(3)

Alien seeking asylum established a well-founded fear of future persecution on the basis of political opinion; alien testified about two imprisonments for political demonstrations, five year imprisonment of his father, beating he endured at the hands of soldiers, a threat by government that it would kill him if he returned to politics, and disclosure of his recent political activity by a fellow protestor to the government, which resulted in repeated inquiries by government officials into alien's whereabouts and torture of his fellow protestor, and testimony of dire political situation was confirmed by state department reports. Thein v. Ashcroft, C.A.9 2004, 107 Fed.Appx. 151, 2004 WL 1859901, Unreported. Aliens ↻ 53.10(3)

Alien's testimony at asylum proceeding regarding his politically-motivated beating, threats against him, and the beating of his brother and rape of his sister established that he was persecuted in the past on account of political opinion. Varo v. Ashcroft, C.A.9 2004, 106 Fed.Appx. 630, 2004 WL 1831744, Unreported. Aliens ↻ 53.10(3)

Substantial evidence did not support Board of Immigration Appeals' determination that alien, a citizen of Sierra Leone, failed to demonstrate either past persecution or a well-founded fear of future persecution, as required for asylum; alien offered evidence, including his own testimony, international and governmental agency reports, and expert opinion, demonstrating that his family was killed on account of his father's political affiliation and that should alien be returned to native country, he could suffer a similar fate. Jalloh v. Ashcroft, C.A.1 2004, 103 Fed.Appx. 402, 2004 WL 1514713, Unreported. Aliens ↻ 54.1(4.1)

Alien demonstrated that he was persecuted on account of political opinion, as required to support his application for asylum; credible testimony established that there was causal connection between alien's persecution by military officers in his native country of Honduras, and his political opinion as investigator and whistleblower against Army corruption, the investigation of which could have potentially exposed criminal activity of powerful governing institution as whole. Maldonado-Castro v. Ashcroft, C.A.9 2004, 103 Fed.Appx. 113, 2004 WL 1404697, Unreported. Aliens ↻ 53.10(3)

Finding by BIA that alien was not persecuted on account of political opinion was not supported by substantial evidence, and thus did not provide basis for denying asylum; alien based claim on fact that his father, an active

8 U.S.C.A. § 1101

member of oppositional political party, was murdered and that shortly after, uniformed men broke into his home and demanded that alien turn over his father's political documents, and BIA based its rejection of claim on fact that alien did not know who killed his father, why he was killed, or identity of intruders, without addressing fact that alien was tortured to obtain political papers, that alien frequently attended political functions, or that he was told by intruders that he had not seen last of them. *Santos-Morales v. I.N.S.*, C.A.9 2004, 89 Fed.Appx. 127, 2004 WL 376819, Unreported. Aliens ↪ 54.1(4.1)

Alien adequately established past persecution required for asylum claim; alien offered consistent evidence that government officials, based on his perceived support of a political opinion, detained him for a prolonged period of time, slapped him repeatedly, and released him only after forcing him to sign a false confession, as a result of which alien suffered serious consequences to his health, including stomach and kidney ailments, arthritis, and lack of concentration, and was forced to endure daily re-education sessions and weekly interrogations by police, precluding him from finding employment. *Lu v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 52, 2004 WL 326405, Unreported. Aliens ↪ 53.10(3)

Alien's testimony, if credited, was sufficient to establish a well-founded fear of persecution in Armenia on the basis of an imputed political belief, as required to establish eligibility for asylum; although alien was not a member of any political party, she testified that was singled out for persecution because she refused to kill a patient who was a member of an opposition party, and although, after having been shot at, the alien and her family lived with her mother for three months without incident, alien testified that she never returned to work and that she and her family were living in hiding at her mother's house. *Hakobyan v. Ashcroft*, C.A.9 2004, 86 Fed.Appx. 353, 2004 WL 162574, Unreported. Aliens ↪ 53.10(3)

Substantial evidence did not support Board of Immigration Appeals' (BIA) finding that alien had not suffered from past persecution, as required in his application for asylum; BIA failed to properly consider evidence that alien and three other members of his group were warned by a member of the government regarding their activities on behalf of a documented political and humanitarian organization, that shortly thereafter they began receiving death threats, and that two of group were kidnapped, one of them killed while the other remained missing. *Ajanel v. I.N.S.*, C.A.9 2003, 79 Fed.Appx. 968, 2003 WL 22474598, Unreported. Aliens ↪ 53.10(3)

Alien's alleged beating and rape by Indian police was a harm suffered on account of a statutorily enumerated ground, as required in her application for asylum; alien was warned by police about speaking about Khalistan or testifying on behalf of another person, which were political activities. *Kaur v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 964, 2003 WL 22474596, Unreported. Aliens ↪ 53.10(3)

Alien's credible testimony, establishing that he was arrested by police in his country and tortured for his political activities, demonstrated that alien was persecuted on account of political opinion, entitling him to asylum. *Mughal v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 314, 2003 WL 22435191, Unreported. Aliens ↪ 53.10(3)

Alien established past persecution on application for asylum and withholding of deportation; immigration judge found that persecution of alien in home country was motivated primarily by alien's wealth, and secondarily by alien's political opinion, establishing past persecution at least in part by an enumerated ground. *Barrera v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 944, 2003 WL 21995298, Unreported. Aliens ↪ 53.10(3)

Asylum applicant suffered past persecution on account of his political opinion in Iran, thus entitling him to a presumption of a well-founded fear of future persecution, where he was incarcerated for over one year after police found *Derafseh Kaviani* (DK) pamphlets in his car and was threatened with execution, he was subjected to abusive treatment while in prison to extract information from him, and he was released on condition that he have no contact with any other group, report regularly to police precinct, and not leave country for five years. *Abadi v. I.N.S.*, C.A.9 2002, 52 Fed.Appx. 997, 2002 WL 31856127, Unreported, amended on denial of rehearing 56 Fed.Appx. 435, 2003 WL 683935. Aliens ↪ 53.10(3)

8 U.S.C.A. § 1101

166. --- Miscellaneous cases persecution not shown, political opinion, refugee

Substantial evidence supported Board of Immigration Appeals' (BIA) denial of asylum and withholding of removal based on alien's claim of past political persecution because of her union activism in China; alien was laid off from her job for economic, not political, reasons, and when she and fellow workers organized a protest of their layoffs, the police responded by removing them from the factory premises. *Zhang v. Gonzales*, C.A.2 2006, 452 F.3d 167. Aliens, Immigration, And Citizenship ↻ 540

Albanian alien was not entitled to asylum based on past persecution or well-founded fear of future persecution on grounds of political party affiliation, where alien was not physically harmed in Albania, alien successfully evaded trouble by relocating within Albania, and his only direct run-in with authorities consisted of a single threatening meeting with local police. *Kambolli v. Gonzales*, C.A.2 2006, 449 F.3d 454. Aliens, Immigration, And Citizenship ↻ 530(1)

Assuming that incident in which two unknown men on motorcycles fired gun shots into Colombian national's car would qualify as past persecution, such as might support asylum claim, timing of this shooting, about three weeks after Colombian national had received death threat which was directly related to her political activity in Colombia and after series of anonymous phone calls which did not refer to her political activity, did not compel conclusion that shooting incident was persecution on account of her political opinion, as required for Court of Appeals to disturb immigration judge's finding to the contrary on petition for review in asylum case. *Silva v. U.S. Atty. Gen.*, C.A.11 2006, 448 F.3d 1229. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Determination of Immigration Judge (IJ), that asylum applicant from Republic of Congo failed to establish persecution or well-founded fear of future persecution on account of political opinion, was supported by substantial evidence, even though IJ did not discuss individual worth of articles, country reports, and affidavits submitted by applicant, where IJ did not completely ignore such documents, IJ identified particular pieces of missing evidence, and documents in question did not constitute independent evidence of persecution on account of political opinion. *Gandziami-Mickhou v. Gonzales*, C.A.4 2006, 445 F.3d 351. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Broadcasted death threat that alien received on his security radio while he was working at the American embassy in Cambodia did not support alien's claim that he suffered past persecution in Cambodia because of his political affiliation or his support of the United States, in view of evidence that the threat was made by a disgruntled former subordinate. *Ang v. Gonzales*, C.A.1 2005, 430 F.3d 50. Aliens ↻ 53.10(3)

Finding that the two occasions when, based upon his active participation in political rallies and protests, Albanian national was arrested, beaten and allegedly threatened with death by police unless he severed his ties with opposition political party did not rise to level of past "persecution," of kind supporting application for asylum, was supported by substantial evidence and would not be disturbed on judicial review, where these incidents occurred over eight-year period when alien was involved with opposition political party and were separated by more than 25 months. *Bocova v. Gonzales*, C.A.1 2005, 412 F.3d 257. Aliens ↻ 54.1(4.1)

Colombian businessman who regularly traveled to the United States and who, after becoming indebted to alleged drug trafficker, had refused to assist drug trafficker in his drug trafficking activities failed to show that persecution to which he was exposed was on account of any imputed political opinion, as required to support his asylum or withholding-of-removal claims. *Ochoa v. Gonzales*, C.A.9 2005, 406 F.3d 1166. Aliens ↻ 53.10(3)

Neither bombing of restaurant at which alien had worked in Colombia, which was allegedly related to alien's political activities, nor threats made to alien, her brother, and members of university group to which alien belonged established past persecution of alien based on her political opinion or any other protected ground, as would render her eligible for asylum. *Sepulveda v. U.S. Atty. Gen.*, C.A.11 2005, 401 F.3d 1226. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Finding that Iraqi applicant was not entitled to asylum was supported by substantial evidence, even though he testified that he was detained for two weeks, beaten, forced to witness rape, and threatened with rape of his wife after he refused to work on blast furnaces for Iraqi government, where applicant did not identify himself as associated with particular political faction, never openly expressed opinion antithetical to interests of government, and was able to secure travel documents and leave Iraq with relative ease. *Namo v. Gonzales*, C.A.6 2005, 401 F.3d 453. Aliens ↪ 54.1(4.1)

Evidence did not compel conclusion that police officers in asylum applicant's native country of Kenya, who raped and physically abused her after her father reported officers to local authorities for hijacking truckload of goods that he was driving, were motivated at least in part by political opinion held by her or imputed to her, as required to reverse Board of Immigration Appeals' (BIA) finding that applicant was not persecuted on account of political opinion; Immigration Judge (IJ) determined that officers were driven by criminal, non-political motive to punish father for reporting hijacking, and reasonable factfinder would not be compelled to conclude to contrary. *Thuri v. Ashcroft*, C.A.5 2004, 380 F.3d 788. Aliens ↪ 54.3(4)

Testimony of applicant seeking withholding of removal, that he feared future persecution because Kenyan government issued warrant for his arrest several years earlier, after he had failed to report to police in accordance with bond requirement, did not compel Immigration Judge (IJ) to find objectively reasonable fear of persecution on account of political opinion. *Ngure v. Ashcroft*, C.A.8 2004, 367 F.3d 975, rehearing and rehearing en banc denied. Aliens ↪ 53.10(3)

Aliens, citizens of Albania and members of the democratic party, failed to establish a well founded fear of political persecution if returned to Albania, as required to support their application for asylum, even though aliens established past persecution under Communist regime; Communist party was no longer in power, state department report indicated there was no post-Communist tradition of retribution against political leaders, alien had not established that shooting in Albania was result of his public argument with Socialist party member, and incident when house in Albania was robbed was not shown to be on account of political opinion or religion. *Hasalla v. Ashcroft*, C.A.8 2004, 367 F.3d 799, rehearing and rehearing en banc denied. Aliens ↪ 53.10(3)

Immigration Judge (IJ) did not err in determining that Mongolian applicant, who claimed he had been beaten as result of his activities on behalf of Mongolian United Movement, was not entitled to withholding of removal, in that he failed to link beating to political motives, did not know who had attacked him, and failed to show that government was unwilling to protect him. *Tsevegmid v. Ashcroft*, C.A.10 2003, 336 F.3d 1231. Aliens ↪ 53.10(3)

Substantial evidence supported decision of Board of Immigration Appeals (BIA) that landlords' persecution of Honduran asylum applicant, based on his role in cooperative which sought legal title to land that landlords wished to develop, was not "on account of" political opinion, so as to make him eligible for asylum; applicant did not act in direct opposition to government policies, landlords did not demand applicant's silence but instead demanded only that he leave the area, and landlords did not threaten him as long as he remained off the land. *Ontunez-Tursios v. Ashcroft*, C.A.5 2002, 303 F.3d 341. Aliens ↪ 54.1(4.1)

Citizen of El Salvador was not entitled to asylum as result of dispute with local politician regarding politician's alleged rape of his aunt, absent evidence that his persecution related to his affirmative political beliefs. *Molina-Morales v. I.N.S.*, C.A.9 2001, 237 F.3d 1048. Aliens ↪ 53.10(3)

Substantial evidence supported determination by Board of Immigration Appeals (BIA) that alien seeking asylum, who was a native and citizen of Russia, had failed to show that incident in which he was attacked while working on Russian merchant marine ship was in fact motivated by his purported anti-Communist views, as would establish past persecution making alien a "refugee" eligible for discretionary grant of asylum under Immigration and Nationality Act. *Kozulin v. I.N.S.*, C.A.9 2000, 218 F.3d 1112. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Board of Immigration Appeals' (BIA) determination that persecution of Indian Tamil in Sri Lanka was not on account of his political opinion was supported by substantial evidence, though his position as student advisor at university required him to inform university and government officials about Sri Lankan Tamil student activists supporting Tamil separatist cause, where his status as informant, not his political opinion, made him target of separatist terrorist organizations. *Adhiyappa v. I.N.S.*, C.A.6 1995, 58 F.3d 261, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1261, 516 U.S. 1171, 134 L.Ed.2d 210. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA) decision that incidents of interrogation, both those that occurred while Iranian alien was in the army and those which followed dinner party incident during which alien's wife and officer's wife got into fight concerning alien's wife's religion, did not evince political motive on part of regime, but rather legitimate concern with espionage, such that alien was not entitled to asylum, was not supported by substantial evidence; although alien had been questioned on numerous prior occasions, he was seized and beaten only immediately following dinner party incident, alien's detention was occasioned by this incident and incident resparked authorities' interest in him, and summons fit into overall pattern of political arrests and detentions on part of Iranian regime. *Shirazi-Parsa v. I.N.S.*, C.A.9 (Cal.) 1994, 14 F.3d 1424.

Alien's experiences in Poland as a member of the Solidarity movement were not sufficiently compelling to entitle alien to asylum based on past persecution. *Tokarska v. I.N.S.*, C.A.1 1992, 978 F.2d 1. Aliens ↪ 53.10(3)

Sri Lankan citizen, who was petitioning for asylum, failed to show he was singled out for persecution or that any persecution he did suffer was related to his political opinions, where no evidence demonstrated that government authorities took any action against petitioner's political group, petitioner's hunger strike took place without incident, and petitioner never encountered trouble distributing political pamphlets, through petitioner was a member of the Tamil minority, had been interrogated and hit by soldiers for violating curfew, and had witnessed random acts of violence against family members. *Ravindran v. I.N.S.*, C.A.1 1992, 976 F.2d 754. Aliens ↪ 53.10(3)

Ethnic Albanian citizen of Yugoslavia failed to show well-founded fear of persecution that would have entitled him to asylum based on political activities of his friends and their arrests, where he did not personally participate in any demonstrations and police interrogations to which he was subjected focused primarily on activities of his friends and ceased after they were arrested. *Zulbeari v. I.N.S.*, C.A.7 1992, 963 F.2d 999. Aliens ↪ 53.10(3)

Evidence supported determination that alien did not prove that persecution he feared if he were deported to Honduras would be on account of political opinion, for purposes of supporting withholding of deportation or asylum; administrative record did not support claim that alien held political opinion other than possibility that such an opinion was manifest from his membership in labor union. *Zamora-Morel v. I.N.S.*, C.A.5 1990, 905 F.2d 833. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's finding that harm alien suffered in Colombia did not constitute past persecution on account of her political opinion, for purposes of asylum eligibility; alien received a few telephone threats, but those isolated incidents of verbal intimidation were unaccompanied by any physical act. *Vera-Marquez v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 1228711, Unreported. Aliens, Immigration, And Citizenship ↪ 530(1)

Substantial evidence supported denial of Albanian aliens' applications for asylum on account of political beliefs and social status; department of state country reports indicated that there was virtually no evidence that individuals were targeted in Albania for mistreatment on political grounds, despite the prevalence of crime and police corruption, and aliens gave inconsistent testimony about alleged physical assaults perpetrated against them. *Nazarko v. Gonzales*, C.A.6 2006, 2006 WL 1208071, Unreported. Aliens, Immigration, And Citizenship ↪ 644

None of incidents about which alien testified in proceedings on his applications for asylum and withholding of removal were severe enough to constitute persecution, and therefore substantial evidence supported finding by

8 U.S.C.A. § 1101

immigration judge (IJ) that alien did not suffer past persecution on account of his participation in Chinese student movement. *Dong v. Gonzales*, C.A.2 2006, 2006 WL 994313, Unreported. Aliens, Immigration, And Citizenship ¶ 642

Citizen of Albania, who was well-known soccer player, failed to establish sufficiently severe harassment to establish past persecution or well founded fear of future persecution based upon his political belief, and thus was not entitled to asylum or withholding of removal, despite incidents in which unidentified caller threatened harm because of tee shirt he wore during soccer game, his tires were slashed next day, and he found chicken head in his locker at soccer stadium with note stating "you are next," where he never found out who had harassed him, and there were no other incidents after last threat. *Dalipaj v. Gonzales*, C.A.3 2006, 173 Fed.Appx. 957, 2006 WL 887324, Unreported. Aliens, Immigration, And Citizenship ¶ 530(1)

Substantial evidence supported immigration judge's finding that even if the testimony was credible, aliens, natives and citizens of Armenia, failed to demonstrate that they were persecuted or had an objectively unreasonable fear of future persecution, as required for asylum claim; the only evidence offered demonstrated that alien was beaten once and taken to the hospital because he was critical of the government, and that he fled Armenia four years later after other members of his political party were arrested. *Kirakosyan v. Gonzales*, C.A.9 2006, 171 Fed.Appx. 199, 2006 WL 679816, Unreported. Aliens, Immigration, And Citizenship ¶ 54.1(4.1)

Substantial evidence supported immigration judge's conclusion that alien failed to demonstrate either past persecution or a well-founded fear of future persecution on account of his political opinion, as required to be eligible for asylum; any threats he received stemmed from his company's refusal to pay "war taxes" when operating within the dangerous "red zones" in Colombia and thus were not on account of his political opinion, and, there was no showing why alien could not seek internal resettlement in Colombia, or refuse to perform contracts in certain known dangerous areas to avoid future persecution. *Cabrera v. U.S. Atty. Gen.*, C.A.11 2005, 154 Fed.Appx. 889, 2005 WL 3134194, Unreported. Aliens ¶ 53.10(3)

Alien, a citizen of Columbia, failed to establish a nexus between his alleged past persecution and protected ground, as required for withholding of removal; alien claimed that his persecution was on account of his political opinion, but did not present any evidence to suggest that his attacks were motivated by a political opinion, and conflicts and discrepancies between alien's testimony and police report regarding date of his kidnapping and whether he was physically harmed by his kidnapers further undermined his testimony. *Garcia v. U.S. Attorney General*, C.A.11 2005, 143 Fed.Appx. 268, 2005 WL 2141527, Unreported. Aliens ¶ 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that single beating and two threatening telephone calls alien received from guerillas were on account of alien's appearance as an actor in an army television production in which he portrayed a guerilla, rather than on account of his political opinion. *Yunda v. U.S. Attorney General*, C.A.11 2005, 140 Fed.Appx. 50, 2005 WL 1635298, Unreported. Aliens ¶ 53.10(3)

Substantial evidence supported IJ's finding that incidents alien testified to, including bombing of hotel where alien had helped organize a political meeting, bombing of home of one of alien's relatives who was involved in political organization, shooting at convoy of cars which was returned from political meeting, and car-jacking, did not constitute past political persecution required for asylum; at time bombings and shooting occurred, country was in virtual state of anarchy in which violence abounded, and there was not sufficient evidence of motive or identity of perpetrators in shooting at convoy or car-jacking. *Ndreu v. Gonzales*, C.A.3 2005, 128 Fed.Appx. 295, 2005 WL 1122658, Unreported. Aliens ¶ 54.1(4.1)

Substantial evidence supported finding that alien seeking asylum failed to establish persecution on account of his political opinion or any other protected ground; alien's single complaint against certain drunken security agents for assaulting him during traffic stop was not directed toward a governing institution, but rather toward individuals whose corruption was aberrational, and evidence did not compel conclusion that agents' subsequent harassment

8 U.S.C.A. § 1101

was based on anything other than purely personal retribution completely untethered to a governmental system. *Terteryan v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 887, 2005 WL 1122644, Unreported. Aliens ↩ 53.10(3)

Even assuming asylum applicant's criticism, while practicing as radiologist in Ukraine, of government's conduct in connection with nuclear radiation from Chernobyl disaster constituted political opinion, mistreatment of applicant and his wife by government officials was more in nature of harassment than past persecution, and thus, applicant and wife were not entitled to rebuttable presumption of well-founded fear of future persecution if they were deported to Ukraine; applicant and his wife claimed KGB and Secret Police searched their home, interrogated them, and verbally threatened them, applicant claimed he was demoted to position of family practitioner with 35 percent salary reduction, and there was no nexus between applicant's criticism and his wife's termination from her employment with Patent Examination Office nearly four years later. *Kornetskyi v. Gonzales*, C.A.6 2005, 129 Fed.Appx. 254, 2005 WL 977068, Unreported. Aliens ↩ 54.1(2)

Substantial evidence supported IJ's finding at asylum proceeding that police violence at demonstration was a means of mishandled crowd control and not an attack on the students on account of their political opinion. *Martinez-Martinez v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 844, 2005 WL 767451, Unreported. Aliens ↩ 54.1(4.1)

Neither robbery and beating in alien's home nor harassment and simple assault alien was subjected to established past persecution on the basis of political belief which would entitle alien to asylum; only nexus between first incident and alien's political activity was alien's assertion that her neighbor, a prominent Socialist, was involved in robbery, but alien did not assert that neighbor was somehow agent of government or that robbery was government sponsored, and with respect to second incident, assailants did state that alien should not be involved in politics, but alien testified that incident was halted before any significant harm occurred. *Erkocaj v. Ashcroft*, C.A.6 2005, 124 Fed.Appx. 422, 2005 WL 643355, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) conclusion that asylum applicant failed to establish past persecution in Bulgaria or well-founded fear of persecution on account of his political opinion; applicant did not allege any past mistreatment by Bulgarian government, and although he testified that he feared being punished for "betraying" Balkan Airlines, he submitted no evidence that Balkan Airlines or the Bulgarian government had any interest in him whatsoever, except perhaps for failing to report for required military service. *Rusev v. Gonzales*, C.A.9 2005, 123 Fed.Appx. 316, 2005 WL 415673, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) decision that asylum applicant failed to establish past persecution or well-founded fear of future persecution in Guatemala; applicant was never harassed, threatened, or harmed in Guatemala, and evidence failed to establish that her father's death was on account of union activities. *Solis Alvarez v. Gonzales*, C.A.9 2005, 122 Fed.Appx. 336, 2005 WL 319098, Unreported. Aliens ↩ 53.10(3)

Alien's testimony regarding his sole encounter with police, during which they beat him and detained him for 20 days, did not compel finding that police were motivated by alien's actual or imputed political opinion, so as to entitle alien to asylum; police were primarily interested in whether alien was a guerilla and let him go because they did not have evidence that he was a guerilla. *Ajanel v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 729, 2005 WL 221876, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported Bureau of Immigration Appeals' (BIA) conclusion that alien did not link harm suffered by himself and his family in Albania on the one hand, and his political opinion on the other, as required to support his application for asylum; rather, weight of evidence suggested that alien's abusers, who were criminals who happened to belong to opposing political party, had another motive unrelated to alien's involvement in political party, which was his brother's brief tenure as police chief at time of their arrest. *Ceta v. Ashcroft*, C.A.7 2004, 117 Fed.Appx. 478, 2004 WL 2889923, Unreported. Aliens ↩ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported decision of the Board of Immigration Appeals (BIA) affirming a decision of an immigration judge (IJ) denying application of alien, a native and citizen of India, for asylum and withholding of removal; BIA found it implausible that the alien never voted in an election even though his asylum claim was based on persecution on account of his political opinion and his support of an independent Khalistan, a movement for a separate state through an electoral process. *Singh v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 199, 2004 WL 2829127, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported Bureau of Immigration Appeals' (BIA) determination that asylum applicant was not persecuted on account of his political opinions; alien's efforts to expose operations of criminal syndicate whose members included high ranking officials in Philippine government were based on his own honesty rather than any opposition to presidential candidate whose son was implicated, and, although his persecutors appeared to have generalized political motive underlying their actions, it was not sufficient to establish alien's fear of persecution on account of his political opinion. *Pe v. Ashcroft*, C.A.3 2004, 116 Fed.Appx. 408, 2004 WL 2801123, Unreported. Aliens ☞ 53.10(3)

Immigration Judge's (IJ) conclusion that the story of an Indonesian alien seeking asylum did not establish with enough specificity that the alien had been subjected to persecution because of his political beliefs was supported by substantial evidence; although he testified that threats were delivered by members of "the left wing party," he did not offer any evidence showing that the Indonesian government was behind the harassment, there was no testimony showing that the government was "unable or unwilling" to protect him from future harassment, and the alleged harassment occurred entirely because of the political activities of his brothers. *Iskandar v. Ashcroft*, C.A.3 2004, 115 Fed.Appx. 588, 2004 WL 2757627, Unreported. Aliens ☞ 54.1(4.1)

Alien failed to establish that she was persecuted by her abductors, who sought to force her into an Italian prostitution ring, on account of her political opinion, as required to support her application for asylum, absent any indication that abductors were even aware of alien's political opinions, much less motivated by them. *Muca v. Ashcroft*, C.A.3 2004, 116 Fed.Appx. 400, 2004 WL 2756826, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported IJ's finding that intra-union conflict between alien and union leaders which arose when union leaders pocketed wage increases that were intended for members was about money and not any political opinion of alien's which would entitle him to asylum. *Tanahubia v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 829, 2004 WL 2633916, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported IJ's finding that alien failed to show past political persecution which would entitle her to asylum; there was no clear evidence that alien's father and sister were murdered because of father's political opinions and alien experienced no resulting physical harm from threats she received. *Mendez-Lazaro v. Ashcroft*, C.A.8 2004, 114 Fed.Appx. 272, 2004 WL 2495908, Unreported. Aliens ☞ 53.10(3)

Although rape of alien's sister in Albania by one of four armed men who accused family of being spies and anarchists could have constituted component of pattern of violence against family members that could, under some circumstances, establish persecution, as required to support alien's asylum claim, rape occurred at time when Albania was in state of anarchy and without police force; as such, the violent act committed against alien's sister could not have been considered politically-motivated attack condoned by non-existent national government. *Preka v. Ashcroft*, C.A.6 2004, 113 Fed.Appx. 140, 2004 WL 2452682, Unreported. Aliens ☞ 53.10(3)

Alien's testimony that while driving with his cousin, who was chairman of political party, he was stopped and approached by police, who were wearing masks, that police fired shots after he sped away, and that he had been cautioned to be careful three days earlier by a friend who worked at police station because his name and photo were posted at station, was insufficient to show persecution on account of political opinion or any other protected ground which would establish eligibility for asylum; testimony did not reveal why police stopped alien's car or whether they would have fired shots had he not tried to escape, and there was no evidence that alien's picture was

8 U.S.C.A. § 1101

posted because of his political activities. *Nerhati v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 234, 2004 WL 2416043, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien did not show past persecution or a well-founded fear of future persecution due to political opinion; the only evidence of harassment that alien offered was that, upon his return to his country, his coworkers issued death threats and were aggressive toward him due to his refusal to participate in a political protest march with them, but the coworkers' anger was due, however, to the fact that alien could expose to authorities criminal activities that occurred during the march, not due to alien's political opinion. *Rivera-Prudencia v. Ashcroft*, C.A.5 2004, 108 Fed.Appx. 929, 2004 WL 2047345, Unreported. Aliens ↻ 53.10(3)

Alien seeking asylum failed to show that his shooting was politically motivated, so as to demonstrate that he suffered persecution on account of his political opinion. *Farrales v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 507, 2004 WL 1941278, Unreported. Aliens ↻ 53.10(3)

Absent evidence of harm such as detention, torture, or life-threatening injury, alien's testimony that he had received daily telephone calls stating that he would have bad luck and go out of business unless he paid his taxes and ceased his protests with respect to high taxes, that his residence and store were burglarized and vandalized several times, and that he was beaten by three unknown men who told him to stop protesting the high taxes or close his store, was insufficient to demonstrate political persecution which would entitle him to asylum. *Uselis v. Ashcroft*, C.A.3 2004, 108 Fed.Appx. 51, 2004 WL 1880138, Unreported. Aliens ↻ 53.10(3)

Alien's testimony regarding threats he and his wife received from his country's military was insufficient to establish political persecution which would entitle alien and his wife to asylum; military visited alien only four times over eight years, by alien's own testimony, the primary purpose of those visits was to enlist young men into the military, not to punish guerilla sympathizers, and alien testified that all young people in his community were pressured to join the army. *Juan v. Ashcroft*, C.A.8 2004, 109 Fed.Appx. 127, 2004 WL 1873642, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that the killing of alien's relatives and threatening phone calls she received were not on account of political opinion or membership in a particular social group which would entitle her to withholding of removal. *Bernal v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 609, 2004 WL 1826290, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien failed to present evidence of either past persecution or a well-founded fear of future persecution which would entitle her to asylum; alien testified that her husband was killed during war with neighboring country, that his body was never returned, that she was visited by men she believed were members of particular political party, who directed her to observe the customs of holding a condolence dinner, that she was asked to join a women's political group, and that she learned that she was not receiving as large a pension as other widows. *Hami-Pattah v. I.N.S.*, C.A.6 2004, 104 Fed.Appx. 556, 2004 WL 1791404, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that alien failed to establish a well-founded fear of future persecution, on account of her status as an opponent to political organization, which would entitle her to asylum; alien was threatened by a person affiliated with organization only once, received threatening phone calls for two weeks, and had her home visited by an unknown man asking questions about her, but alien was not an informer and provided no evidence that anyone she was associated with was harmed by the organization. *Mendoza v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 91, 2004 WL 1663251, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that beatings alien suffered each time he left the employment of a political party did not amount to persecution which would entitle him to asylum; the two incidents were not

8 U.S.C.A. § 1101

motivated by political beliefs, and were isolated events. *Arif Rashid v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 636, 2004 WL 1614892, Unreported. Aliens ↪ 54.1(4.1)

In light of ALJ's finding that alien was not fully credible, evidence supported finding that incident in which he was allegedly ordered by Syrians, members of Hezbollah, and Lebanese army soldiers to deliver boxes of munitions to southern Lebanon did not establish persecution, as required in his application for asylum; alien was used for the delivery because he was able to travel to the area, rather than because of some political animus. *Bachir v. I.N.S.*, C.A.1 2004, 111 Fed.Appx. 6, 2004 WL 1598288, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported finding that alien failed to show past persecution which would entitle him to asylum; alien, who worked as driver for political organization, was never physically harmed in any way, nor was he ever confined, and he failed to show that the alleged incidents of persecution, including burning of his aunt's home, where he was staying, and firing of shots while bus alien was driving passed by, occurred as a result of his political opinion or any other protected ground. *Andre v. Ashcroft*, C.A.1 2004, 102 Fed.Appx. 180, 2004 WL 1563203, Unreported. Aliens ↪ 53.10(3)

Alien failed to establish that Communists requested money from his family on account of his political opinion, as required to support asylum claim. *Gabasan v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 213, 2004 WL 1447784, Unreported. Aliens ↪ 53.10(3)

Evidence supported denial of application for asylum for citizen of Burma who had participated in student demonstrations and claimed he had been arrested and abused by police; jailers accused alien of being "anti-peace" rather than anti-government, there was no evidence police singled out alien for arrest and abuse or treated him differently than other detained protesters on account of his political opinions, and alien was able to live safely in a different part of Burma from 1988 to 1991. *Thu v. Ashcroft*, C.A.8 2004, 103 Fed.Appx. 56, 2004 WL 1434856, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) determination that alien failed to demonstrate past persecution or well-founded fear of future persecution, as required to support his application for asylum; alien testified that he participated minimally in one student demonstration that occurred in China over fourteen years ago, he testified at one point that police had never pursued him for participating in student demonstration, and at another point, that unspecified family member informed him that police were looking for him, there was no evidence that alien's decision to leave home after being dismissed from school was compelled by government action, and documentary evidence regarding treatment of student dissidents in province where alien participated in demonstration undermined his claims of persecution. *Yang v. Ashcroft*, C.A.2 2004, 100 Fed.Appx. 59, 2004 WL 1303652, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to establish past persecution by Albanian government on account of his work as organizer for Democratic Party, as required to support his claim for asylum; alien's testimony was that he was attacked by private individuals, and specifically, that he was shot at by his neighbor who was member of Socialist Party, and beaten by group of masked men, because of his political activities, but there was no evidence that police were protecting his neighbor by not arresting him, or that alien even reported beating incident to police. *Ago v. Ashcroft*, C.A.7 2004, 100 Fed.Appx. 550, 2004 WL 1202964, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's determination that alien, a native and citizen of the Philippines, did not have a well-founded fear of future persecution by a political organization; alien offered no compelling evidence that the organization's effort to recruit him was based on any knowledge of his political opinions, or that his implicit refusal of the job offer would be the basis for future persecution attributed to his political opinions. *Polintan v. Ashcroft*, C.A.9 2004, 96 Fed.Appx. 544, 2004 WL 1098783, Unreported. Aliens ↪ 54.1(4.1)

Evidence that alien's brother, a bank manager, was killed by bank robbers who may have been anti-government

8 U.S.C.A. § 1101

guerrillas, and that after beginning to investigate her brother's death and then bringing a lawsuit against the government alien was subjected to threats and followed, was insufficient to establish any past persecution or well-founded fear of future persecution on account of alien's political beliefs or membership in a particular social group, absent evidence that incidents were in response to alien's political opinions. *del Rosario Mogollon v. Ashcroft*, C.A.10 2004, 99 Fed.Appx. 183, 2004 WL 1089485, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported the Immigration Judge's (IJ) finding that an alien seeking asylum and withholding of removal failed to demonstrate the requisite well-founded fear of persecution if returned to Togo; the alien based his claim solely on fear of future persecution on account of political opinion or membership in the a political organization if he returned to Togo, there was a paucity of record information regarding the organization, and even more prominent members of organization had been taken into custody for very brief questioning, and had not been held for any lengthy period of time. *Afeaneku v. Ashcroft*, C.A.3 2004, 98 Fed.Appx. 124, 2004 WL 1088363, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ) denial of aliens' applications for asylum and withholding of deportation was not supported by substantial evidence, where husband had established past persecution through his credible testimony indicating that he was physically attacked on two occasions due to his political activities, which gave rise to rebuttable presumption that he and his wife would suffer future persecution if returned to Peru. *Escudero-Sato v. Ashcroft*, C.A.9 2004, 96 Fed.Appx. 481, 2004 WL 901456, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) finding that any persecution of aliens by pro-government mob in Haiti was not on account of political opinion, as would warrant grant of asylum; there was no evidence that mobs' attack on homes of step-father and uncle where aliens lived, which attacks included firing shots in air, throwing rocks at occupants and threatening to kill them if they did not produce step-father, occurred because aliens knew where their step-father and uncle could be found, or that aliens were targeted because of their relationship with those who opposed Haitian government, rather, record revealed that aliens were in wrong house at wrong time, and that they would not be in danger if they relocated to homes of other relatives. *Vertus v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 60, 2004 WL 758658, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding, in asylum proceeding, that alien, a citizen of Montenegro, was not entitled to refugee status, even though she had endured some hardships due to her political activities; her arrests did not amount to persecution inasmuch as they were responses to mass demonstrations, the arrest of her husband and the rape of her friend were not based upon alien's political opinion, and she did not have a well-founded fear of future persecution in Montenegro inasmuch as there had been significant improvements in human rights. *Dokic v. Ashcroft*, C.A.6 2004, 93 Fed.Appx. 46, 2004 WL 473984, Unreported, certiorari denied 125 S.Ct. 624, 543 U.S. 1003, 160 L.Ed.2d 463. Aliens ↻ 53.10(3)

Alien failed to establish a possible nexus between his political activities and the beating he received to demonstrate past persecution or reasonable fear of future persecution if returned to home country as required to support his application for asylum. *Camara v. I.N.S.*, C.A.6 2004, 88 Fed.Appx. 73, 2004 WL 259232, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported conclusion that any persecution suffered by alien was as a result of a business dispute rather than his political opinion, such that alien was not entitled to presumption of a well-founded fear of future persecution, and therefore alien was not eligible to asylum or withholding or removal. *Qureshi v. I.N.S.*, C.A.9 2004, 89 Fed.Appx. 10, 2004 WL 232379, Unreported. Aliens ↻ 54.1(4.1)

Even if alien were fully credible, in asylum proceeding, as to his allegations of past persecution, allegations that his arrests were primarily based on his brother's political activities did not constitute compelling evidence supporting alien's asylum claim, where brother had been dead for more than 13 years. *Sylla v. I.N.S.*, C.A.6 2004, 89 Fed.Appx. 502, 2004 WL 232367, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported determination, in asylum proceeding, that alien did not have a well-founded fear of future persecution because of his political belief; political party of his alleged persecutors was not in power, there was a paucity of supporting testimony and documentation, and Immigration Judge (IJ) had concerns as to alien's credibility. *Qorraj v. Ashcroft*, C.A.3 2004, 89 Fed.Appx. 318, 2004 WL 188327, Unreported. Aliens 54.1(4.1)

Substantial evidence supported decision, in asylum proceeding, that alien was not persecuted on the basis of a political opinion; harassment alien suffered as a result of his advocacy of a single, small public works project did not amount to persecution on the basis of a political opinion. *Ahmed v. Ashcroft*, C.A.6 2004, 86 Fed.Appx. 827, 2004 WL 74652, Unreported. Aliens 53.10(3)

Alien failed to establish past persecution or a well-founded fear of future persecution on the basis of political opinion, or imputed political opinion, supporting denial of alien's application for asylum; although alien testified that masked men fired gunshots at meeting of public officials that he attended, that the attackers' guns were marked with an anti-government group's initials, and that he fled his native country after incident, the evidence failed to show that police would not have protected alien if he returned, and alien's wife and children continued to live in their village without incident after alien's departure. *Singh v. Ashcroft*, C.A.1 2004, 85 Fed.Appx. 221, 2004 WL 67696, Unreported. Aliens 53.10(3)

Substantial evidence supported finding, in asylum proceeding, that alien had no well-founded fear of persecution if he returned to India; Immigration Judge (IJ) concluded that alien was unlikely to be of interest to the police inasmuch as his support for a student political group was minimal, and a State Department report indicated that conditions had normalized for supporters of that group after alien left India. *Singh v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 29, 2003 WL 23097843, Unreported. Aliens 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that the treatment of alien's family in Mali did not constitute persecution on account of political opinion; alien's father was prosecuted because he, along with alien himself, had continued to fight the government after a pact ended hostilities in the civil war, and there was substantial evidence that peaceful means of protest were available thereafter, such that a coup was not the only means of effectuating political change. *Mbaye v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 826, 2003 WL 22977465, Unreported. Aliens 53.10(3)

Alien's testimony, which, at most, showed that he was harassed by the police because of his suspected involvement with certain separatists, was insufficient to demonstrate persecution for purposes of establishing asylum eligibility. *Singh v. Ashcroft*, C.A.5 2003, 83 Fed.Appx. 640, 2003 WL 22955888, Unreported. Aliens 54.1(4.1)

Death threats from a political group did not constitute past persecution, as required in alien's request for asylum, despite knife attack on student group alien was in; knife attack was on the group rather than on alien individually, no one was actually harmed, and it was unknown whether attacker was a member of the threatening political group, alien was never harmed although threats continued for over ten years, and there was no evidence that threats escalated or were disruptive to alien's family members, who continued to reside in their home. *Roxas v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 642, 2003 WL 22735881, Unreported. Aliens 53.10(3)

Substantial evidence supported Board of Immigration Appeals' determination that alien lacked a well-founded fear of future persecution; although alien testified that he believed he would be harmed if returned to India and that his father had been interrogated about his whereabouts, other members of alien's family remained unharmed by the police, notwithstanding their membership in alien's political party. *Sandhu v. I.N.S.*, C.A.9 2003, 79 Fed.Appx. 288, 2003 WL 22434768, Unreported. Aliens 54.1(4.1)

Immigration judge's (IJ) determination that native of Mali did not suffer past persecution, or have well-founded fear of future persecution because of his political opinion, and thus was not entitled to asylum or withholding of

8 U.S.C.A. § 1101

deportation, was supported by substantial evidence, despite evidence that alien had been attacked on three occasions and that his uncle had been high ranking official in previous regime, where attacks were committed by unknown assailants, no politically-charged threats were made, coup that overthrew prior regime happened twelve years earlier, and alien's parents remained in Mali without encountering any problems. *Traore v. Ashcroft*, C.A.3 2003, 77 Fed.Appx. 580, 2003 WL 22325337, Unreported. Aliens ↪ 54.1(4.1)

Testimony of alien, a native and citizen of Romania, was insufficient, even if true, to establish that he suffered past persecution or had a well-founded fear of future persecution on account of his political opinion as required for asylum, where he testified that he worked as a chemist and supervisor in a factory that manufactured explosives, and that he had frequent disagreements with his superiors over safety concerns in the factory; there was no political component to his conflicts with his superiors, nor any indication that he would face similar problems upon his return to Romania, and his main concerns about returning appeared to be finding a job or being robbed. *Soanca v. Ashcroft*, C.A.6 2003, 72 Fed.Appx. 376, 2003 WL 21920028, Unreported. Aliens ↪ 53.10(3)

Alien could not show that he was subject to persecution on account of his political opinion, as would support grant of asylum or withholding of deportation, on basis that communist group in his native country demanded a tax from him that he refused to pay, absent evidence that the group knew or in fact believed that his refusal to pay was politically-based. *Orobio v. Ashcroft*, C.A.3 2003, 71 Fed.Appx. 113, 2003 WL 21853240, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's (IJ) determination that alien seeking asylum and withholding of deportation suffered no past persecution, in that IJ reasonably concluded that incidents which had occurred before New People's Army in the Philippines became aware that alien held political views contrary to its cause were not politically motivated, and alien did not demonstrate unusual circumstances or particularly egregious threats compelling finding of past persecution based solely on unfulfilled death threats. *Jison v. I.N.S.*, C.A.9 2003, 72 Fed.Appx. 638, 2003 WL 21801538, Unreported. Aliens ↪ 54.1(4.1)


Substantial evidence supported Board of Immigration Appeals' (BIA) finding that alien did not suffer past persecution, or possess well-founded fear of future persecution, on account of his membership in any statutorily protected group, and thus was not entitled to asylum or withholding of removal, even if immigration judge (IJ) improperly found that alien was not credible solely because of his failure to provide corroborative evidence, where there was no evidence that alien's father held particular political beliefs or that guerillas knew of or assumed any such beliefs and imputed them to alien. *Gonzales-Zepeda v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 706, 2003 WL 21774128, Unreported. Aliens ↪ 54.1(4.1)



Alien failed to demonstrate that he was persecuted for his political opinion, as required to qualify for asylum, when, at best, alien's testimony established that his business rent was raised either due to success of business or because market manager wanted his space for a relative, and while alien maintained that he was attacked for his refusal to pay what he perceived as arbitrary rent increase, such refusal did not qualify as expression of political opinion, given absence of evidence that it stemmed from, or was perceived to stem from, his political views. *He v. Ashcroft*, C.A.3 2003, 66 Fed.Appx. 335, 2003 WL 1950050, Unreported. Aliens ↪ 53.10(3); Aliens ↪ 54.1(4.1)


Substantial evidence supported the conclusion of Board of Immigration Appeals (BIA) that any threats against alien wife were motivated by a desire for information regarding husband, and not on account of her political opinion or any other protected ground. *Perez-Baten v. Ashcroft*, C.A.9 2003, 62 Fed.Appx. 809, 2003 WL 1900838, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to show that her native country's government had the inclination to persecute her for her affiliation with political group that opposed the government, warranting denial of alien's application for asylum; although the last time alien visited native country she was detained at airport and the government denied her the right to leave


8 U.S.C.A. § 1101


the country for over 50 days and state department reports showed past military attacks by government on activists in alien's political group, government eventually released alien and allowed her to leave country, and alien did not establish that she was an activist or that her particular role in the group provided basis upon which government would persecute her. *Osman v. Ashcroft*, C.A.3 2003, 56 Fed.Appx. 84, 2003 WL 291680, Unreported. Aliens  53.10(3)


Substantial evidence supported determination by Board of Immigration Appeals (BIA) that alien had failed to establish past persecution or an objectively reasonable fear of past prosecution if she was returned to Guatemala, as would make her eligible for asylum and withholding of deportation; alien did not show a causal nexus between her brother's death 20 years earlier by unknown persons for unknown reasons, her undocumented membership in a political party, and a single physical encounter with guerillas seven years earlier, and neither she nor her family had been harmed over previous seven years by guerillas, who had during that time signed a peace accord. *Immigration and Nationality Act, Vasquez-Leyva v. I.N.S.*, C.A.8 2000, 208 F.3d 219, Unreported. Aliens  53.10(3); Aliens  54.1(4.1)


Alien failed to establish that he was a member of political party in his native Nigeria, or that he was or might be persecuted because of such membership, as would make him eligible for grant of asylum and withholding of deportation; alien's testimony regarding party membership and persecution was discredited by facts that he had used numerous aliases, obtained false documents, used a false birth certificate, and denied specific facts about a prior fraud conviction, and alien did not present proof of party membership and involvement and had procured false passports and other official documents. *Ademola v. I.N.S.*, C.A.8 2000, 208 F.3d 217, Unreported. Aliens  54.1(4.1)

167. Religion, refugee

Evidence that alien, a Chinese citizen, was arrested in China and detained for five days because he was a practitioner of Falun Gong, was forced to watch anti-Falun Gong videos, to stand in the sun for two hours, and to sign a pledge to no longer practice Falun Gong was insufficient to establish past persecution necessary for asylum, absent evidence that alien was physically harmed while he was detained. *Zheng v. U.S. Atty. Gen.*, C.A.11 2006, 451 F.3d 1287. Aliens, Immigration, And Citizenship  531

Alien's status as an Assyrian Christian in Iraq did not demonstrate, in asylum proceeding, a well-founded fear of future persecution; country was subjected to random violence that made it unsafe for the general population regardless of their religions, and such violence was being perpetrated by domestic and foreign terrorists rather than the government, which was taking steps to protect citizens. *Margos v. Gonzales*, C.A.7 2006, 443 F.3d 593. Aliens, Immigration, And Citizenship  53.10(3)

Past persecution that Kosovar Muslim experienced at hands of what, at time, was Kosovo's Serbian-dominated police force and Serbian paramilitary forces present in Kosovo, including fact that she was forced to watch her husband being beaten, was forced to flee country on foot, had her home and her livelihood as doctor destroyed, and was subjected to artillery and infantry attacks for a few days, was not sufficiently severe to compel conclusion that she was entitled to humanitarian asylum, and did not permit Court of Appeals to disturb immigration judge's denial of such relief. *Shehu v. Gonzales*, C.A.5 2006, 443 F.3d 435. Aliens, Immigration, And Citizenship  53.10(3)

Immigration Judge's (IJ) adverse credibility finding, based on Indonesian asylum applicant's purported failure to persuade IJ of genuineness of his professed Christian faith, was not supported by substantial evidence, notwithstanding applicant's failure to pass IJ's "quiz" about Christian doctrine, where applicant testified that he attended Christian school, was baptized, identified himself as Christian, attended church in Indonesia and United States, and converted because he liked listening to preachers and because he appreciated Christian teachings about "what's good and what's evil." *Rizal v. Gonzales*, C.A.2 2006, 442 F.3d 84. Aliens, Immigration, And Citizenship  54.1(4.1)

8 U.S.C.A. § 1101

Indonesian alien's claims that she and her mother wore veils in public to disguise their Chinese ethnicity, that her family home was vandalized during their absence, that men confronted her outside her school and called her a "Chinese snob" and tried unsuccessfully to grope her, that an undetonated bomb was discovered at alien's Christian church, and that Muslim crowds threw stones at alien and fellow worshippers did not amount to "past persecution" on account of ethnicity and religion, for purpose of alien's asylum claim, absent showing of physical confinement or serious injury. *Susanto v. Gonzales*, C.A.1 2006, 439 F.3d 57. Aliens ↻ 53.10(3)

Substantial evidence did not support determinations made by IJ, that substantive claims of government-sponsored abuse made by alien, Indian citizen and native of northern Indian state of Jammu and Kashmir, were inconsistent with factual findings in Indian country reports and were implausible; although Indian country reports did not detail identical incidents to those described by alien in his sworn affidavit, they did warn of "deficient police methods" and violent police suppressions of Muslim separatist movements. *Kumar v. Gonzales*, C.A.9 2006, 435 F.3d 1019. Aliens ↻ 54.1(4.1)

Absent evidence compelling the Court of Appeals to find that alien, a citizen of the People's Republic of China, was a practitioner of Falun Gong or that he suffered persecution, immigration judge's (IJ's) denial of alien's applications for asylum and withholding of removal was supported by substantial evidence; based on alien's own testimony, IJ could reasonably have concluded that alien had purportedly practiced Falun Gong for a few months, had little detailed understanding of its practices, and fled after one incident with the police, and, with doubts regarding alien's past practice of Falun Gong, the IJ properly noted the absence of any evidence, beyond an unverified subpoena and arrest warrant, supporting alien's claim, such as statements or witness testimony affirming that alien was a practitioner of Falun Gong or corroborating his claim of arrest and maltreatment. *Zhang v. Gonzales*, C.A.5 2005, 432 F.3d 339. Aliens ↻ 54.1(4.1)

Asylum applicant, who was native and citizen of Bangladesh and member of Catholic faith, failed to establish a pattern or practice of persecution against Christians in Bangladesh as required to support his asylum application, even though applicant's brother was murdered by Muslim extremists; Bangladesh government investigated and issued warrants for murder suspects and country report stated that Bangladesh government did not countenance attacks against Christians and intervened in such attacks to extent possible. *Gomes v. Gonzales*, C.A.9 2005, 429 F.3d 1264. Aliens ↻ 53.10(3)

Alien, who was citizen of China, failed to demonstrate past persecution based on his religious practices, in support of his asylum application; even if alien was detained, interrogated, and beaten by Chinese authorities, this occurred on only one occasion, alien did not require medical treatment, nor did he suffer any adverse employment consequences, and record did not demonstrate that alien was objectively unable to attend his household church after the incident. *Xiaoguang Gu v. Gonzales*, C.A.9 2005, 429 F.3d 1209. Aliens ↻ 53.10(3)

Chinese alien had well-founded fear of future persecution on account of her Christian beliefs, supporting grant of asylum; alien testified credibly that after her departure from China, police continued to monitor her communications with her father, and that she feared she would be locked up and beaten if forced to return, and Chinese authorities conditioned alien's release from prison on her ceasing all Christian religious association, and accused her of participating in anti-revolutionary activities after they searched her father's home and found Christian pamphlets. *Quan v. Gonzales*, C.A.9 2005, 428 F.3d 883. Aliens ↻ 53.10(3)

In ruling on alien's asylum application alleging persecution on account of religion, Board of Immigration Appeals' (BIA) finding that alien had been targeted for persecution by Liberation Tigers of Tamil Elam (LTTE), a militant group in Sri Lanka, because of his wealth did not permit BIA to ignore evidence that LTTE had mixed motives for the persecution, including alien's Muslim religion. *Mohideen v. Gonzales*, C.A.7 2005, 416 F.3d 567. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) determination, on application of alien, a Chinese national,

8 U.S.C.A. § 1101

for asylum and withholding of removal, that alien failed to demonstrate past persecution based on his spiritual practice of Falun Gong, where the alien pointed to no evidence that the Chinese government ever arrested, detained, interrogated, or harmed him or his family, or even that a government official ever confronted him because of his involvement in Falun Gong. *Zhao v. Gonzales*, C.A.5 2005, 404 F.3d 295. Aliens ↻ 53.10(3)

Immigration Judge's (IJ) opinion denying asylum to Chinese adherent of Fulan Gong religion was not reasoned, and remand for rational analysis was appropriate, in that opinion reflected lack of familiarity with foreign culture, exaggerated notion of how much religious people know about their religion, exaggerated notion of availability of documentary evidence of religious membership, insensitivity to possibility of misunderstandings caused by translators and to difficulty of determining credibility based on demeanor of person from foreign culture, and reluctance to make clean determination of credibility. *Iao v. Gonzales*, C.A.7 2005, 400 F.3d 530. Aliens ↻ 54(3.1); Aliens ↻ 54.3(6)

Assuming credibility of Afghani asylum applicant, government failed to rebut presumption that he had well-founded fear of future persecution, where he showed that he was convert to Christianity, and that under Shari'a law such conversion was punishable by death, and government failed to show that such legal system had changed since fall of Taliban. *Ahmadshah v. Ashcroft*, C.A.8 2005, 396 F.3d 917. Aliens ↻ 54.1(2)

Assuming credibility of Afghani asylum applicant, his testimony that his sister was murdered and that he was threatened because local militia found their names in Bibles after rocket attack on their parents' home was sufficient to establish past persecution, inasmuch as they indicated pattern of violence perpetrated against Christian converts. *Ahmadshah v. Ashcroft*, C.A.8 2005, 396 F.3d 917. Aliens ↻ 53.10(3)

Asylum applicant, who was Chinese Christian from Indonesia, failed to establish either that she faced individualized risk of persecution or that there was a pattern or practice of persecution of Chinese Christians in Indonesia, as required to support her application; all of applicant's siblings and her husband's siblings remained safely in Indonesia, country report on Indonesia indicated sharp decline in violence against Chinese Christians and noted that Indonesian government officially promoted religious and ethnic tolerance, and violence seemed to be wrought by fellow citizens and not result of governmental action or acquiescence. *Lie v. Ashcroft*, C.A.3 2005, 396 F.3d 530. Aliens ↻ 53.10(3)

Finding that Christian alien from India did not face clear probability of persecution, such as would warrant withholding of removal, was supported by evidence; although alien's father had been granted asylum, there was virtually no evidence that alien personally faced any risk of harm from anyone if he returned to India. *Roy v. Ashcroft*, C.A.5 2004, 389 F.3d 132. Aliens ↻ 53.10(3)

Any persecution of alien based on his involvement in spiritual movement which, while lacking any clergy or formal places of worship, blended elements of Taoism, Buddhism and certain meditation techniques, was persecution on account of imputed political opinion and religion, and supported alien's application for withholding of removal, notwithstanding that alien did not regard movement as either religious or political; Chinese government had banned movement as religious cult and had accused those participating in movement of anti-government activity. *Zhang v. Ashcroft*, C.A.9 2004, 388 F.3d 713. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's determination that alien did not suffer a well-founded fear of persecution based on alien's Baptist religious beliefs if returned to the Ukraine, as required for alien's asylum claim; although alien's family was persecuted during the Soviet era in the Ukraine, State Department profile indicated that Evangelicals were no longer denied religious freedom and worshipped without interference, and alien admitted that family members still lived in the Ukraine and practiced the Baptist faith without persecution. *Ambartsoumian v. Ashcroft*, C.A.3 2004, 388 F.3d 85. Aliens ↻ 54.1(4.1)

Immigration judge's denial of aliens' application for asylum, to extent based on judge's doubts about credibility of

8 U.S.C.A. § 1101

aliens' testimony that they had been excluded from employment and beaten by police based on fact that one of them was Jewish and that the other had married outside her Muslim faith, was not supported by reasoned decision, and necessitated remand of aliens' case, where alien provided explanation as to how his co-workers allegedly knew that he was Jewish, despite his Muslim surname, based on fact that he was allegedly seen leaving known meeting place for Jews, where judge failed to explain why Muslim nationality of alien's father made it likely that any discrimination that he experienced was not as significant as he claimed, and where alleged discrepancy between alien's testimony and documentary evidence was based on immigration judge's misunderstanding of alien's testimony. *Mamedov v. Ashcroft*, C.A.7 2004, 387 F.3d 918. Aliens ↻ 54.1(4.1); Aliens ↻ 54.3(6)

Alien, a citizen of Eritrea, established a well-founded fear of future persecution on account of his religion as a Jehovah's Witness, as required for asylum; a country report for Eritrea explained that Jehovah's Witnesses had been denied trading licenses, dismissed from civil service positions, and left with economic, employment, and travel difficulties because of their beliefs, the alien testified that he lost his teaching position at a university because of his faith and was subsequently denied the opportunity to use his expertise by opening his own consulting business, and two close associates of alien, a brother and a university colleague, were incarcerated and beaten to death because they maintained that their convictions as Jehovah's Witnesses barred them from performing military service. *Ghebremedhin v. Ashcroft*, C.A.7 2004, 385 F.3d 1116, modified on rehearing 392 F.3d 241. Aliens ↻ 53.10(3)

Asylum applicant did not suffer past persecution in Ukraine, where she testified she was taunted as child for being Seventh Day Adventist, was insulted by militia and government officials, was briefly detained several times, and was beaten up while in jail but did not require medical attention, but she failed to produce evidence of connection between kidnapping of her daughter and her religion, she remained in Ukraine after kidnapping and completed her university education, asylum application attributed husband's beating to commercial dispute, and there was no evidence that applicant was unable to practice her religion. *Kondakova v. Ashcroft*, C.A.8 2004, 383 F.3d 792, certiorari denied 125 S.Ct. 894, 543 U.S. 1053, 160 L.Ed.2d 775. Aliens ↻ 53.10(3)

Even assuming asylum applicant was credible, Board of Immigration Appeals' (BIA) decision that he did not suffer past persecution and did not have well-founded fear of persecution in Georgia based upon his Baptist religion was supported by substantial evidence, where he introduced no evidence that he suffered specific harm on account of his religious beliefs since 1991 or that there existed recent pattern of family persecution linked to him, and no harm had come to his remaining family members in Georgia. *Krasnopitvsev v. Ashcroft*, C.A.8 2004, 382 F.3d 832. Aliens ↻ 53.10(3)

Applicant established prima facie case of asylum based on changed circumstances in Egypt, by demonstrating pattern and practice of persecution of Coptic Christians, including beatings, arrests, and threats, against his similarly situated family members, perpetrated by militant anti-Christian groups that government was either unwilling or unable to control, and by demonstrating that applicant's father was threatened that applicant would be arrested if he returned to Egypt. *Malty v. Ashcroft*, C.A.9 2004, 381 F.3d 942. Aliens ↻ 53.10(3)

Substantial evidence supported determination of Board of Immigration Appeals (BIA) that two-day detention of alien by Chinese authorities during which she was questioned about her alleged involvement in Falun Gong organization, pushed to ground, and had her hair pulled, coupled with second incident in which officials ransacked her home and pushed her mother, did not rise to level of past persecution that would support asylum application. *Liu v. Ashcroft*, C.A.7 2004, 380 F.3d 307. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's (IJ) finding that married aliens, both Christian Indonesians, one of whom was of Manado ancestry and the other of Chinese ethnicity, failed to establish "past persecution" so as to support their applications for asylum, where the only violence suffered by either party, on account of either religion or ethnicity, was a minor head injury husband sustained when a purported Muslim threw a rock while he was walking to church, and the rest of the alleged mistreatment was composed of mere denigration, harassment, and threats. *Eduard v. Ashcroft*, C.A.5 2004, 379 F.3d 182. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Egyptian husband and wife failed to establish past persecution supporting asylum claim, despite providing evidence that wife's father suffered four arrests largely on basis of his appearance, which identified him as fundamentalist Muslim, that wife was forced to watch her father's mistreatment by authorities, that she was pushed to ground by police officer when she tried to aid her father, and that she exhibited symptoms of post-traumatic stress disorder; husband did not claim to have suffered persecution himself, and wife's psychological damage did not rise to level of persecution. *Shoaira v. Ashcroft*, C.A.8 2004, 377 F.3d 837, rehearing denied, rehearing granted. Aliens 53.10(3)

Applicant seeking asylum and withholding of removal suffered past persecution, such that presumption of future threat was warranted, where because of her Protestant religious practices she suffered beating by Bulgarian police officers that caused miscarriage, and fact that her Word of Life religion was not mentioned in State Department report did not mean that it was not persecuted. *Vladimirova v. Ashcroft*, C.A.7 2004, 377 F.3d 690. Aliens 54.1(2)

Alien's account of one alleged beating in home country based on his religion was not sufficient to constitute persecution, as required for alien to be entitled to withholding of removal, where alien did not provide even minimal details about severity of beating. *Zaidi v. Ashcroft*, C.A.7 2004, 377 F.3d 678. Aliens 53.10(3)

Alien suffered past persecution in his native country on account of religious activities, supporting grant of asylum, where, according to the alien's credible testimony, his fellow preacher was arrested, tortured, and killed by military, alien and fellow preacher were together warned by the military not to preach, alien and fellow preacher preached together in disregard of military's warnings, military searched for alien after killing fellow preacher, and alien was forced to go into hiding. *Khup v. Ashcroft*, C.A.9 2004, 376 F.3d 898. Aliens 53.10(3)

Immigration judge's finding that asylum applicant had not demonstrated past persecution or a well-founded fear of future persecution in former Soviet Georgia on account of his religion was supported by substantial evidence, where alien's persecution claims were founded principally upon his uncorroborated testimony of police beatings, testimony which judge had determined was lacking in credibility, and where alien's mother, who unlike alien was an active and baptized member of church, had remained in Georgia with alien's sister and there was no evidence that either was suffering from persecution. *Prokopenko v. Ashcroft*, C.A.8 2004, 372 F.3d 941. Aliens 54.1(4.1)

Discrepancy in asylum applicant's testimony as to whether she graduated from college in Poland or was expelled because she was Jewish, and her failure to mention during asylum hearing her alleged kidnapping by skinheads, constituted sufficient evidence to support decision of Board of Immigration Appeals (BIA) that she was not credible. *Korniejew v. Ashcroft*, C.A.7 2004, 371 F.3d 377. Aliens 54.1(4.1)

Denial of asylum application filed by Bulgarian nationals of Macedonian descent, one of whom was allegedly arrested and beaten because he belonged to organization which sought to preserve the ethnic identity of Macedonians living in Bulgaria, and both of whom lost their jobs, and whose daughter was expelled from medical school, for this same reason, was not sufficiently explained by reasoned decision, so as to necessitate remand to immigration service; fact that government of Bulgaria had allegedly determined that organization in question had purpose contrary to the Bulgarian constitution and was thus unlawful did not mean, as suggested by immigration judge, that no persecution occurred, given complete lack of evidence that aliens had engaged in any activities that would have been unlawful under laws of the United States. *Guchshenkov v. Ashcroft*, C.A.7 2004, 366 F.3d 554, order to show cause discharged 368 F.3d 960. Aliens 54(3.1); Aliens 54.3(6)

Alien did not establish that he had a well-founded fear of future persecution based on his religion if he was denied asylum, where alien's siblings were not prevented from pursuing their career of choice despite having the same religion and siblings appeared to be wealthy and high profile citizens of alien's home country. *Khalil v. Ashcroft*, C.A.1 2003, 337 F.3d 50. Aliens 53.10(3)

8 U.S.C.A. § 1101

Decision of immigration judge (IJ), that citizen of Georgia was not eligible for asylum based on persecution of Baptists, was supported by substantial evidence; decision was based on IJ's crediting of testimony of alien's brother regarding violent incident over that of alien, and, although alien presented evidence suggesting that intolerance for Baptists was still a serious problem, a State Department report indicated that conditions had improved. *Karapetian v. I.N.S.*, C.A.7 1998, 162 F.3d 933. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien, a citizen of Indonesia, failed to prove pattern or practice of persecution of Chinese Catholics such as herself which would entitle her to asylum; State Department country reports and international religious freedom reports indicated that Catholicism was one of five recognized religions in Indonesia and that while churches continued to come under attack during the year, such incidents were much less frequent than in previous years, and alien testified that her family members had remained in the country free from violence for several years. *Lauw v. Atty. Gen. of U.S.*, C.A.3 2006, 2006 WL 1440326, Unreported. Aliens, Immigration, And Citizenship ↻ 644

Substantial evidence supported immigration judge's finding that alien failed to establish claim for asylum and withholding of removal to China based on her Christian faith; alien's testimony was inconsistent with her asylum application regarding the churches she attended in China, her testimony was inconsistent with statements she made in interview with border patrol agent concerning her objective for coming to United States, and she submitted no corroborating evidence of her church membership in China. *Su Zhen Weng v. Gonzales*, C.A.2 2006, 2006 WL 1236650, Unreported. Aliens, Immigration, And Citizenship ↻ 642

Harm that alien suffered as a Christian of Chinese ethnicity in Indonesia did not rise to the level of past persecution, so as to establish presumption of well-founded fear of future persecution for purposes of asylum eligibility; attack by students from rival, largely Muslim high school was harassment rather than threat to life or freedom, anti-Chinese statements made by some attackers in robbery of alien did not establish nexus between robbery and protected ground, harassment alien experienced was sporadic, and alien's mother and brother continued to live in Indonesia and attend church without incident. *Siswanto v. Gonzales*, C.A.8 2006, 2006 WL 1133704, Unreported. Aliens, Immigration, And Citizenship ↻ 530(1)

Substantial evidence supported finding, in asylum proceeding, that alien did not suffer past persecution in Nigeria on account of his Christian religion, despite acts of violence against his family members; alien had been able to avoid harm because he was either not present during the incidents or able to run away, and he had not been harmed during his return to Nigeria. *Moses v. Gonzales*, C.A.8 2006, 2006 WL 1083969, Unreported. Aliens, Immigration, And Citizenship ↻ 530(2)

Substantial evidence supported adverse credibility finding made by immigration judge (IJ), sustaining denial of Chinese alien's applications for asylum and withholding of removal, given that alien's testimony was inconsistent with his own written statements and those of his father, uncle, and uncle's friend, that alien failed to provide convincing explanation despite being given numerous opportunities to explain or reconcile such discrepancies, and that, though relatively minor, inconsistencies, which included who built uncle's church, where church was built, whether alien went home after arguing with officials at church or went directly into hiding, and when and number of times officials came looking for alien, concerned recent incidents that purportedly inspired alien to flee China. *Huang v. U.S. Atty. Gen.*, C.A.2 2006, 2006 WL 994241, Unreported.

Substantial evidence supported finding that alien, a citizen of Ghana, failed to establish requisite governmental nexus for asylum based on alleged religious persecution stemming from attempt by tribal fetish priests to anoint him as their new chief priest; in his application, alien stated that government would not intervene on his behalf, and during credible fear interview alien stated that authorities could not help him and would not get involved "in these matters," but alien never testified or suggested that he sought protection of government or that such protection was not afforded him when it was sought, and country report indicated that authorities would intervene. *Brown v. Gonzales*, C.A.3 2006, 2006 WL 915761, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported immigration judge's determination that alien failed to establish either past persecution or well-founded fear future persecution in China based on his practice of Falun Gong, for purposes of asylum eligibility; alien had never been threatened, detained, physically mistreated or subjected to police scrutiny, he failed to establish familiarity with history and practice of Falun Gong, he practiced Falun Gong for only seven months before leaving China, and he failed to continue practicing after arriving in United States. *Zhen Deng Chen v. Board of Immigration Appeals*, C.A.2 2006, 175 Fed.Appx. 451, 2006 WL 913011, Unreported. Aliens, Immigration, And Citizenship ↪ 642

Substantial evidence supported immigration judge's determination that aliens, immigrants from Turkey, were not persecuted on account of their religion, as required to be eligible for asylum; although the aliens suffered at the hands of family members as a result of their religion, they failed to show that the Turkish government was unwilling or unable to protect them. *Yaylaci v. Gonzales*, C.A.7 2006, 2006 WL 906444, Unreported. Aliens, Immigration, And Citizenship ↪ 542

Substantial evidence supported finding, in asylum proceeding, that alien failed to establish a well-founded fear of future persecution in China; alien gave no particulars as to why or how the government required the dismantling of her church, she was released after three days of detention because the government had no evidence to use against her, she was never a leader or major player of the church, and the actual leader of the church, although arrested, was released unharmed a short while later. *Hui Chun Tang v. Gonzales*, C.A.2 2006, 174 Fed.Appx. 618, 2006 WL 897977, Unreported. Aliens, Immigration, And Citizenship ↪ 642

Substantial evidence supported determination that Chinese alien, who sought asylum and withholding of removal based on his claim that he had been arrested and beaten for teaching his friends and family how to practice Falun Gong, was not credible; although alien claimed that he taught himself and others Falun Gong and practiced for four years, he was unable to answer even the most basic questions about what Falun Gong was or what he did when he practiced, he admitted that he did not practice Falun Gong in the United States, and his testimonial description of his mistreatment in detention differed from his asylum application's description of that mistreatment. *Zhang v. Gonzales*, C.A.2 2006, 169 Fed.Appx. 34, 2006 WL 460910, Unreported. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Substantial evidence supported determination of Board of Immigration Appeals (BIA) that Chinese alien was not persecuted on account of religion, and alien thus did not establish past persecution as basis for asylum, given that alien offered no evidence that he suffered any threats to life or freedom or was subject to any violence based on fact that he was Christian, and offered only evidence that his mother had been detained in connection with her proselytizing activities, without a showing that mother was harmed during her detention. *Huang v. Bureau of Citizenship and Immigration Services*, C.A.2 2006, 169 Fed.Appx. 14, 2006 WL 374110, Unreported. Aliens, Immigration, And Citizenship ↪ 53.10(3)

Substantial evidence supported immigration judge's (IJ's) determination that incidents of harm alleged by Indonesian alien, who was a Christian of Chinese ethnicity, did not amount to persecution on account of religion or ethnicity, as would support claim for withholding of removal; although alien asserted that he was beaten and subjected to racial pejoratives by Muslim men when the men noticed a Bible in his carrying case, that he was subject to harassment from Muslim colleagues at his workplace, and that his Muslim father-in-law threatened to kill alien and disowned alien's wife after the marriage, such incidents did not amount to threats to alien's life or freedom. *Sugiarto v. Gonzales*, C.A.3 2005, 153 Fed.Appx. 104, 2005 WL 2839206, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to support her claim on basis of her adherence to particular religion; alien did not demonstrate that she actually adhered to faith in question, did not provide witnesses to corroborate her claim that she practiced her religion in the United States, and did not sufficiently prove that her practice of such religion would result in persecution in her native country. *Zhuang v.*

8 U.S.C.A. § 1101

Gonzales, C.A.2 2005, 153 Fed.Appx. 14, 2005 WL 2812749, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien alleged religious persecution; there were discrepancies in alien's statements, regarding his history as a practitioner of his religion and his fear of persecution on that basis, that went to heart of his claims, including fact that alien provided completely different account of his practice and his persecution in and escape from his country at his hearing than he had provided in affidavit supporting his application, and alien had limited familiarity with his claimed religion, had an evasive demeanor at hearing, and there was evidence that alien's motivations for coming to United States were economic. *Dong v. Gonzales*, C.A.3 2005, 152 Fed.Appx. 155, 2005 WL 2673491, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien initially told immigration authorities in sworn statements that he came to the United States to work and that he did not fear persecution on religious grounds, and IJ determined that alien was not credible because the religious persecution claim was fabricated and developed only after he arrived in the United States. *Zhang v. Gonzales*, C.A.5 2005, 145 Fed.Appx. 91, 2005 WL 2476217, Unreported. Aliens ↻ 54.1(4.1)

Claim of alien, a citizen of Israel, that fellow bus passenger took a bible out of her hands and hit her with it, and that her employer threatened to fire her if she mentioned Jesus Christ, did not establish persecution required for asylum. *Isakov v. Gonzales*, C.A.2 2005, 144 Fed.Appx. 909, 2005 WL 2338802, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding by Board of Immigration Appeals (BIA) that alien seeking asylum failed to establish persecution on account of enumerated factor; alien's testimony at most established that he had been victim of extortion by government officials, but alien neither asserted nor presented evidence that would establish that officials extorted him because of his religion. *Lin v. Ashcroft*, C.A.2 2005, 144 Fed.Appx. 182, 2005 WL 2277634, Unreported. Aliens ↻ 54.1(4.1)

Arrest of alien, a citizen of China, as well as alien's 15-day detainment and two beatings for twice holding a religious service in his home, established past persecution required for asylum. *Zhuang v. Gonzales*, C.A.9 2005, 143 Fed.Appx. 864, 2005 WL 2271597, Unreported. Aliens ↻ 53.10(3)

Immigration judge (IJ) was entitled to consider alien's weak explanations for inability to secure corroboration of claimed rape as factor to be weighed in determining whether alien, a citizen of Egypt, carried burden at asylum proceeding of showing religious persecution through rape; alien, a Christian, explained that Muslim neighbor raped her in attempt to compel her to marry him, testifying in considerable detail regarding abduction that preceded rape, but not offering testimony as to rape itself because she claimed to have been forcibly sedated prior to assault, and although alien testified that doctor who later examined her revealed rape to her, she did not submit medical report, testimony or affidavit of her mother, who had spoken with doctor, or letter from priest to whom alien said she had confided rape. *Beshay v. Gonzales*, C.A.2 (N.Y.) 2005, 143 Fed.Appx. 386, 2005 WL 2243366, Unreported.

Evidence did not compel finding that alien seeking asylum suffered persecution in Ukraine, as required for reversal on judicial review of determination of immigration judge (IJ) that alien did not qualify as refugee, given that alien claimed that he was attacked three times over 12-year period due to his religion, that two of attacks occurred under different government regime, and that attacks were committed by private individuals and alien did not make compelling showing of government's inability or unwillingness to protect him. *Gromovik v. Gonzales*, C.A.6 2005, 148 Fed.Appx. 479, 2005 WL 2173789, Unreported, rehearing denied. Aliens ↻ 54.1(4.1)

Alien's beating at a Hezbollah checkpoint in Lebanon constituted persecution on account of a religious belief even if such beatings were a general response to individuals who attempted to enter the Hezbollah-controlled area of Lebanon, where alien's religion was another basis for the beating. *Zoghbi v. Gonzales*, C.A.9 2005, 148 Fed.Appx.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

596, 2005 WL 1950888, Unreported. Aliens ↪ 53.10(3)

Alien's claim that he was taunted and "beaten up" as a child because of his religious beliefs, but that such harassment subsided by the time he was an adult, did not establish religious persecution required for asylum. *Sujono v. Attorney General of U.S.*, C.A.3 2005, 140 Fed.Appx. 385, 2005 WL 1749937, Unreported. Aliens ↪ 53.10(3)

Aliens' credible testimony at asylum proceeding that a militant group threatened them with death, shot at them, and burned their business because they failed to give the group money, and because aliens were Christian, established that aliens were persecuted at least in part on account of their religion. *Dumangas v. Gonzales*, C.A.9 2005, 132 Fed.Appx. 182, 2005 WL 1242066, Unreported. Aliens ↪ 53.10(3)

Immigration judge's (IJ's) adverse credibility finding at asylum proceeding with respect to alien's claim of religious persecution was not supported by substantial evidence; IJ's primary justification for disbelief was alien's failure to tell sufficient number of Bible stories, but alien testified that her group lacked Bibles to study and primarily focused on testimonials rather than Bible lessons. *Zhang v. Gonzales*, C.A.9 2005, 132 Fed.Appx. 144, 2005 WL 1163163, Unreported. Aliens ↪ 54.1(4.1)

Harassment and discrimination suffered by alien in Armenia, on account of her religious status as a Jehovah's Witness, did not rise to level of past persecution that would warrant asylum. *Markosyan v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 954, 2005 WL 824075, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding that alien's claim of religious persecution was undermined by the ability of his mother and siblings, who practiced same religion as alien, to remain unharmed in alien's native country. *Vas v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 853, 2005 WL 775418, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Bureau of Immigration Appeals' (BIA) determination that asylum applicant did not have well founded fear of persecution in China on account of her Christian religion; applicant's claims were not credible because she gave inconsistent and at times false testimony, having changed basis of her claim from first fearing forced marriage to fearing religious prosecution, and giving inconsistent testimony regarding her family's religious views and her role in church, and she failed to provide sufficient corroboration regarding alleged persecution, or her membership in unofficial church, such as affidavits from her fellow parishioners. *Lin v. Ashcroft*, C.A.3 2005, 120 Fed.Appx. 432, 2005 WL 256345, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to demonstrate past persecution on account of protected ground; alien claimed he experienced difficulties in his home country because of his religious beliefs, he was unable to describe any specific problems he personally experienced as a result of his religion. *Nata v. Ashcroft*, C.A.3 2004, 114 Fed.Appx. 506, 2004 WL 2729716, Unreported. Aliens ↪ 54.1(4.1)

In testifying credibly about his fear of persecution based on his abandonment of majority faith and joining of minority religion in his country, alien seeking asylum satisfied subjective component of well-founded fear test for establishing future persecution. *Salari v. Ashcroft*, C.A.9 2004, 114 Fed.Appx. 815, 2004 WL 2650907, Unreported. Aliens ↪ 53.10(3)

Incident, during which indigenous Indonesians forced asylum applicant, who was a Catholic of Chinese ethnicity, to pray in Muslim fashion, was not so severe as to compel finding of past persecution, as would warrant reversal of Immigration Judge's (IJ) finding that applicant had not suffered past persecution. *Widjaja v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 243, 2004 WL 2453327, Unreported. Aliens ↪ 53.10(3)

Although aliens satisfied subjective component of well-founded fear of future persecution in Egypt on account of their religion of Coptic Christianity, objective showing was not strong enough to compel overturning of

8 U.S.C.A. § 1101

Immigration Judge's (IJ) denial of asylum; there was not ten percent chance aliens would suffer persecution, references in State Department Report and other documents to persecution of Coptic Christians in Egypt generally did not compel conclusion that all Coptic Christians in Egypt were at risk, and there was no direct and specific evidence that aliens had been individually targeted for persecution. *Youssef v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 227, 2004 WL 2423739, Unreported, amended on denial of rehearing. Aliens 53.10(3)

Substantial evidence supported determination of Board of Immigration Appeals (BIA) that alien failed to establish eligibility for asylum, given that alien did not show that persecution he experienced by smugglers who twice kidnapped him in effort to use his truck for illegal smuggling activities occurred on account of protected ground, conceded that smugglers stopped Muslim truck drivers as well as Christian drivers, notwithstanding his claim that smugglers targeted him because he was Christian, and failed to show link between smugglers and Syrian government or inability on government's part to control smugglers. *Ghrair v. Ashcroft*, C.A.9 2004, 97 Fed.Appx. 114, 2004 WL 950224, Unreported. Aliens 53.10(3)

Government's evidence, in asylum proceeding, was insufficient to rebut presumption that alien had a well-founded fear of future persecution, on the basis of hostility to his religious denomination, if returned to Russia; neither documentary evidence nor government's cross-examination of alien established that he no longer had a well-founded fear of persecution or that internal relocation was a reasonable option. *Galyautdinov v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 802, 2003 WL 22954174, Unreported. Aliens 54.1(4.1)

168. Social group membership, refugee

Court of Appeals was required to remand to Board of Immigration Appeals (BIA) for BIA's consideration of South African aliens' eligibility for asylum based upon persecution or fear of persecution on account of membership in particular family, rather than considering the question de novo on petition for review of BIA's denial of application for asylum, where the BIA had not yet considered whether the particular family constituted a particular social group, for asylum purposes. *Gonzales v. Thomas*, U.S.2006, 126 S.Ct. 1613, 164 L.Ed.2d 358. Aliens, Immigration, And Citizenship 54.3(6)


Women who were sold into marriage and who lived in a community in China where forced marriage was condoned and considered valid qualified as "particular social group," for purpose of Chinese alien's asylum claim based on membership in social group. *Gao v. Gonzales*, C.A.2 2006, 440 F.3d 62. Aliens, Immigration, And Citizenship 53.10(3)


Homosexual men in Mexico could constitute a "particular social group," membership in which would be a statutorily prohibited ground for persecuting alien under the Immigration and Nationality Act (INA); thus, if alien's membership in this group was proven to be basis of past persecution which he allegedly experienced while living in Mexico, persecution would support asylum claim. *Boer-Sedano v. Gonzales*, C.A.9 2005, 418 F.3d 1082. Aliens 53.10(3)


Alleged social group consisting of all business owners in Colombia who had rejected demands by narcotics traffickers to participate in illegal narcotics activity was too broad to qualify as particularized social group for purposes of asylum and withholding of removal. *Ochoa v. Gonzales*, C.A.9 2005, 406 F.3d 1166. Aliens 53.10(3)


Russian children with disabilities that are serious and long-lasting or permanent in nature and parents who care for them qualify as a "particular social group," within meaning of provision of the Immigration and Nationality Act (INA) making alien eligible for grant of asylum if he has well-founded fear of persecution based on his membership in "particular social group"; parents, in providing such care to their disabled children, are acting in manner which is so fundamental to their identities that they should not be required to change, and since they and their disabled children incur harm as unit, it is appropriate to treat them as single social group. *Tchoukhrova v.*


8 U.S.C.A. § 1101


Gonzales, C.A.9 2005, 404 F.3d 1181, rehearing and rehearing en banc denied 430 F.3d 1222, petition for certiorari filed 2006 WL 1221941. Aliens  53.10(3)


Evidence that asylum applicant's cousin was arrested and tortured in Intifada in 1987, that another cousin who served as judge in Gaza was killed because he refused to unlawfully apply laws to Palestinians before him, and that applicant's parents' house was among the thousands destroyed in 1976 pursuant to Israeli policy, was insufficient to establish that any persecution of his family members was because of their familial relationship, and thus was insufficient to establish applicant's membership in a particular social group. *Al-Fara v. Gonzales*, C.A.3 2005, 404 F.3d 733. Aliens  54.1(4.1)


Asylum applicant established that she was persecuted in part on account of political opinion and for membership in clan which was low in caste system in Somalia, as required to support her application; applicant's husband worked for political group which empowered her clan, applicant was gang raped by members of militia composed of members of ruling clan, rapists declared that applicant was "getting what she deserved" because of her clan status and "now we are in power" during rape, militia taunted family as being clan traitors, and at least one rapist knew of husband's political affiliation. *Ali v. Ashcroft*, C.A.9 2005, 394 F.3d 780. Aliens  53.10(3)

Even assuming that Somali asylum applicant was member of Midgan clan, Immigration Judge's (IJ) determination that he did not establish well-founded fear of future persecution was supported by substantial evidence, including State Department Asylum profiles stating that there was no automatic correlation between clan affiliation and danger of persecution toward Midgan clan members unless the individuals had visibly supported regime of previous ruler Siad Barre. *Hassan v. Ashcroft*, C.A.8 2004, 388 F.3d 661. Aliens  54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien, a citizen of Somalia, alleged persecution on account of clan membership; IJ concluded that alien was not member of claimed clan, in that she was unable to explain distinguishing features of clan or provide more than basic information about culture, alien did not rebut forensic report which called into question authenticity of her identity card which IJ determined to be fraudulent, and IJ found it implausible that seven men who were allegedly breaking into alien's small home to steal valuables would not discover alien, her two children, or her mother, and that alien was able to enter the United States without documentation or being asked questions. *Axmed v. U.S. Attorney General*, C.A.11 2005, 145 Fed.Appx. 669, 2005 WL 2402826, Unreported, rehearing and rehearing en banc denied 2006 WL 220765. Aliens  54.1(4.1)

Alien showed that he was member of particular social group for purposes of establishing eligibility for asylum or withholding of removal when immigration judge (IJ) found credible testimony of alien and his mother that, while alien was boy in Guatemala, three male members of his family were killed by guerrillas who identified his family as supporters of the military and that alien and his relatives moved several times for security reasons prior to alien's departure for the United States at age 15. *Morales v. Gonzales*, C.A.9 2005, 148 Fed.Appx. 625, 2005 WL 2250712, Unreported. Aliens  53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that aliens' feared mistreatment at hands of drug traffickers in their native country of Columbia was not on account of their membership in their family, but rather was aimed at extorting their silence and retaliating for their reports to authorities. *Vesga Orozco v. U.S. Attorney General*, C.A.11 2005, 144 Fed.Appx. 86, 2005 WL 2108666, Unreported. Aliens  54.1(4.1)

Alien's status as an informant did not render him a member of a "particular social group" who was eligible for asylum. *Kripalani v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 653, 2005 WL 1111835, Unreported. Aliens  53.10(3)

Asylum applicant's failure to specify particular nuances of social group to which she belonged in India, specifically, young married women in India unable to escape customary in-law domination, in her application and

8 U.S.C.A. § 1101

in her testimony, did not bar her from pursuing her asylum claim on petition to review; although Immigration Judge (IJ) referred to her claim as one for political asylum, applicant's allegations made obvious that applicant was claiming persecution based on membership in social group. *Mann v. Attorney General of U.S.*, C.A.3 2005, 123 Fed.Appx. 514, 2005 WL 434403, Unreported. Aliens ↩ 53.10(3)

Alien's former status as a high-ranking employee of an American company was insufficient to establish a well-founded fear of persecution on account of either membership in a particular social group or because of political opinion, imputed or otherwise, as was required to establish his status as a refugee who was eligible for asylum; there was no evidence that alien ever spoke out against the aims of Colombian guerilla group or associated himself with any cause that explicitly opposed group's objectives. *Jaramillo v. Ashcroft*, C.A.10 2004, 119 Fed.Appx. 233, 2004 WL 2944141, Unreported. Aliens ↩ 53.10(3)

169. Officials, refugee

Substantial evidence supported finding that alien did not have well-founded fear of persecution which would entitle him to asylum; alien did not allege past persecution, did not show that alleged past persecution of other family members was related to any protected grounds, and although he claimed that his father's status as a tax collector or customs inspector under country's former government provided basis for relief, he did not provide evidence that such petty officials employed by former government had been subject to any persecution by new government. *Mabikas v. I.N.S.*, C.A.1 2004, 358 F.3d 145. Aliens ↩ 53.10(3)

Alien's testimony and declaration that her father was a member of government, that political organization had previously attempted to kill him, and that death threats had continued against entire family since that time, was sufficient to establish that alien had well-founded fear of future persecution entitling her to asylum. *Solomon v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 260, 2004 WL 2579207, Unreported. Aliens ↩ 53.10(3)

170. Police officer, refugee

Evidence was insufficient, in asylum proceeding, to find that alien faced a well-founded fear of future persecution by terrorists due to his status as a former police officer, even if such status constituted a cognizable social group;. *Estrada-Escobar v. Ashcroft*, C.A.10 2004, 376 F.3d 1042. Aliens ↩ 53.10(3)


Substantial evidence supported determination by Board of Immigration Appeals (BIA) that former member of Algerian military and police forces failed to satisfy objective component of test for well-founded fear of future persecution, where he relied almost exclusively on his own uncorroborated testimony, his testimony was almost entirely devoid of dates or other specific details, and State Department's 1988 report contained little supporting contention that Islamic militants were more likely to target security and police forces than other social groups. *Ahmed v. Ashcroft*, C.A.7 2003, 348 F.3d 611. Aliens ↩ 54.1(4.1)


Substantial evidence supported determination by Board of Immigration Appeals (BIA) that former member of Algerian military and police forces failed to demonstrate past "persecution" based on his spending two years on desert farm in order to avoid Islamic militants, where he focused on threats to his brother and bus ambush in which fellow security officers were killed, but not on harm or threats of harm to himself, and dangers he faced as officer arose from nature of his employment. *Ahmed v. Ashcroft*, C.A.7 2003, 348 F.3d 611. Aliens ↩ 53.10(3)


Finding that alien could not establish an objectively reasonable fear of persecution based on his kinship to former member of colonial police force, before North African nation secured its independence 40 years earlier, was supported by substantial evidence, so that Court of Appeals would not disturb the Board of Immigration Appeals' (BIA's) denial of alien's request for asylum. *Mediouni v. I.N.S.*, C.A.1 2002, 314 F.3d 24.


Alien's status as a former police officer, without more, is insufficient to render the alien eligible for asylum. *Kika*

8 U.S.C.A. § 1101


v. Attorney General of U.S., C.A.3 2005, 123 Fed.Appx. 86, 2005 WL 419466, Unreported. Aliens  53.10(3)


Substantial evidence supported conclusion, in asylum proceeding, that alien, a police officer, failed to establish past persecution or a well-founded fear of future persecution on account of an enumerated ground; any threats or violence that alien suffered at the hands of guerrillas was job-related and not a ground for asylum, and State Department country report established that conditions had changed such that alien's fear of future persecution was not objectively reasonable. Valdez v. Ashcroft, C.A.9 2004, 102 Fed.Appx. 549, 2004 WL 1380195, Unreported. Aliens  53.10(3)

Evidence was insufficient to establish that alien, a former member of the Albania police force who faced trial if returned, had a well-founded fear of persecution, as required in his request for asylum and withholding of removal; no specific, detailed facts supported alien's testimony that police officers might commit perjury, witnesses would be afraid to testify, he would not receive a public trial, and his former colleagues had been punished on the basis of their political sympathies. Qoku v. Ashcroft, C.A.7 2003, 72 Fed.Appx. 467, 2003 WL 21782569, Unreported. Aliens  54.1(4.1)

Substantial evidence supported finding that former Guatemalan police officer did not have an objective fear of persecution and was not a member of a statutorily defined class, as required for grant of asylum and withholding of deportation; there was no evidence of past persecution, much less on account of race, religion, nationality, membership in a particular social group, or political opinion, and no rational basis for a fear of future prosecution, and conscientious police officers were not a social group within meaning of regulation governing eligibility for asylum. Valensuela-Ortega v. I.N.S., C.A.6 2003, 58 Fed.Appx. 145, 2003 WL 343236, Unreported. Aliens  54.1(4.1)

171. Military personnel, refugee

Substantial evidence supported conclusion of Bureau of Immigration Appeals (BIA) that family of aliens failed to demonstrate either past persecution or well-founded fear of future persecution sufficient to avoid deportation under Immigration and Nationality Act (INA) after they were found to be in United States without authorization; alien father had successfully lived in Guatemala before and after his military service for army against guerrillas, single incident in which family was detained by guerrillas was unrelated to father's military service, death and disappearance of relatives did not demonstrate past persecution without evidence that their fates related to father's safety, and aliens' fears of future persecution were not objectively reasonable due to end of Guatemalan civil war and disarmament of guerrillas. Gutierrez v. I.N.S., C.A.6 2003, 77 Fed.Appx. 326, 2003 WL 22284030, Unreported, certiorari denied 124 S.Ct. 1514, 540 U.S. 1223, 158 L.Ed.2d 160. Aliens  54.1(4.1)

Alien did not establish well-founded fear of future persecution due to his status as army veteran, and thus, he was not entitled to asylum on that basis; although alien testified that terrorist group in his native country targeted army veterans because veterans possessed critical weapons knowledge, that alleged terrorists came to his parents' house looking for him, and that a fellow veteran was killed by terrorists, fellow veteran's death occurred over nine years earlier, alien was not recent veteran with knowledge of current weapons, no member of any terrorist group had come looking for alien for nine years, and alien's family, including his brother, who was also an army veteran, had lived in native country for several years without being targeted. Malki v. Ashcroft, C.A.7 2003, 74 Fed.Appx. 655, 2003 WL 22025058, Unreported. Aliens  53.10(3)

Alien did not suffer from past persecution due to his status as army veteran, and thus, alien was not entitled to asylum on that basis; although three men came to alien's parents' house in his native country and asked for him by his full name, and fellow veteran was killed by terrorist group, the men did not identify themselves, even if those men were terrorists, alien could not demonstrate he was singled out for persecution due to past army membership, as such incidents occurred regularly and men could have gotten his full name from records other than army records, and inquiry as to alien's whereabouts did not rise to level of persecution. Malki v. Ashcroft, C.A.7 2003, 74

8 U.S.C.A. § 1101

Fed.Appx. 655, 2003 WL 22025058, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding by Board of Immigration Appeals (BIA) that Guatemalan asylum applicant did not have well-founded fear of persecution based upon political opinion, arising from guerrillas' statements that they intended to kill him and other members of army after they had captured them, fact that he escaped, or his status as former soldier. *Velasquez-Velasquez v. I.N.S.*, C.A.6 2002, 53 Fed.Appx. 359, 2002 WL 31870322, Unreported. Aliens ↪ 53.10(3)

172. Fear, refugee--Generally

Without proof of past persecution, an asylum applicant must demonstrate that fear of future persecution is subjectively and objectively reasonable; that is, the applicant must establish with credible evidence that he genuinely fears persecution and show through credible, direct, and specific evidence that a reasonable person in his position would fear persecution. *Hassan v. Ashcroft*, C.A.8 2004, 388 F.3d 661. Aliens ↪ 54.1(4.1)

In order to establish asylum eligibility, an applicant must not only harbor a genuine fear of future persecution, but also must establish an objectively reasonable basis for that fear. *Laurent v. Ashcroft*, C.A.1 2004, 359 F.3d 59. Aliens ↪ 53.10(3)

"Well-founded fear" of persecution for asylum eligibility is one that is both subjectively genuine and objectively reasonable. *Hamzehi v. I.N.S.*, C.A.8 1995, 64 F.3d 1240, rehearing and suggestion for rehearing en banc denied. Aliens ↪ 53.10(3)

Petitioner applying for asylum under Immigration and Nationality Act establishes that fear is objectively reasonable by proving facts that would support reasonable fear that petitioner faces persecution. *Hadjimehdigholi v. I.N.S.*, C.A.10 1995, 49 F.3d 642. Aliens ↪ 53.10(3)

Board of Immigration Appeals (BIA) improperly failed to consider whether asylum applicant might have well-founded fear of persecution even if she was unable to establish pattern or practice of persecution of her ethnic group or political group of which she was member. *Makonnen v. I.N.S.*, C.A.8 1995, 44 F.3d 1378. Aliens ↪ 53.10(3)

Applicant seeking asylum due to persecution or well-founded fear of persecution was not required to show that he had suffered past harm in country of origin or that his family had been harmed since his departure as a prerequisite to qualify for asylum. *Cordero-Trejo v. I.N.S.*, C.A.1 1994, 40 F.3d 482. Aliens ↪ 53.10(3)

An alien requesting asylum can establish that he is a refugee by showing either past persecution or a well-founded fear of persecution in the future; subjective component of well-founded fear standard requires that asserted fear be genuine, and objective component of standard contemplates that alien show, by credible, direct, and specific evidence, facts that would support a reasonable fear that alien faces persecution. *Ravindran v. I.N.S.*, C.A.1 1992, 976 F.2d 754. Aliens ↪ 53.10(3)

The "well-founded fear" of persecution required to be shown in order to support successful application for asylum involves subjective fear of persecution, grounded in objective facts, and in addition application must show fear is based on one of statutory grounds for asylum. *Saleh v. U.S. Dept. of Justice*, C.A.2 1992, 962 F.2d 234. Aliens ↪ 53.10(3)

"Well-founded fear of persecution" for purposes of alien's eligibility for asylum consists of both a subjective and objective component: alien may satisfy subjective prong by showing that events in country to which he or she will be deported have personally or directly affected him or her, while to satisfy objective component, applicant must submit documentary evidence or testimony alleging specific facts from which it can be inferred that he or she may

8 U.S.C.A. § 1101

be singled out for persecution on the basis of race, religion, nationality, political opinion or membership in a particular social group. *Gomez v. I.N.S.*, C.A.2 1991, 947 F.2d 660. Aliens ↪ 53.10(3)

Alien seeking asylum was required to establish well-founded fear of persecution in his country; well-founded fear involved both subjective and objective components; former could be based on alien's reactions to events which impinged on him personally, but to make well-founded fear, there had to be other proof or objective facts that lent support to alien's subjective fear. *Melendez v. U.S. Dept. of Justice*, C.A.2 1991, 926 F.2d 211. Aliens ↪ 53.10(3)

While there must be both subjective fear of persecution on part of alien and grounding in reality, to make that fear objectively well-founded, to satisfy requirement of "well-founded fear of persecution" to qualify for political asylum, showing need not be so persuasive as to demonstrate that persecution is more likely than not by establishing greater than 50% chance. *Carcamo-Flores v. I.N.S.*, C.A.2 1986, 805 F.2d 60. Aliens ↪ 54.1(4.1)

Alien can satisfy well-founded fear standard for political asylum without showing that it is more likely than not that alien will be subject to persecution. *Rasool v. I.N.S.*, S.D.N.Y.1991, 758 F.Supp. 188.

Immigration judge (IJ) did not err in applying definition of a refugee to facts of alien's asylum application, in determining that alien did not have objectively well-founded fear of persecution on account of his political beliefs, where alien failed to show that he suffered any past persecution, or that he had well-founded fear of future persecution if returned to his native country. *Sudusinghe v. Ashcroft*, S.D.N.Y.2003, 2003 WL 22299206, Unreported. Aliens ↪ 53.10(3)

173. ---- Presumption, fear, refugee

Government's allegation in asylum proceeding, that alien's reason for not returning to Cote d'Ivoire was that he would be court-martialed for deserting the military, was not sufficient to rebut presumption that he had a well-founded fear of persecution; alien testified that he left his position in the military because his family was in grave danger of being harmed by government authorities. *Toure v. Attorney General of U.S.*, C.A.3 2006, 443 F.3d 310. Aliens, Immigration, And Citizenship ↪ 54.1(2)

The fact that alien's wife remarried after alien left China was insufficient to rebut presumption that alien had well-founded fear of future persecution, and thus qualified as a refugee eligible for asylum, because he had established past persecution consisting of his wife's being forced to have an abortion because she was underage; alien had been permanently denied existence of child with wife, he remained subject to same population control measures, and nothing in record indicated that he had no desire to marry and have children or that he had come to agree with China's population control measures. *Zhang v. Gonzales*, C.A.7 2006, 434 F.3d 993. Aliens ↪ 54.1(2)

If an asylum applicant establishes past persecution, he is entitled to a presumption of a well-founded fear of persecution, which the Attorney General may rebut by proving either a fundamental change in circumstances in the applicant's country of nationality or that the applicant could reasonably relocate to another part of his country of nationality under all of the circumstances. *Hassan v. Ashcroft*, C.A.8 2004, 388 F.3d 661. Aliens ↪ 54.1(4.1)

Alien's testimony was sufficient to establish that he had suffered past persecution in his native Romania, and thus to give rise to a rebuttable presumption of a well-founded fear of future persecution which would allow alien to be deemed a refugee eligible for grant of asylum; while some of ills alien had suffered, such as searches, interrogations, and phone taps, could be construed as threats and harassment rather than an actual infliction of suffering or harm, staged hit-and-run crashes in which he was targeted victim put him at serious risk of injury or death. *Gui v. I.N.S.*, C.A.9 (Cal.) 2002, 280 F.3d 1217. Aliens ↪ 54.1(2)

8 U.S.C.A. § 1101

Mistreatment that alien claimed to have received in China due to his parents resistance to China's forcible sterilization policies did not rise to level of persecution, as required for presumption of future persecution entitling alien to asylum; alien suffered no physical violence, he suffered deprivation of furniture and electric and water services for undisclosed period of time, he was denied education beyond junior high school, and he was indirectly affected when his parents were fined and went into hiding. *Huang v. Attorney General of U.S.*, C.A.2 2005, 134 Fed.Appx. 473, 2005 WL 1403255, Unreported. Aliens ↪ 54.1(2)

Alien's allegations, in asylum proceeding, regarding past persecution of his father did not entitle him a rebuttable presumption that his fear of future persecution was well-founded, as Immigration and Naturalization Service (INS) regulation granting such a presumption applied only to applicants who personally suffered past persecution. *Rusz v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 584, 2004 WL 1737942, Unreported. Aliens ↪ 54.1(2)

174. ---- Evidence, fear, refugee

Failure of the immigration judge (IJ) to give Romanian alien advance notice of IJ's reliance on state department country report, which indicated that open worship was possible in Romania, as evidence to rebut presumption of alien's well-founded fear of future persecution on account of her religion, violated alien's procedural due process rights; the report contained facts that were controversial, and the report was released 19 months after the conclusion of the hearing, so that it was not part of the administrative record. *Circu v. Gonzales*, C.A.9 (Or.) 2006, 450 F.3d 990. Constitutional Law ↪ 274.3

Albanian asylum applicant failed to establish well-founded fear of persecution, based on his membership in Youth Forum of Democratic Party (DP), since, inter alia, he gave no hint of politically motivated persecution when he was first interviewed at airport upon entering United States. *Simo v. Gonzales*, C.A.1 2006, 445 F.3d 7. Aliens, Immigration, And Citizenship ↪ 53.10(3)

Evidence presented in connection with ethnic Albanian's application for asylum, including evidence that Serbian nationalists had recently won a plurality of votes in Serbian parliament, did not compel conclusion that changed country conditions on which government relied to rebut alien's presumptively well-founded fear of future persecution if she were returned to Kosovo, based on departure of Serbian paramilitary forces from Kosovo and change in make-up of Kosovo police force so that it was no longer dominated by Serbs, was merely transitory and thus nonfundamental, where Kosovo, while still technically part of Serbia and Montenegro, had significant autonomy, its own parliament in which ethnic Albanians had majority of votes, and its own administration independent of Serbia. *Shehu v. Gonzales*, C.A.5 2006, 443 F.3d 435. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Substantial evidence supported ALJ's determination that alien seeking asylum did not have a well-founded fear of future persecution on account of her membership in a particular ethnic group; although alien claimed that she would have no right to work if returned to her native country, that her relatives had been forcibly deported because of their ethnic heritage, and that she would be forcibly deported, State Department country reports indicated that conditions in native country had improved significantly since alien's relatives were deported and since alien last lived there, in that the government of native country and the ethnic group had signed a cessation of hostilities agreement, and there were no more reports of forced exile after that agreement. *Negeya v. Gonzales*, C.A.1 2005, 417 F.3d 78. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals (BIA) was incorrect as matter of law in requiring specific evidence that Ethiopian government would target individual outside its borders for persecution in order to grant asylum application based on well-founded fear of persecution upon return to that country; in defining "refugee," Congress put no limitation on what it might consider to constitute evidence of well-founded fear of persecution. *Makonnen v. I.N.S.*, C.A.8 1995, 44 F.3d 1378. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Subjective component of "well-founded fear" of persecution by applicant for asylum may be satisfied by applicant's credible testimony that he genuinely fears persecution. *Hartooni v. I.N.S.*, C.A.9 1994, 21 F.3d 336. Aliens ⚡ 53.10(3); Aliens ⚡ 54.1(4.1)

Substantial evidence did not support Board of Immigration Appeals' (BIA) determination that alien, a native and citizen of Mauritania, did not have a well-founded fear of future persecution, as required for his asylum application; the BIA did not perform an individualized assessment of the record evidence and ignored evidence that supported alien's fear of future persecution, the BIA wrote only two sentences in support of its finding that country conditions in Mauritania have changed, and not only did the BIA rely exclusively on general statements with little probative value, it overlooked evidence in the record concerning alien's individual circumstances that was favorable to him. *Diallo v. Gonzales*, C.A.10 2006, 178 Fed.Appx. 833, 2006 WL 1174624, Unreported. Aliens, Immigration, And Citizenship ⚡ 642

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to demonstrate well-founded fear of future persecution by guerillas, in light of alien's continued residence in his country without harassment or threats for almost three years following his initial encounter with guerillas. *Yantas-Chuco v. Gonzales*, C.A.9 2005, 139 Fed.Appx. 907, 2005 WL 1706378, Unreported. Aliens ⚡ 54.1(4.1)

Evidence supported conclusion that alien, a native and citizen of Colombia seeking asylum, did not suffer past persecution or a well-founded fear of future persecution, despite her testimony that she received about 50 threatening telephone calls; she was never physically harmed, and her son remained in Colombia under his grandmother's care without incident in the same town where she had been threatened. *Hurtado v. U.S. Atty. Gen.*, C.A.11 2005, 136 Fed.Appx. 331, 2005 WL 1475853, Unreported. Aliens ⚡ 53.10(3)

Claim by asylum applicant who was citizen of Republic of Suriname, that a group of guerillas in that country would retaliate against him for disagreeing with the cause of his brother's death and independently investigating it, failed to prove that applicant had a well-founded fear of persecution on account of his political opinion; evidence did not suggest that such retaliation would be on account of applicant's political opinion. *Birambi v. Department of Homeland Security*, C.A.3 2004, 134 Fed.Appx. 488, 2004 WL 2820940, Unreported. Aliens ⚡ 53.10(3)

175. ---- Subjective fear, refugee

Even if alien had subjective fear of future persecution if he were to return to Cambodia, he could not establish objectively reasonable basis for that fear, as required to support his asylum request; alien's claim was based on his membership of opposition political party and his support of the United States while he worked at the American embassy in Cambodia, and he conceded that regime change resulted in his party becoming integral part of the coalition government ruling Cambodia, and there was no convincing evidence of animus directed at pro-American citizens in Cambodia. *Ang v. Gonzales*, C.A.1 2005, 430 F.3d 50. Aliens ⚡ 53.10(3)

Alien, who was citizen of China, failed to demonstrate well-founded fear of persecution based on his religious practices, in support of his asylum application; even if alien had subjective fear of persecution, based on conversation with friend, who lived in China, indicating that "security people" had been looking for alien and that alien should not call alien's family anymore, neither Board of Immigration Appeals (BIA) nor reviewing court was required to accept such hearsay statement, which lacked foundation and was not subject to cross-examination, as true, and alien presented no compelling objective evidence demonstrating well-founded fear. *Xiaoguang Gu v. Gonzales*, C.A.9 2005, 429 F.3d 1209. Aliens ⚡ 54.3(4)

Determination of Board of Immigration Appeals (BIA) that asylum applicant did not have subjective fear of persecution in Rwanda because of her decision to remain in school after two arrests and rapes while incarcerated was not supported by substantial evidence; applicant specifically explained that rape after first arrest was so "ashaming and embarrassing" to her that she told no one about it, that she was assured that she would not be

8 U.S.C.A. § 1101

arrested again, that after death of entire family she was without means of economic or emotional support, and that her education was at the government's expense. *Mukamusoni v. Ashcroft*, C.A.1 2004, 390 F.3d 110. Aliens 54.1(4.1)

Decision of Immigration Judge (IJ) that Jordanian asylum applicant did not show fear of persecution, arising from events that occurred when he was released from Israeli prison after having been convicted of commanding Palestinian Liberation Organization (PLO) attack on Israeli military camp, was supported by record; although Jordanian police questioned applicant and his family frequently, he was listed in police database as potential spy and threat, and he had trouble finding work, he was able to obtain passport, and there was evidence that certificate he accused police of withholding was not required for him to work. *Mousa v. I.N.S.*, C.A.7 (Ill.) 2000, 223 F.3d 425. Aliens 54.1(4.1)

Substantial evidence supported IJ's finding that alien, a citizen of Tunisia, lacked well-founded fear of future persecution on account of being detained and questioned by Immigration and Naturalization Service (INS) and Federal Bureau of Investigation (FBI); although alien testified credibly as to his subjective fear, he did not show reasonable possibility that he would be labeled as political activist, or that authorities were even aware of detention and questioning, so as to satisfy objective element. *Sayadi v. Gonzales*, C.A.9 2006, 2006 WL 897621, Unreported. Aliens, Immigration, And Citizenship 53.10(3)

Substantial evidence supported determination, in asylum proceeding, that alien failed to establish a subjectively genuine or objectively reasonable fear of persecution; alien's allegations, that members of his political organization disappeared and that he and his brother were followed home by purported agents, were vague and sometimes contradictory, and incident in which alien was brought into a police station in a neighboring town for distributing leaflets did not amount to persecution, given that he was only asked a few questions and let go. *Girigan v. Ashcroft*, C.A.6 2005, 121 Fed.Appx. 577, 2005 WL 23373, Unreported. Aliens 53.10(3); Aliens 54.1(4.1)

Evidence did not compel conclusion that asylum applicant established subjective fear of future persecution in her native Fiji, as required to overturn Bureau of Immigration Appeals' (BIA) denial of asylum; alien testified that denial of her husband's work visa instigated their decision to leave Fiji, and that if his work visa had been extended, they would not have left Fiji. *Lata v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 102, 2004 WL 2983502, Unreported. Aliens 54.1(4.1)

Ample evidence supported finding that aliens, in their requests for asylum, withholding of removal, and relief under Convention Against Torture (CAT), were not credible as to alleged fear of persecution in Latvia; fear of persecution on basis of being perceived as Jewish was not credible given that one alien claimed she only realized she was Jewish after arriving in the U.S. and country reports indicated no evidence of systemic persecution of Jews, and alleged fear of retaliation by KGB officials was unrealistic in view of Latvian independence. *Kanger v. Ashcroft*, C.A.3 2003, 80 Fed.Appx. 746, 2003 WL 22520407, Unreported. Aliens 54.1(4.1); Treaties 8

Sufficient evidence supported immigration judge's finding that alien was not persecuted and did not fear persecution to support her application for asylum and withholding of removal; alien only provided vague claims of torture, alien gave conflicting accounts of time spent in refugee camp, alien refused to say what, if anything happened in refugee camp, alien provided conflicting statements regarding her reason for fleeing Burundi and fear of returning, alien provided conflicting statements about her cousin, and alien provided conflicting information about number of brothers and their status. *Namahoro v. Ashcroft*, C.A.6 2003, 76 Fed.Appx. 95, 2003 WL 22205082, Unreported. Aliens 54.1(4.1)

176. ---- Degree of persecution, fear, refugee

Mistreatment suffered by asylum applicant and his family in Fiji rose to the level of severity required by *Matter of*

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Chen, which waived the requirement that an individual who has suffered past persecution must also demonstrate a well-founded fear of future persecution; family members endured repeated arbitrary detentions, painful and humiliating torture, sexual assault, threats, and severe intimidation on the basis of their political opinion and religious beliefs, and suffered the horror of attempting to escape but finding their way barred by government blacklists. *Lal v. I.N.S.*, C.A.9 2001, 255 F.3d 998, opinion amended on rehearing 268 F.3d 1148. Aliens 53.10(3)

Based on the severity of the persecution alien's family faced in Fiji, asylum application was properly considered under the *Matter of Chen* rule, which waived the requirement that an individual who has suffered past persecution must also demonstrate a well-founded fear of future persecution; family members endured repeated arbitrary detentions, painful and humiliating torture, sexual assault, threats, and severe intimidation on the basis of their political opinion and religious beliefs, and suffered the horror of attempting to escape but finding their way barred by government blacklists. *Lal v. I.N.S.*, C.A.9 2001, 255 F.3d 998, opinion amended on rehearing 268 F.3d 1148. Aliens 53.10(3)

Laotian citizen suffered atrocious forms of persecution, and thus was entitled to asylum without showing of well-founded fear of future persecution, where he was placed in labor camp as result of his support of Laotian monarchy, was physically and verbally abused, was deprived of adequate food for substantial period of time, suffered serious injuries and was denied medical care resulting in permanent impairment, and was forced to undergo "reeducation." *Vongsakdy v. I.N.S.*, C.A.9 1999, 171 F.3d 1203. Aliens 53.10(3)

177. ---- Time passage, fear, refugee

Substantial evidence supported finding of Immigration Judge (IJ), that asylum applicant's fear of retaliation from Israeli forces as result of his attack on Israeli soldier in Gaza in 1967 was not objectively reasonable, given passage of 38 years since such incident, and 30 years since Israelis last inquired of applicant's whereabouts. *Al-Fara v. Gonzales*, C.A.3 2005, 404 F.3d 733. Aliens 54.1(4.1)

Substantial evidence supported immigration judge's determination that alien did not have a well-founded fear of future persecution, as required for alien's asylum claim; alien lived in the same home for six years after an alleged rape by a government representative without incident, alien maintained her job with the government, and was allowed to obtain exit visas and leave the country to go to India, the Philippines, and the United States, and alien's family safely remains in Ethiopia, and one of alien's sons works for the government-owned airline. *Ali v. Gonzales*, C.A.1 2005, 401 F.3d 11. Aliens 53.10(3)

Asylum applicant failed to establish that her fear of future persecution was genuine, as required to support her application; applicant acknowledged that she came to United States to see if she wanted to settle there, applicant did not leave home country with her husband after first robbery, and applicant waited nearly two years after subsequent robbery of home to come to United States because son was still in school. *Lie v. Ashcroft*, C.A.3 2005, 396 F.3d 530. Aliens 53.10(3)

Chinese asylum applicant failed to establish past persecution or well-founded fear of future persecution, where his concerns about having to pay fine for his eldest child's schooling were not based on specific events or indications he was being persecuted, and eight years passed between his wife's alleged sterilization and his subsequent disillusionment and planning to leave. *Lin v. Ashcroft*, C.A.1 2004, 371 F.3d 18. Aliens 53.10(3)

Substantial evidence supported IJ's finding that alien, a citizen of Guatemala, did not have a well-founded fear of future persecution on account of her political views which would entitle her to asylum, despite alien's claim that she was raped and beaten by rebel guerrillas because they believed she was a government sympathizer and that her husband was killed by guerrillas for the same reason; alien could not see her attackers, who were masked, attackers did not identify themselves, and even if alien's husband was killed in retaliation by guerrillas, there was four-year

8 U.S.C.A. § 1101

time lapse between husband's death and attack on alien, and country reports indicated that civil war was over. *Menendez-Donis v. Ashcroft*, C.A.8 2004, 360 F.3d 915, rehearing and rehearing en banc denied. Aliens 54.1(4.1)

Mexican national requesting asylum, on theory that, as result of being active member more than ten years earlier in Mexican labor organizations, he had well-founded fear of future persecution if returned to Mexico, failed to satisfy burden of demonstrating the objective reasonableness of any such fear, where Mexican national failed to establish any persecution in past, where more than ten years had passed since he had any connection with these organizations, and where his brother, the founder of one of these organizations, was not shown to have been persecuted or harassed by Mexican government during this time. *Regalado-Garcia v. I.N.S.*, C.A.8 2002, 305 F.3d 784. Aliens 54.1(4.1)

Documentary evidence showing no actual cases of Philippine rebel groups targeting or harming family members of current or former government officials and evidence that asylum applicant herself actually returned to island where her father had been military police officer charged with quelling insurgency and was not harmed or threatened during almost two years she resided there before leaving Philippines sustained finding that persecution of applicant was not reasonable possibility, as required to satisfy objectively reasonable fear of persecution for purposes of asylum eligibility. *Aruta v. I.N.S.*, C.A.9 1996, 80 F.3d 1389. Aliens 54.1(4.1)

Alien from Colombia who held several government positions and who claimed that his house had been destroyed by grenade explosion, that he had been shot at, and that his political ally had been murdered, failed to establish well-founded fear of future persecution as required to grant his asylum application, where alien's claims that his life had been threatened and that he had been shot at were uncorroborated, grenade incident had occurred approximately fourteen years earlier and was not shown to be due to his political opinion, and alien failed to provide evidence newspaper clippings of the murder, evidence of his political ties to the victim, or testimony from his older daughter or son-in-law who had been granted asylum based on the murder. *Monroy v. U.S. Atty. Gen.*, C.A.11 2006, 174 Fed.Appx. 448, 2006 WL 858287, Unreported. Aliens, Immigration, And Citizenship 642

Substantial evidence supported determination that asylum applicants, who were brother and sister, failed to establish well-founded fear of future persecution in Guatemala; one of the applicants was able to live without incident in Guatemala City for four years before entering United States, several members of applicants' family still safely resided in Guatemala, and there was no evidence that applicants' cousin's murder was on account of statutorily protected ground. *Arevalo-Galicia v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 267, 2004 WL 2914269, Unreported. Aliens 53.10(3)

Alien did not present sufficient evidence to compel finding that she suffered past persecution or that she had objectively reasonable fear of persecution should she return to Guatemala, as required to overturn Bureau of Immigration Appeals' (BIA) denial of asylum; alien failed to establish that guerrillas imputed political opinion of certain individual whom they killed to her, and alien's fear of future persecution was undercut by fact that she lived peacefully in Guatemala for almost three years after individual's disappearance. *Alvarez-Rios v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 195, 2004 WL 2860181, Unreported. Aliens 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) findings that alien, who was native and citizen of Fiji, did not qualify for asylum; alien's difficulty in obtaining government job did not rise to level of economic persecution, he failed to demonstrate that beating he testified he received was on account of one of statutorily protected grounds, and facts that members of his family were still in Fiji and that he did not attempt to leave Fiji for more than three years after the beating weakened his claim of well-founded fear of future persecution. *Chand v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 242, 2004 WL 2453318, Unreported. Aliens 54.1(4.1)

Alien failed to prove a well-founded fear of persecution which would entitle her to asylum; alien testified that after her parents and siblings were arrested by government officials, she and her maternal grandmother lived in her

8 U.S.C.A. § 1101

parents' home, and she continued to attend the same school for the next five years, living peacefully, until after her grandmother passed away and alien left the country. *Abraham v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 96, 2004 WL 1869295, Unreported. Aliens ☞ 53.10(3)

Alien failed to establish a well-founded fear of persecution on account of political opinion if returned to her native country, so as to entitle her to asylum; alien was never threatened with or subjected to detention or physical mistreatment on account of her activities relating to a pro-democracy demonstration 14 years earlier, and alien's parents, in whose home the two organizers of the demonstration were harbored, had resided in the country for the past 14 years without incident. *Lin v. Bureau of Citizenship and Immigration Services*, C.A.3 2004, 105 Fed.Appx. 424, 2004 WL 1758161, Unreported. Aliens ☞ 53.10(3)

Alien seeking asylum failed to demonstrate that he would be persecuted if he returned to Yemen; Immigration Judge (IJ) noted that some of the incidents involving the alien's family took place as long as 30 years before he left Yemen, and the alien did not connect the government from that time period with the later government; moreover, the alien provided no details about his arrest and incarceration, such as the date, the cause, the duration, the location, and who and how much he paid to be released. *El Hady v. Ashcroft*, C.A.6 2004, 101 Fed.Appx. 622, 2004 WL 1379964, Unreported. Aliens ☞ 53.10(3)

Alien, a citizen of Guatemala, did not have a well-founded fear of future persecution, as required in her application for asylum and withholding of deportation, despite allegation that she was in jeopardy because she was perceived by others to be murdered uncle's confidant; alien lived in Guatemala for over five years after her uncle was killed, uncle's widow continued to live there, and conditions in country were improved. *Ajin v. I.N.S.*, C.A.9 2003, 65 Fed.Appx. 161, 2003 WL 21153499, Unreported. Aliens ☞ 53.10(3)

178. ---- Miscellaneous cases fear well founded, refugee

Acute social and political tensions in Jammu and Kashmir, considered together with prior experience of alien, an Indian citizen and native of northern Indian state of Jammu and Kashmir, as victim of police violence and letter from his parents stating that local security forces had threatened to kill him if he returned to India, required finding that alien met his burden of showing well-founded fear of future persecution; although alien's parents had not been harmed in his absence, there was no evidence that police in Jammu and Kashmir suspected alien's parents of associating with same Muslim separatist faction to which they accused alien of belonging. *Kumar v. Gonzales*, C.A.9 2006, 444 F.3d 1043. Aliens, Immigration, And Citizenship ☞ 54.1(4.1)

Alien, a native and citizen of Peru, who received threats of escalating severity from a terrorist organization as direct consequence of speeches she made at political rally criticizing rebel organization established well founded threat of future persecution, notwithstanding that she waited seven months after threats began before leaving Peru, during which time she was not harmed, and notwithstanding age of threats, which would be nearly 15 years old by time alien could be returned to Peru, as there was evidence supporting at least a ten percent change that applicant would be persecuted in future. *Canales-Vargas v. Gonzales*, C.A.9 2006, 441 F.3d 739. Aliens, Immigration, And Citizenship ☞ 53.10(3)

Substantial evidence supported Immigration Judge's determination that asylum applicant, who was native and citizen of China, lacked a well-founded fear of persecution upon return to China based on his posting of two pro-democracy flyers in public spaces; copy of summons requiring applicant to report to police in China did not specify why applicant's appearance at police station was sought, applicant failed to offer supporting affidavits from family members with whom he remained in contact, and it was not plausible that government in China would be interested in persecuting applicant for distributing leaflets on two separate occasions when he was 16 years old. *Zhao Jin Lin v. Attorney General of U.S.*, C.A.2 2006, 441 F.3d 193. Aliens, Immigration, And Citizenship ☞ 54.1(4.1)

8 U.S.C.A. § 1101

Evidence compelled conclusion that alien's fear of arrest and punishment if she returned to China was well-founded, as required for eligibility for asylum and withholding of removal; alien credibly testified that she feared arrest and incarceration, Chinese government arrested friend to whom alien gave newspaper articles about Falun Gong that alien had brought into China illegally, letters from alien's friends and family stated that police repeatedly searched residences associated with alien in attempts to arrest her, and that police explained to her family that she had brought counter-revolutionary materials into China, and alien submitted faxed copies of search warrants and warrant for her arrest. *Zhou v. Gonzales*, C.A.9 2006, 437 F.3d 860. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals (BIA) did not abuse its discretion in denying alien's motion to reopen asylum proceedings based on ineffective assistance of counsel consisting of counsel's offering only unauthenticated documents at asylum hearing and failing to present physician's report that corroborated alien's claim that his wife was forcibly sterilized in China; BIA found that alien failed to comply with requirement that motion be accompanied by certain specific documents regarding relationship between attorney and client, alien was represented by a new attorney on appeal, and there was no indication that the necessary documents were ever ultimately produced. *Zeng v. Gonzales*, C.A.1 2006, 436 F.3d 26. Aliens ↻ 54(5)

Substantial evidence established that asylum applicants, who were citizens of China, had well-founded fear of future persecution based on China's coercive population control policies if removed to China with two American-born children; evidence found credible by Immigration Judge (IJ) included fact that several family members had been forcibly sterilized suggesting that forced abortions still occurred, applicants would not abandon their children in United States if forced to return to China, government official told applicant's brother that she would be sterilized upon return to China, and reports relied on by Immigration Judge (IJ) were directly disputed by affidavit of specialist on China's demographic developments and population policy. *Yang v. Gonzales*, C.A.8 2005, 427 F.3d 1117. Aliens ↻ 54.1(4.1)

Philippine national who, immediately before he fled to United States, had received three death threats over period of less than six months from communist militia with well-documented history of political violence, including the murder of its opponents, had well-founded fear of persecution, of kind making him eligible for asylum, notwithstanding that strength of this communist militia may have substantially diminished, as described in State Department report, and notwithstanding that militia had not carried out its threats before alien fled. *Marcos v. Gonzales*, C.A.9 2005, 410 F.3d 1112. Aliens ↻ 53.10(3)

Alien, a Chinese national, had well-founded "fear of future persecution" based on his spiritual practice of Falun Gong, so as to support his asylum claim, where, inter alia, he was Falun Gong practitioner and continued, while in the United States, to practice Falun Gong in private almost daily, evidence established unavoidable inference that Chinese authorities were seeking him out because of his Falun Gong participation, Chinese government was punishing Falun Gong practitioners with penalties including imprisonment and torture, and alien had been fleeing the Chinese authorities and hiding. *Zhao v. Gonzales*, C.A.5 2005, 404 F.3d 295. Aliens ↻ 53.10(3)

Immigration Judge's finding that asylum applicant's attendance at dinner parties with other homosexuals after returning to home country to attend to dying father established that he did not fear future persecution was not supported by substantial evidence; evidence in record strongly suggested that applicant attended parties only because he believed them to be safe and applicant testified that all attendees of parties were very close friends whom applicant had known for years. *Karouni v. Gonzales*, C.A.9 2005, 399 F.3d 1163. Aliens ↻ 54.1(4.1)

Asylum applicant demonstrated well-founded fear of future persecution; applicant was arrested, brought to court, and prohibited from leaving home country because she was engaged in anti-government political expression, government authorities threatened that applicant would be jailed, even possibly killed, if she continued speaking out against corruption in ruling party, applicant had endured arrests, beatings, and detention on account of her political expression in home country, and state department home country reports depicted a country rife with political corruption and police abuse. *Mamouzian v. Ashcroft*, C.A.9 2004, 390 F.3d 1129. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Asylum applicants established well-founded fear of future persecution if returned to Pakistan; one applicant was placed on political party's death list, entire family was repeatedly threatened with death, father and son were followed by members of political party on at least one occasion in a fashion similar to that experienced by another ex-military officer before his murder by party, and state department country report suggested that party was active organization that resorted to violence to accomplish goals. *Kaiser v. Ashcroft*, C.A.9 2004, 390 F.3d 653. Aliens ↪ 53.10(3)

Indonesian alien of Chinese ethnicity had well-founded fear of future persecution, and thus was eligible for asylum; alien offered credible testimony that she feared being hurt, raped or killed in Indonesia, and she demonstrated that Indonesians of Chinese descent were disfavored group and that she was particularly at risk, based on past threats and acts of violence against her. *Sael v. Ashcroft*, C.A.9 2004, 386 F.3d 922. Aliens ↪ 53.10(3)

Alien demonstrated a well-founded fear of future persecution by the military in his native country on account of his religious activities, supporting grant of asylum; although alien obtained a passport from his native country in his own name, never sought asylum at a foreign embassy, and never claimed his family was harassed or questioned about his whereabouts after he fled, alien explained that he paid a large sum to a passport broker in order to obtain the passport, he explained that he did not know that he could apply for asylum at foreign embassies, alien testified that his family was not harassed because they did not do anything against the government, and he was not asked whether the military had questioned his family about his whereabouts. *Khup v. Ashcroft*, C.A.9 2004, 376 F.3d 898. Aliens ↪ 53.10(3)

Kenyan national satisfied his burden of showing a well-founded fear of persecution based on his acts in opposition to alleged corruption in Kenya's current regime, in assisting Kenyan women who had allegedly been sold into de facto slavery to the Saudi royal family to escape from their alleged captors while present in the United States, based upon evidence of threats which were made against alien by Kenyan official after he had provided this assistance, and based on evidence of the imprisonment, attacks on, and threats against members of alien's family still present in Kenya, some of which attacks were accompanied by specific threats against alien; accordingly, alien was eligible for grant of asylum. *Njuguna v. Ashcroft*, C.A.9 2004, 374 F.3d 765. Aliens ↪ 53.10(3)

Asylum applicant established well-founded fear of future persecution by providing evidence that she was subjected to forced gynecological examination and threatened after she announced opposition to China's population control policies, that she was afraid to call home after she fled China because she was worried that her call would be traced and that Chinese government would send someone to arrest her, and that she was issued government document indicating that she and her boyfriend could not have a baby for rest of their lives. *Li v. Ashcroft*, C.A.9 2004, 356 F.3d 1153. Aliens ↪ 53.10(3)

Immigration and Naturalization Service (INS) failed to rebut presumption that aliens had fear of future persecution, after aliens established past persecution such that their lives or freedom were threatened in Albania on account of husband's political opinion, where government failed to produce any evidence regarding identities of persons who attacked aliens, government did not show that it was reasonable to expect aliens to move elsewhere in Albania, and government did not submit any particularized evidence concerning present-day Albania's political landscape and what impact it had on aliens. *Bace v. Ashcroft*, C.A.7 2003, 352 F.3d 1133, modified on denial of rehearing. Aliens ↪ 54.1(4.1)

Iraqi asylum applicant established well-founded fear of future persecution on account of imputed political opinion, based on his evacuation to United States territory by United States government agencies, even though his testimony was found not credible by Immigration Judge (IJ), inasmuch as documentary evidence indicated that all individuals who were evacuated to Guam at same time as applicant genuinely entertained subjective fear of persecution, and that such fear had objective basis in that he would be associated by Iraqi regime with American airlift and assumed to be dissident, and likely would be persecuted were he forced to return. *Al-Harbi v. I.N.S.*, C.A.9 2001, 242 F.3d 882. Aliens ↪ 53.10(3); Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Documentary evidence, consisting of summons for Iranian asylum applicant to appear in court for interrogation, notice declaring time for applicant to appear in court to answer allegations of reproduction of banned novel, letter to Islamic Revolutionary Court stating that applicant had been active in distributing novel, and death certificate of novel's translator, along with background evidence submitted by applicant, made out objective component of applicant's claim that he had well-founded fear of future persecution. *Zahedi v. I.N.S.*, C.A.9 2000, 222 F.3d 1157. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding by immigration judge (IJ) and Board of Immigration Appeals (BIA) that alien neither suffered past persecution nor had a well-founded fear of future persecution, based on his girlfriend's or mother's alleged forced abortions; airport interview, in which alien said he left China "to make a living," differed materially from statement that he left China because he would be persecuted based on violation of coercive family planning policies, he failed to produce any evidence corroborating claim that girlfriend was forced to have abortion, other than picture of identified female, he provided only vague description of when and how abortion occurred, and he failed to provide any corroboration that he even had girlfriend in China. *Wang v. U.S. Atty. Gen.*, C.A.11 2005, 152 Fed.Appx. 761, 2005 WL 2373450, Unreported. Aliens ↻ 54.1(4.1)

Alien who was native and citizen of Colombia had well-founded fear of future persecution supporting his application for asylum, given evidence regarding death threats and confrontation with his wife and declarations about likelihood that drug traffickers in Colombia would execute threats against perceived informants. *Torres-Ariza v. Gonzales*, C.A.9 2005, 150 Fed.Appx. 599, 2005 WL 2250716, Unreported. Aliens ↻ 53.10(3)

By establishing that as an ethnic Chinese Christian woman, she was a member of two sub-groups that were subject to a particularized risk of persecution in Indonesia, alien met the comparatively low level of individualized risk required to prove that, as a member of the ethnic Chinese minority in Indonesia, she had a well-founded fear of future persecution if returned to Indonesia, making her eligible for asylum. *Oey v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 919, 2005 WL 752270, Unreported. Aliens ↻ 53.10(3)

Alien seeking asylum showed a well-founded fear of future persecution if he returned to Guatemala, in the form of punishment for his avoidance of military service and the human rights violations that would have entailed, and substantial evidence did not support a Immigration Judge's (IJ) opinion to the contrary. *Cite-Rodriguez v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 815, 2005 WL 658937, Unreported. Aliens ↻ 53.10(3)

Alien's testimony at asylum proceeding that his native country's government sought to execute him satisfied objective prong of well-founded fear of future persecution test, although alien was unable to provide supporting documentary evidence; alien testified that he could not bring any documents with him that demonstrated his military service because he would have been in serious danger had he been caught with such documents at the border, and country report supported finding of well-founded fear of future persecution. *Abdul Ritha v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 606, 2004 WL 2943194, Unreported. Aliens ↻ 54.1(4.1)

Government failed to rebut presumption of well-founded fear of future persecution upon return to India to which asylum applicant was entitled upon establishing past persecution as Sikh; documents government introduced concerning country conditions detailed ongoing abuses by Indian police as countermeasures to Sikh militancy. *Varaich v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 582, 2004 WL 2862172, Unreported. Aliens ↻ 54.1(2)

In light of alien's credible testimony as to her subjective fear of persecution in Eritrea, her testimony, and that of a leader of an Eritrean opposition movement, as to government's arbitrary arrest, detention, and harming of opposition members, her documentary support for her membership in the opposition group, and State Department Country Report for Eritrea demonstrated that alien's fear was objectively reasonable, compelling conclusion that alien had a well-founded fear of future persecution in Eritrea. *Tesfahunegn v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 126, 2004 WL 2370571, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Continuous and threatening nature of alien's past harm, including death threats, life-threatening attacks, harassment, and systemic discrimination, provided objective support for his well-founded fear of persecution, for purposes of his asylum claim. *Khodaverdyan v. Ashcroft*, C.A.9 2004, 111 Fed.Appx. 489, 2004 WL 2286462, Unreported. Aliens ↪ 53.10(3)

Alien's status as a member of disfavored minority religious group, along with her testimony that she had been ordered, since leaving her country, to appear for questioning before a local "revolutionary committee," and had been placed on a "blacklist" of people not allowed to leave the country, was sufficient to establish that alien had a well-founded fear of future persecution required for asylum. *Avedian v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 167, 2004 WL 2030117, Unreported. Aliens ↪ 53.10(3)

Alien established a well-founded fear of future persecution required for asylum, through submission of country reports and credible testimony that he had been repeatedly beaten by a police officer, and harassed by other officers, due to his affiliation with political organization. *Singh v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 638, 2004 WL 1987343, Unreported. Aliens ↪ 53.10(3)

Alien demonstrated well-founded fear of future persecution required for asylum; prior to leaving her country, alien had been questioned by military authorities and helped to conceal the whereabouts of her younger brother, who was a rebel, by asserting multiple times that he was dead, and since her departure, her younger brother had been caught and sentenced to life imprisonment, her older brother, who was not involved in politics, had been taken away for interrogation, and the military intelligence was actively searching for her. *San v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 801, 2004 WL 1894980, Unreported. Aliens ↪ 53.10(3)

Peruvian citizen seeking asylum and withholding of removal established a well-founded fear of future persecution based on the bombing of her home, the deaths in her family, and the attempted forced recruitment by terrorists on account of her father's imputed political opinion. *Egoavil-Macha v. Ashcroft*, C.A.9 2004, 93 Fed.Appx. 152, 2004 WL 603465, Unreported. Aliens ↪ 53.10(3)

Alien was entitled to asylum inasmuch as she established past persecution in Somalia and government did not rebut presumption that she had a well-founded fear of future persecution; alien established past persecution based upon her membership in her clan, her credible testimony about being raped and separated from her family reflected a genuine fear of persecution, and numerous documents provided objective evidence in support of her account. *Hassan v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 461, 2004 WL 515611, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported determination that relevant conditions in India changed so fundamentally between alien's past persecution and date of her removal hearing, that she no longer had a well-founded fear of future persecution, even though she was a small-scale organizer for a dissident political group; presumption that alien had a well-founded fear of persecution was rebutted by State Department Country Profile which specifically concluded that membership in the group did not in itself result in prosecution or mistreatment. *Kaur v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 843, 2003 WL 23097842, Unreported, certiorari denied 125 S.Ct. 53, 543 U.S. 815, 160 L.Ed.2d 21. Aliens ↪ 54.1(4.1)

Substantial evidence did not support Board of Immigration Appeals'(BIA) determination that government successfully rebutted presumption that alien had a well-founded fear of future persecution if returned to India; government relied on country conditions report that referred to changes that occurred before alien was persecuted, alien was targeted because of unique and unusual circumstances not addressed by the report, and evidence showed that police doggedly searched for alien for at least as long as she remained in India. *Kaur v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 769, 2003 WL 23096019, Unreported. Aliens ↪ 54.1(4.1)

Fear of future persecution of alien who sought asylum was both subjectively genuine and objectively reasonable and thus well founded; alien was repeatedly confronted by armed belligerents and repeatedly received vivid death

8 U.S.C.A. § 1101

threats, his property was riddled with gun-fire late at night, he had a gun pressed to his side when he was accosted on his way to work early in the morning, and alien and his family left the Philippines as soon after final death threat as possible. *Kho v. I.N.S.*, C.A.9 2003, 62 Fed.Appx. 785, 2003 WL 1870885, Unreported. Aliens ↪ 53.10(3)

179. ---- Miscellaneous cases fear not well founded, refugee

Allegations in alien's asylum application, as to his fear for his life if he returned to Mexico, were vague and conclusory, and thus insufficient to make a prima facie showing of the requisite well-founded fear of future persecution; alien alleged only that he was harassed and threatened by federal police because of his political affiliation, that he was sometimes taken away for interrogation in a desolate place, and that he believed he would be killed if he returned. *Mendez-Gutierrez v. Gonzales*, C.A.9 2006, 444 F.3d 1168. Aliens, Immigration, And Citizenship ↪ 53.10(3)

Board of Immigration Appeals (BIA) did not abuse its discretion in denying alien's motion to reopen asylum proceedings for consideration of new evidence; evidence alien offered in support of motion to reopen consisted of a letter from an American physician who had read alien's wife's medical records and x-rays, consulted with radiologist, and determined that history presented was consistent with alien's claim that his wife was forcibly sterilized in China, and since alien claimed his wife had been sterilized well before his asylum hearing and had her x-rays in hand all along, doctor's report could have been sought in time to be presented at hearing. *Zeng v. Gonzales*, C.A.1 2006, 436 F.3d 26. Aliens ↪ 54(5)

Decision of Immigration Judge (IJ), that asylum applicant did not have objectively reasonable fear of future persecution even if he suffered past persecution stemming from tensions between El Salvador's official military and guerilla fighters during civil war, was supported by substantial evidence, including State Department report demonstrating that general civil unrest in El Salvador had abated, and applicant's testimony that he did not fear government persecution. *Reyes-Morales v. Gonzales*, C.A.8 2006, 435 F.3d 937. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination that alien, a citizen of Indonesia, failed to establish an objectively reasonable fear of future persecution on account of his Christian religion, as would support grant of asylum; alien's family members who shared his religious affiliation continued to live peaceably in Indonesia, and country conditions report stated that incidents of violence against Christians were in significant decline. *Nikijuluw v. Gonzales*, C.A.1 2005, 427 F.3d 115. Aliens ↪ 54.1(4.1)

Finding that Albanian national had not established well-found fear of future persecution, of kind required to make him eligible for asylum, based solely on prior arrests not rising to level of "persecution" and police officer's cryptic comments, on visit to his parents' home after alien's departure from Albania, that alien should "not to come back here," was supported by substantial evidence and would not be disturbed on judicial review. *Bocova v. Gonzales*, C.A.1 2005, 412 F.3d 257. Aliens ↪ 54.1(4.1)

Immigration Judge's (IJ) decision, that Nigerian asylum applicant failed to show that she was persecuted or had well-founded fear of persecution because she converted from Islam to Christianity, was supported by substantial evidence, in that IJ's specific findings, regarding applicant's use of false documentation to enter United States and her presentation of bogus birth certificate to court, and inconsistencies in her testimony, strongly corroborated IJ's global finding that applicant's testimony lacked credibility. *Olujoke v. Gonzales*, C.A.1 2005, 411 F.3d 16. Aliens ↪ 54.1(4.1)

Asylum applicant failed to establish a well-founded fear of persecution on account of membership in his family, even though applicant's mother was wounded and father was murdered due to their involvement in political group; unlike his parents, applicant was apolitical and not a member of political group and alien did not establish that he would be targeted due to his familial ties. *Akhtar v. Gonzales*, C.A.6 2005, 406 F.3d 399, rehearing and rehearing en banc denied. Aliens ↪ 53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Asylum applicant, an Iranian who fled to Germany, where he lived for 10 years, failed to establish well-founded fear of future persecution, and thus, alien was not entitled to asylum as to Germany; although alien described several incidents in Germany of harassment, threats, and property damage, he suffered only de minimis property damage and anonymous, ambiguous threats that did not create a sense of immediate physical violence, he suffered no physical harm, and he was never detained. *Nahrvani v. Gonzales*, C.A.9 2005, 399 F.3d 1148. Aliens 53.10(3)

Fact that peace accords had since been signed by Guatemalan government and insurgent forces and that, since these peace accords were signed, neither alien nor his relatives who continued to reside in Guatemala had been approached in bellicose manner or threatened in any way undermined objective reasonableness of any fear of future persecution that alien might have if his asylum claim was denied, and if he was removed to Guatemala. *Rodriguez-Ramirez v. Ashcroft*, C.A.1 2005, 398 F.3d 120. Aliens 53.10(3)

Asylum applicant, who was Pentecostal Christian from Armenia, failed to establish that he had a well-founded fear of persecution on account of his religious beliefs if returned to Armenia; no evidence was presented that Armenian government would target applicant for conscription or punishment on account of his religion. *Movsisian v. Ashcroft*, C.A.9 2005, 395 F.3d 1095. Aliens 53.10(3)

Alien who acted as whistleblower in exposing corruption by his boss did not demonstrate well-founded fear of future persecution based on fear of future acts of reprisal by his former employer if returned to Brazil, so as to qualify for withholding of removal, where his former employer's sphere of influence apparently encompassed only one municipality in large country and there was no evidence that government could not or would not protect alien. *Silva v. Ashcroft*, C.A.1 2005, 394 F.3d 1. Aliens 53.10(3)

Asylum applicant who claimed Albanian ethnicity did not establish either actual past persecution or well-founded fear of persecution based on his arrest and detention in Montenegro by police on two occasions following demonstrations, his verbal harassment during those detentions, or his beating by policemen during third demonstration, particularly given overall sparse nature of his political involvement, consisting of attendance at five demonstrations and improvement in country conditions in Montenegro since alien's departure. *Pilica v. Ashcroft*, C.A.6 2004, 388 F.3d 941. Aliens 53.10(3)

Immigration judge's denial of alien's petition for asylum on grounds that alien failed to establish a well-founded fear of persecution on account of political opinion was supported by substantial evidence; although threatened, alien was not physically harmed while living in Albania, alien's brother and parents remained unharmed in Albania, and State Department's advisory opinion indicated that the situation in Albania had calmed considerably. *Hasanaj v. Ashcroft*, C.A.7 2004, 385 F.3d 780. Aliens 53.10(3)

Asylum applicant failed to show that her fear of future persecution in Ukraine, based on her Seventh Day Adventist religion, was well-founded or reasonable, where her claims were inconsistent with country conditions reports, her mother's service as elected government official, and apparent reopening and continued operation of church day school. *Kondakova v. Ashcroft*, C.A.8 2004, 383 F.3d 792, certiorari denied 125 S.Ct. 894, 543 U.S. 1053, 160 L.Ed.2d 775. Aliens 53.10(3)

Substantial evidence supported denial of asylum to alien on basis of fear of future persecution, notwithstanding that Chinese authorities had imputed membership in outlawed Falun Gong organization to alien, detained her for two days, and ransacked her home, where nothing suggested that government, which had not taken further action against alien for three months she remained at her home and had allowed her to leave country on her passport, continued to impute Falun Gong membership. *Liu v. Ashcroft*, C.A.7 2004, 380 F.3d 307. Aliens 54.1(4.1)

Evidence related to imprisonment of alien's husband in home country was not sufficient to establish that alien had a well-founded fear of future persecution if returned to home country, as required to support alien's application for

8 U.S.C.A. § 1101

asylum; evidence was not specific to alien and could not be imputed to her. *Gebremaria v. Ashcroft*, C.A.8 2004, 378 F.3d 734. Aliens ↻ 54.1(4.1)

Egyptian husband and wife failed to establish well-founded fear of persecution supporting asylum claim, despite providing evidence that wife's father suffered four arrests largely on basis of his appearance, which identified him as fundamentalist Muslim, that Egyptian authorities suspected him of desiring to overthrow secular government, and that husband and wife also adhered to traditional dress; generalized government interest in group to which husband and wife belonged did not show they would be persecuted. *Shoaira v. Ashcroft*, C.A.8 2004, 377 F.3d 837, rehearing denied, rehearing granted. Aliens ↻ 53.10(3)

Substantial evidence supported determination of immigration judge that alien lacked a well-founded fear of persecution if returned to Nigeria based on alien's political opinion expressed while he worked as a journalist in Nigeria, defeating alien's claim for asylum; alien was not persecuted while working as a journalist in Nigeria, alien had never had any contact with the state security service, and the conditions facing journalists in Nigeria following the death of former general had changed greatly. *Agada v. Ashcroft*, C.A.8 2004, 368 F.3d 867. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's conclusion that asylum applicant did not possess a well-founded fear of future persecution in Bangladesh on account of his political opinion; applicant's fear of future persecution was not objectively reasonable since it was primarily based upon events that occurred in the past that the immigration judge concluded, based upon substantial evidence, did not rise to the level of persecution. *Ali v. Ashcroft*, C.A.6 2004, 366 F.3d 407. Aliens ↻ 53.10(3)

Finding that asylum applicant did not have well-founded fear of future persecution in Togo was supported by substantial evidence, even though he had participated in demonstrations in opposition to Eyadema regime, where there had been no disappearances or extrajudicial killings in previous year, many citizens of Togo engaged in opposition politics without suffering persecution, and, although applicant had been confronted by Eyadema's bodyguard after applicant gave failing grade to Eyadema's son in high school, such confrontation was reasonably characterized as personal dispute. *Eusebio v. Ashcroft*, C.A.8 2004, 361 F.3d 1088, rehearing and rehearing en banc denied. Aliens ↻ 54.1(4.1)

Asylum applicant failed to establish well founded fear that he would be persecuted for his political beliefs if returned to Eritrea, where adverse action against him would be on account of his desertion from Eritrean People's Liberation Front (EPLF) rather than his politics, any punishment for his failure to contribute money to the Eritrean government would not be based upon political opinion, and, if he were conscripted, it would be because he had not completed his military service requirement. *Habtemicael v. Ashcroft*, C.A.8 2004, 360 F.3d 820, superseded 370 F.3d 774. Aliens ↻ 53.10(3)

Substantial evidence supported decision of Immigration Judge (IJ) that alien, a native and citizen of China, was not persecuted and did not have a reasonable fear of future persecution if returned to China, and thus alien was not entitled to asylum; alien was not credible, country report indicated province where alien had lived had relatively liberal family planning policies, and alien failed to mention alleged fine after birth of first child in her application for asylum. *Qin v. Ashcroft*, C.A.1 2004, 360 F.3d 302. Aliens ↻ 54.1(4.1)

Asylum applicant's fear of persecution on account of his Berber ethnicity, his political opinions and/or his avoidance of Algerian military service was not well-founded, and therefore he was not eligible for asylum; there was no evidence that similarly situated persons sharing Berber ethnicity and support for Berber causes or other shared political opinions had been targeted for persecution, no evidence that draft evasion would lead the government to label him as an Islamic fundamentalist sympathizer and a terrorist and, therefore, target him for abuse or death, the Algerian military was not a military whose acts were condemned by the international community as contrary to the basic rules of human conduct, and applicant failed to establish that alternative service

8 U.S.C.A. § 1101

was not available or that he asked about the possibility of non-combat positions. *Mekhough v. Ashcroft*, C.A.1 2004, 358 F.3d 118. Aliens ↻ 53.10(3)

Asylum applicant failed to establish pattern and practice of discrimination against ethnic Albanians and Moslems in Montenegro region of Serbia and Montenegro, so as to establish per se fear of future persecution, where applicant relied entirely upon State Department reports addressing former Federal Republic of Yugoslavia (FRY) generally and detailing ethnic cleansing campaigns in regions other than Montenegro. *Capric v. Ashcroft*, C.A.7 2004, 355 F.3d 1075. Aliens ↻ 53.10(3)

Iranian asylum applicant did not have well-founded fear of persecution based on his political opinion, where he served five-year imprisonment as result of his involvement with dissident Mujahedin-e Khalq Organization (MEK), but he subsequently served in Iranian military without incident, he was questioned four times but was not physically mistreated, he was able to obtain employment although his options were limited, and, although Iranian government engaged in widespread human rights abuse, he could not have well-founded fear of persecution solely by virtue of living in Iran. *Daneshvar v. Ashcroft*, C.A.6 2004, 355 F.3d 615. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that fear of alien, a citizen of Cambodia, of future persecution based on her husband's role as a soldier in peace-keeping group and her own party membership in group was objectively unreasonable, and thus alien was not entitled to asylum or withholding of removal; although alien's husband was killed, there was no evidence that he was target of persecution, since he died in armed conflict after a coup, and alien herself was a low-level party member who never held a party office or made public speeches, a position which country reports indicated was not subjected to persecution. *Khem v. Ashcroft*, C.A.1 2003, 342 F.3d 51. Aliens ↻ 54.1(4.1)

Alien failed to show that he had well-founded fear of persecution if he returned to Guatemala, supporting Board of Immigration Appeals' (BIA) decision to deny alien's application for asylum; only evidence supporting application was alien's testimony describing incident in which he was stabbed by Guatemalan rebels and fled to the mountains, but alien had failed to include that incident in his two asylum applications or his principal testimony, and only described the incident after he was reminded of it at conclusion of his testimony. *Alvarez-Santos v. I.N.S.*, C.A.9 2003, 332 F.3d 1245. Aliens ↻ 54.1(4.1)

Chinese citizen did not have objectively reasonable fear of future persecution supporting application for asylum when Board of Immigration Appeals found that citizen came to United States to get married and get a job, citizen and her boyfriend had both become old enough to marry legally in China, and citizen did not show that she would be persecuted upon her return to China either for her desire to marry legally or for her past resistance to China's marriage laws. *Li v. Ashcroft*, C.A.9 2002, 312 F.3d 1094, rehearing granted, opinion vacated 335 F.3d 858, on rehearing 356 F.3d 1153. Aliens ↻ 53.10(3)

Argument by Armenian asylum applicants, that old animosities between Armenians and Azeris continued to exist on border between Armenia and Azerbaijan in Nagorno-Karabakh region, was insufficient to establish well-founded fear of persecution. *Rostomian v. I.N.S.*, C.A.9 2000, 210 F.3d 1088. Aliens ↻ 53.10(3)

Finding of immigration judge (IJ) that asylum applicant did not have well-founded fear of persecution should he be returned to Guatemala was supported by substantial evidence; although applicant testified he believed government and military authorities wished to harm him because he was union member, documentary evidence indicated that persons persecuted for associating with unions, unlike applicant, were primarily union leaders or active members. *Morales v. I.N.S.*, C.A.1 2000, 208 F.3d 323. Aliens ↻ 54.1(4.1)

Citizen of Laos failed to establish objective component of well-founded fear of persecution, and he thus was not eligible for asylum, even though he offered evidence that he helped develop proposal presented to national assembly which resulted in others being sent to prison camp, where he was never arrested or detained, he was

8 U.S.C.A. § 1101

allowed to obtain visa to travel to United States, and his family and property remained unmolested in Laos. *Sayaxing v. I.N.S.*, C.A.7 1999, 179 F.3d 515. Aliens ↻ 53.10(3)

Denial of alien's request for asylum based on alien's alleged status as "refugee" was supported by substantial evidence, despite evidence of previous persecution, where reasonable fact finder could find that alien's fear of future persecution was not objectively reasonable; alien had, in his home country, received degree from government university, worked for city, obtained a visa, and had his passport renewed, and alien's father and children had been living in that country without incident. *Manivong v. District Director, U.S. Dept. of Justice I.N.S.*, C.A.8 1999, 164 F.3d 432. Aliens ↻ 54.1(4.1)

Substantial evidence supported decision that alien who entered United States as citizen of former Republic of Yugoslavia was not entitled to asylum; alien's fear of persecution upon return to Yugoslavia as result of anticommunist book he intended to complete was speculative, alien's statements regarding alleged detentions by Yugoslav police were inconsistent, alien did not apply for asylum in Germany where he lived for 15 years, and alien did not apply for asylum in United States until his wife withdrew her visa application on his behalf. *Milosevic v. I.N.S.*, C.A.7 1994, 18 F.3d 366.

Alien's hypothesis of what political group in Peru might do to him out of possible belief that he was a traitor, while giving rise to fear, did not establish asylum eligibility absent some concrete facts that leadership of group actually believed alien to be a traitor or that Peruvian authorities might actually move to persecute him. *Huaman-Cornelio v. Board of Immigration Appeals*, C.A.4 1992, 979 F.2d 995. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's determination that alien failed to establish well-founded fear of persecution in China, for purposes of asylum eligibility; although alien testified credibly that his girlfriend was fined 15,000 RMB, there was no indication that he had also been fined 15,000 RMB, and although alien testified that his girlfriend remained in hiding and that authorities continued to pursue his whereabouts, he did not allege that family planning officials threatened to arrest, detain, or otherwise punish him, and alien had legally departed China. *Huang v. Gonzales*, C.A.2 2006, 176 Fed.Appx. 206, 2006 WL 1049060, Unreported. Aliens, Immigration, And Citizenship ↻ 642

Substantial evidence supported conclusion, in asylum proceeding, that alien failed to establish a well-founded fear of future persecution; there was no evidence that police continued to look for alien, and, without children, he was not likely to be persecuted under the family planning policy. *Wei Xiong Ni v. U.S. Atty. Gen.*, C.A.2 2006, 2006 WL 678771, Unreported. Aliens, Immigration, And Citizenship ↻ 642

Substantial evidence supported finding, in asylum proceeding, that alien did not have a well-founded fear of future persecution in China on the basis of having had a child in the United States, even if she was forced to have an abortion in the past and failed to have an IUD insertion; any punishment she might receive for reentry after illegal departure did not constitute "persecution." *Xie v. Gonzales*, C.A.2 2006, 170 Fed.Appx. 150, 2006 WL 452013, Unreported. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Alien's fear of persecution by guerrillas in Colombia was not objectively reasonable, and thus she was not entitled to asylum; alien failed to show she could not go to the Colombian authorities or that they would be unable or unwilling to intervene. *Gomez v. Gonzales*, C.A.5 2006, 163 Fed.Appx. 268, 2006 WL 41336, Unreported. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Evidence supported finding that alien seeking asylum did not suffer past persecution or have a well-founded fear of persecution on account of his political activities; he presented only two incidents in which a political party allegedly threatened him, i.e., his being detained for questioning for six hours without being physically harmed and his receiving threatening phone calls, both of which occurred at least ten years after he was involved with an opposing group, and moreover, the party had lost an election and the current government was working with the

8 U.S.C.A. § 1101

party to try to maintain a more peaceful co-existence. *Barberena v. U.S. Atty. Gen.*, C.A.11 2005, 136 Fed.Appx. 344, 2005 WL 1489463, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding by immigration judge (IJ) that alien, who was Chinese national, did not suffer past persecution or have well-founded fear of persecution based on his political opinion, and thus did not qualify for asylum, withholding of removal, or relief under Convention Against Torture (CAT), given that IJ had grounds for questioning testimony in which alien claimed that he fought with government officials who came to take his sister for forced abortion, in light of fact that alien was never arrested or harmed for such conduct during year he remained in China, that alien did not seek asylum for four years after leaving China illegally, that country reports indicated that Chinese government opposed coercive methods of implementing family planning policies, and that Chinese government accepted repatriated asylees who left country illegally, punishing first-time offenders with a fine. *Jiang v. U.S. Attorney General*, C.A.11 2005, 130 Fed.Appx. 406, 2005 WL 1052604, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported determination that an alien had not shown a well-founded fear of future persecution if he were to return to Vietnam, despite claim that he would suffer persecution because, as an attorney, he openly criticized the Vietnamese legal system, and because he applied for asylum in the United States. *Van Doan v. Ashcroft*, C.A.6 2005, 125 Fed.Appx. 664, 2005 WL 602962, Unreported. Aliens ↻ 54.1(4.1)

Alien's claim that he feared government would persecute him because it believed he was involved with guerrillas during his kidnapping was too speculative to compel finding of well-founded fear of future persecution required for asylum; alien did not provide evidence that the government was aware of his abduction or that government would be inclined to persecute him if it were aware, and alien temporarily returned to his native country without any incident. *Reyes-Rodriguez v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 334, 2005 WL 79096, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that alien seeking asylum did not have well-founded fear of future persecution; alien's biological mother, adoptive mother and father, all four brothers, and nine of his 13 sisters continued to live in the country without incident, and alien was able to successfully graduate from college, obtain two jobs, leave for further studies, and return to country without any trouble. *Mualim v. Ashcroft*, C.A.9 2005, 118 Fed.Appx. 329, 2005 WL 79093, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien did not have objectively reasonable fear of persecution based on family relationships, given that alien's father-in-law and husband had traveled to the country on number of occasions without incident. *Vega-De Fisher v. Ashcroft*, C.A.9 2005, 119 Fed.Appx. 168, 2005 WL 79056, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported determination that alien seeking asylum failed to prove a well-founded fear of future persecution if he returned to Albania; Immigration Judge's (IJ) determined that the Socialist Party presently controlled Albania and that the alien presented no evidence that the current Socialist leaders persecuted members of the political groups to which the alien belonged, and United States Department of State country reports supported the IJ's conclusions. *Bicja v. I.N.S.*, C.A.6 2005, 119 Fed.Appx. 730, 2005 WL 54727, Unreported, rehearing denied. Aliens ↻ 53.10(3)

Alien failed to establish well founded fear of future prosecution as result of her membership in government opposition group in Cameroon, and thus was not entitled to asylum, where alien had not been official party member for over ten years, she was never leader, and her party activities since leaving Cameroon had been minimal. *Njoh v. Ashcroft*, C.A.8 2005, 119 Fed.Appx. 838, 2005 WL 53310, Unreported. Aliens ↻ 53.10(3)

Record did not compel conclusion that asylum applicant established past persecution or well-founded fear of future persecution on account of her political opinion, absent evidence that she was personally harmed or threatened;

8 U.S.C.A. § 1101

applicant failed to show that beating suffered by her boyfriend and any harm suffered by other friends was linked to her. *Pineiro v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 84, 2004 WL 2915235, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) finding that asylum applicant failed to demonstrate well-founded fear of persecution because she did not show particularized risk of persecution in Indonesia; although alien contended that as an ethnic Chinese, she was member of disfavored group in Indonesia, she was subject to only isolated incidents of harassment as child, and feared for her safety, but was not physically harmed during riots, she lived in Indonesia without incident after riots until her arrival in United States, and her parents continued to live in and operate business in Indonesia without incident. *Hartono v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 561, 2004 WL 2829392, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) finding that asylum applicant failed to demonstrate well-founded fear of future persecution on account of his political or religious beliefs; applicant left India after incident in which he struck and killed sacred cow with his tractor, but he was never arrested, detained, or harmed. *Bal v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 558, 2004 WL 2829288, Unreported. Aliens ↪ 53.10(3)

Pakistani asylum applicant's marriage to Hindu woman of Indian origin, who was United States citizen, did not add enough to applicant's claim to support well-founded fear of future persecution, especially where substantial evidence otherwise underpinned denial of claim, which was also based on applicant's alleged membership in Pakistan People's Party (PPP). *Ul Hassan v. Ashcroft*, C.A.3 2004, 116 Fed.Appx. 348, 2004 WL 2663118, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to establish well-founded fear of future persecution; alien lived uneventfully in particular area of country, and record did not compel conclusion that area would not be a safe place for him to live if he returned. *Em v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 267, 2004 WL 2580901, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding that alien, who was a Catholic of Chinese ethnicity, did not have well-founded fear of future persecution in her native country of Indonesia; documentary evidence concerning generalized harassment and discrimination endured by Indonesia's Chinese and Christian populations did not establish that alien faced particularized risk of persecution, and her claim was further undermined by fact that her parents and sister continued to reside in Indonesia without incident. *Widjaja v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 243, 2004 WL 2453327, Unreported. Aliens ↪ 54.1(4.1)

Alien's testimony that she genuinely feared persecution did not compel conclusion that this fear was reasonable, as was required to grant application for asylum; although alien testified that government agents would arrest and kill her because of her membership in political party, she offered no evidence as to how commonly party members were persecuted or whether she was similarly situated with those who had been, State Department's country report on Cote d'Ivoire suggested that a relatively small number of people had been targeted, and alien testified that government agents who visited her home always left without incident. *Camara v. Ashcroft*, C.A.3 2004, 110 Fed.Appx. 262, 2004 WL 2203983, Unreported, certiorari denied 125 S.Ct. 1861, 544 U.S. 977, 161 L.Ed.2d 728. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien did not have a well-founded fear of future persecution; state department country report showed that alien had no reasonable basis to fear his return to his country, and while in his country, alien had been able to continue his employment as a police officer, with no evidence that he had ever been tortured. *Kovacevic v. Ashcroft*, C.A.6 2004, 108 Fed.Appx. 332, 2004 WL 1888865, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien did not establish a well-founded fear of future persecution; alien continued to maintain an active church membership in his country despite his experiences,

8 U.S.C.A. § 1101

and record did not compel conclusion that alien's alleged persecutors were still after him. *Kapoor v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 73, 2004 WL 1870366, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported finding that alien's fear of future persecution was entirely speculative and did not demonstrate her eligibility for asylum. *Gerchikova v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 87, 2004 WL 1869291, Unreported. Aliens ☞ 54.1(4.1)

Evidence supported Immigration Judge's (IJ) determination that an alien from Cameroon, who was seeking asylum, had failed to establish the requisite well-founded fear of persecution; in addition to the insufficient corroboration of her alleged mistreatment, the alien failed to seek asylum even after arrests that included ostensibly abusive treatment, and even upon her last entry into the United States, she failed to seek asylum until it was discovered that she overstayed her visa by more than a year and a half; moreover, her sister, in whose house the secret political meetings were supposedly held, remained in Cameroon where she had not been arrested or bothered by authorities. *Tchaya v. Ashcroft*, C.A.4 2004, 106 Fed.Appx. 174, 2004 WL 1746617, Unreported. Aliens ☞ 54.1(4.1)

Alien failed to substantiate his posited fears of future persecution, as required to demonstrate entitlement to asylum; alien claimed his country's government had continuing interest in arresting him after he wrote two political articles, but only referenced, in his application, one visit to his home by government officials on the day he left the country. *Berhe v. Ashcroft*, C.A.3 2004, 105 Fed.Appx. 393, 2004 WL 1688203, Unreported. Aliens ☞ 53.10(3)

Alien's inability to speak the language of the majority of his native country and his speculation that some police stations "may" have pictures of him were not circumstances compelling conclusion that alien had objective fear of future persecution which would entitle him to asylum. *Farook v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 107, 2004 WL 1663267, Unreported. Aliens ☞ 53.10(3)

Citizen of Montenegro was not entitled to asylum on ground of persecution upon a return to Montenegro, where he did not provide details of his alleged detention by Serbians or establish that his protest activities in the United States supported a well-founded fear of persecution upon his return to Montenegro. *Donovic v. Ashcroft*, C.A.6 2004, 103 Fed.Appx. 580, 2004 WL 1447657, Unreported. Aliens ☞ 53.10(3)

Immigration Judge (IJ) properly denied alien's application for asylum; substantial evidence supported IJ's conclusions that one vague threat made to alien while she was detained for two hours did not establish past persecution, and that alien's fear of future persecution was not objectively reasonable in light of changed country conditions in her native country of Guatemala. *Velasquez Yanes v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 605, 2004 WL 1404755, Unreported. Aliens ☞ 53.10(3)

Substantial evidence supported conclusion, in asylum proceeding, that alien did not have a well-founded fear of persecution by the government if returned to Senegal, even though State Department Country Report contained information supporting alien's claims of continued hostility; report also indicated that the government was continuing its effort to broker peace and had released some rebel sympathizers, and that the army was professional, generally disciplined, and under civilian control. *Sene v. Ashcroft*, C.A.3 2004, 105 Fed.Appx. 316, 2004 WL 1256648, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) conclusion that alien failed to establish past persecution or well-founded fear of future persecution, as required to support asylum claim; alien testified that, on two occasions, she was arrested and detained by police in her native country of India for three or four days, but that on both occasions, she did not suffer injuries requiring medical attention and was released without payment of bribe or requirement that she report back to police. *Kaur v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 670, 2004 WL 1197450, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported conclusion that aliens did not establish past persecution or a well-founded fear of

8 U.S.C.A. § 1101

future persecution, as required in their applications for asylum; aliens' periodic inability to find employment and the brief detention of family members for police questioning did not rise to level of persecution, and none of them were subjected to physical violence or specific threats of serious harm. *Andrade v. Ashcroft*, C.A.9 2004, 99 Fed.Appx. 113, 2004 WL 1098775, Unreported. Aliens ↩ 53.10(3)

Even if alien did not waive issue by failing to argue claim before Board of Immigration Appeals (BIA), substantial evidence supported conclusion, in asylum proceeding, that he did not have a well-founded fear of persecution if he returned to Mauritania, even though he had been forcibly expelled and tensions over land redistribution continued; most of the expelled Mauritians had returned, and the most recent State Department country report indicated that there had been no reports of arbitrary arrests of returning refugees. *Sow v. Ashcroft*, C.A.6 2004, 97 Fed.Appx. 560, 2004 WL 958972, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported immigration judge's conclusion that alien had not established a well-founded fear of persecution if returned to Indonesia, thus denying asylum. *Tjandra v. Ashcroft*, C.A.3 2004, 91 Fed.Appx. 244, 2004 WL 557344, Unreported. Aliens ↩ 54.1(4.1)

Immigration judge's finding that alien failed to establish objective basis for her fear of returning to Uganda was reasonable, and thus, applications for asylum and withholding of removal were properly denied, even though alien testified that while she was working as herbologist in Uganda, she and her group were approached by apparent anti-government rebels, that group members were later interrogated by apparent government officials, and that their group's field assistants had been executed later as suspected rebels, where alien presented no evidence that government officials had come looking for her in place where she had lived before leaving Uganda, or had approached her mother and children who were 18 kilometers away. *Nakityo v. Ashcroft*, C.A.10 2004, 93 Fed.Appx. 187, 2004 WL 397232, Unreported. Aliens ↩ 53.10(3)

Alien's fears of future persecution in China, under government's family planning policies, were speculative, even though alien had fathered two children in the United States, and therefore he was not entitled to asylum; despite isolated incidents of physically coerced sterilization, Chinese government had formally prohibited physical coercion to compel sterilization and generally pursued its family planning goals through economic incentives, delayed family licenses, fines, and mandatory birth control. *Chun v. Ashcroft*, C.A.3 2004, 90 Fed.Appx. 425, 2004 WL 385444, Unreported. Aliens ↩ 53.10(3)

Alien did not have a reasonable fear of persecution if returned to home country of Bulgaria, as required to support application for asylum; alien's testimony was inconsistent with previous accounts he had given of reasons for leaving Bulgaria, alien presented no corroborative evidence, alien did not provide any of his articles to confirm that he was a journalist, alien was never beaten, arrested, or tortured and did not know whether it was government officials or criminals who threatened him, and country reports found little evidence that government in Bulgaria was suppressing journalists. *Stoev v. Ashcroft*, C.A.6 2004, 86 Fed.Appx. 914, 2004 WL 232729, Unreported. Aliens ↩ 54.1(4.1)

Aliens failed to establish that they had a well-founded fear of persecution if returned to home country, as required to support their application for asylum; alien's testimony was inconsistent with application regarding death of his father, timing and number of times alien was allegedly detained by political group, alien did not show that he had been seriously mistreated by political group, he had no contact with group in 14 years, group member who allegedly persecuted aliens was dead, and state department country report indicated group no longer existed. *Bazzi v. Ashcroft*, C.A.6 2004, 86 Fed.Appx. 884, 2004 WL 187559, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported conclusion that alien was not eligible for asylum, even though a comrade of his in a resistance group might have revealed his name to authorities; alien did not have a well-founded fear of persecution on account of his political opinion, inasmuch as alleged "hit list" document pre-dated his comrade's capture, list had alien's true name although he had never disclosed it to his comrade, and hit list appeared to be a reward list.

8 U.S.C.A. § 1101

Libiran v. Ashcroft, C.A.9 2003, 86 Fed.Appx. 249, 2003 WL 23097595, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported IJ's finding that alien, a citizen of India, did not have a well-founded fear of past persecution which would entitle him to asylum; although alien claimed the Punjabi police had attempted to kidnap him, alien had never been harmed by the police or any other person while he lived in India. *Singh v. Ashcroft*, C.A.3 2003, 83 Fed.Appx. 407, 2003 WL 22956019, Unreported. Aliens ↩ 54.1(4.1)

Immigration Judge (IJ) was not compelled, in asylum proceeding, to find that alien had a well-founded fear of persecution, even if two of alien's co-demonstrators disappeared after a parade in which alien took part; no past persecution was shown, alien had been in disguise in the parade, there was no evidence that the government was interested in finding him, and no remaining co-demonstrators had been harmed in the years since the parade. *Contreras v. Ashcroft*, C.A.9 2003, 83 Fed.Appx. 210, 2003 WL 22928791, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported determination that alien did not have an objectively reasonable fear of persecution if returned to Macedonia; alien provided no objective evidence to support speculation that he was called to report for military service and to report to police station for an interview, due to his participation in demonstrations, including one in which police violence resulted in deaths and injuries, and State Department Country Report stated that there were no confirmed reports of arbitrary arrest as result of the demonstration. *Klobochista v. Ashcroft*, C.A.9 2003, 83 Fed.Appx. 177, 2003 WL 22905282, Unreported. Aliens ↩ 54.1(4.1)

Neither aliens' worry about being able to find employment in their native Belarus on account of their religious affiliation nor alien's alleged facing of military service were he to return to Belarus amounted to an objectively reasonable fear of being specifically targeted for persecution if they were repatriated, so as to support their application for asylum and withholding of deportation. *Sashko v. I.N.S.*, C.A.9 2003, 81 Fed.Appx. 693, 2003 WL 22803858, Unreported. Aliens ↩ 53.10(3)

Alien failed to establish that she had a well-founded fear of future persecution, as required in her application for asylum, even though ALJ found alien to be credible, in her testimony and application, as to her subjective fears; alien failed to establish that her fear was objectively reasonable, inasmuch as she was found not to have been subjected to past persecution, and Immigration Judge (IJ) reasonably found threats against alien did not establish an objectively reasonable fear of future persecution. *Rancoj De Leon v. I.N.S.*, C.A.9 2003, 82 Fed.Appx. 535, 2003 WL 22746021, Unreported. Aliens ↩ 53.10(3)

Substantial evidence supported conclusion, in asylum proceeding, that alien's fear of future persecution, if she returned to the Philippines, was not objectively reasonable, even though alien was credible and despite her testimony of continued death threats; there was no evidence that the threats specifically targeted alien for her political opinions or that the threats were likely to be carried out, peace negotiations were in progress, and there was no evidence that alien was a person of particular interest or would be singled out for her political opinion. *Roxas v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 642, 2003 WL 22735881, Unreported. Aliens ↩ 54.1(4.1)

Alien failed to establish a factual basis to support his asserted fear of future persecution based on his Chinese ethnicity if removed to Indonesia as required to support his application for asylum, withholding of removal, and protection under the Convention Against Torture; alien's family has lived in same area without incident. *Lauw v. Ashcroft*, C.A.3 2003, 80 Fed.Appx. 227, 2003 WL 22490363, Unreported, republished at, withdrawn from bound volume. Aliens ↩ 53.10(3); Treaties ↩ 8

Substantial evidence supported decision that alien, a citizen of Peru, did not suffer past persecution or have a well-founded fear of future persecution, as required in his application for asylum; alleged guerrilla attack on bus did not appear on alien's asylum application, there was no reason to believe that guerrillas were still pursuing alien, and it was unlikely that Peruvian military would falsely accuse alien of being associated with guerrillas simply because of the area of the country he came from. *Arce-Garibay v. Ashcroft*, C.A.3 2003, 79 Fed.Appx. 516, 2003

8 U.S.C.A. § 1101

WL 22455412, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ) conclusion that fundamental change in circumstances in India rebutted alien's well-founded fear of future persecution, and thus that alien was not eligible for asylum or withholding of removal, was not supported by substantial evidence, where evidence of country conditions, while noting improvement in some areas, also cited continued widespread abuses of Sikhs by police and paramilitary units in India. *Singh v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 311, 2003 WL 22435188, Unreported. Aliens ↻ 54.1(4.1)

Alien who had been forced to perform religious dances for a rebel group in Sri Lanka lacked a well-founded fear of future persecution by the government if she returned, as required in her application for asylum, even though some of her dances had been videotaped; alien had not been singled out by the government and there was no evidence that the government would identify her as a rebel supporter. *Santhalingam v. Ashcroft*, C.A.3 2003, 71 Fed.Appx. 911, 2003 WL 21754981, Unreported. Aliens ↻ 53.10(3)

Evidence that alien, a Chinese citizen, feared that Chinese government would persecute him because he provided intelligence to U.S. government during Viet Nam war, did not compel conclusion that alien had a well-founded fear of future persecution, as required in his petition for asylum. *Luu v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 659, 2003 WL 21751839, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that aliens were not refugees eligible for asylum; alien's dismissal from his job, his unsuccessful attempts to obtain legal redress, and threats made against his family, did not reasonably create requisite fear of persecution. *Rodriguez v. I.N.S.*, C.A.5 2003, 70 Fed.Appx. 776, 2003 WL 21697214, Unreported. Aliens ↻ 54.1(4.1)

Alien's testimony, in her claim for asylum and withholding of deportation, established a well-founded fear of future persecution; alien had a subjective fear of returning to Armenia, she testified that members of a political party there had threatened to harm herself and her daughter if her husband continued his political support for another party, there was evidence that at least three other family members had been harmed, and the threatened harm was on account of political beliefs imputed to alien. *Ambartsoumian v. I.N.S.*, C.A.9 2003, 70 Fed.Appx. 407, 2003 WL 21480319, Unreported. Aliens ↻ 53.10(3)

Evidence was insufficient to find that alien had a reasonable fear of persecution if returned to Sri Lanka, as required in his application for asylum and withholding of deportation; alien's father had not been harmed because of his political activity, despite alleged threats, alien's fear that he might be forcibly recruited by opposition forces was insufficient to establish fear of persecution, and alien did not establish that he had suffered persecution on account of political opinion in the past, or that he reasonably feared such persecution. *Wimalaratna v. Ashcroft*, C.A.6 2003, 69 Fed.Appx. 271, 2003 WL 21456235, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported determination of the Board of Immigration Appeals (BIA) that alien failed to show past persecution or a well-founded fear of future persecution, and thus was not eligible for political asylum; incident in which alien was detained for 24 hours on suspicion of celebrating Albanian Flag Day was not sufficiently extreme or pervasive to constitute past persecution, and alien's fear that he would be drafted into Serbian army should he be returned to Kosovo was not well-founded given changed country conditions. *Bicaj v. Ashcroft*, S.D.N.Y.2003, 2003 WL 21355488, Unreported. Aliens ↻ 54.1(4.1)

Son of former security officer for deposed Philippine president did not have well-founded fear of persecution, and thus was not entitled to asylum, where government has never issued arrest warrant or extradition notice against father, father received honorable discharge from Philippine military, and other former security officers had returned to Philippines without incident. *Almado v. I.N.S.*, C.A.9 2003, 66 Fed.Appx. 723, 2003 WL 21267451, Unreported. Aliens ↻ 53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Alien, a Russian citizen, had no well-founded fear of future persecution, as required in his application for asylum; there was no evidence that anti-Semitic organization had imputed any political belief to alien since he left Russia, organization's threatening phone calls to alien's family focused on its belief that alien possessed an inculpatory videotape, and Russian journalists were not a targeted social group. *Bortnikov v. I.N.S.*, C.A.9 2003, 63 Fed.Appx. 287, 2003 WL 1793389, Unreported. Aliens 53.10(3)

Asylum applicant purporting to be citizen of the Sudan, member of Dinka tribe, and son of member of Sudan People's Liberation Army (SPLA) failed to establish past persecution or well-founded fear of future persecution, where the only information regarding alleged invasion of his home, killing of his mother, and imprisonment of his father came from persons who did not witness alleged attack, and where applicant neither spoke Dinka nor possessed physical characteristics of Dinka. *Abraham v. Ashcroft*, C.A.3 2003, 59 Fed.Appx. 476, 2003 WL 734196, Unreported. Aliens 53.10(3)

Board of Immigration Appeals' (BIA) determination that Guatemalan citizens failed to establish past persecution or objectively reasonable fear of future persecution, and thus were not entitled to asylum, was supported by substantial evidence; petitioner's testimony about murders of his uncle, legislative candidate, and political supporters who urged investigation of uncle's murder was vague, inconclusive, uncorroborated, and inconsistent with petitioner's written application, and petitioners' family members continued to live in Guatemala without suffering harm or threats. *Aguirre-Carrillo v. I.N.S.*, C.A.8 2000, 230 F.3d 1362, Unreported. Aliens 54.1(4.1)

Chinese teacher did not demonstrate well-founded fear of persecution should he be returned to China, so as to qualify for asylum, notwithstanding his testimony that he feared arrest and imprisonment based on length of his unauthorized absence from country and because of his failure to report to education authorities as ordered; subsequent to his leaving, China provided teacher with passport, allowed his wife and children to travel from China, and provided "notarial certificate" that alien had no criminal convictions. *Ni v. I.N.S.*, C.A.6 2002, 54 Fed.Appx. 212, 2002 WL 31890910, Unreported. Aliens 53.10(3)

180. Remaining in country, refugee


Immigration Judge's (IJ) conclusions, that Ethiopian asylum applicant from Oromo ethnic group was not credible and failed to establish well-founded fear of future persecution, were supported by substantial evidence, including State Department report that Oromos were not persecuted for ethnicity alone, and fact that applicant remained in Ethiopia for years after she first began to fear government. *Alemu v. Gonzales*, C.A.8 2005, 403 F.3d 572. Aliens 54.1(4.1)


Alien failed to show that his fear of future persecution was either well founded or reasonable in support of his application for asylum; conditions in native country were not such that alien's fear was objectively reasonable, many religious groups of similar believers remained active in home country, alien's family continued to live in home county without incident, and alien lived in home country for two years after second incident of detainment while remaining a member of same religious group without incident. *Tawm v. Ashcroft*, C.A.8 2004, 363 F.3d 740, rehearing and rehearing en banc denied. Aliens 53.10(3)


Substantial evidence supported the conclusion that asylum applicant and his family had not suffered past persecution; while the detention, torture and death of applicant's son was tragic, fact remained that applicant and family stayed in Cambodia for twelve years after that, during which time applicant's activities on behalf of political organization became more visible and open, and other family members of the applicant remained in Cambodia, apparently without experiencing any persecution. *Yuk v. Ashcroft*, C.A.10 2004, 355 F.3d 1222. Aliens 53.10(3)


Substantial evidence supported conclusion, in asylum proceeding, that alien, a nurse allegedly recruited by a


8 U.S.C.A. § 1101


guerrilla group for his medical skills, lacked a well-founded fear of persecution if he returned to Colombia; alien was not credible inasmuch as he initially claimed that several of his colleagues had been kidnapped, but later testified he did not know of such kidnappings, and alien, after receiving two phone calls, continued to reside in the same place for another year and a half without receiving another call or threat. *Viveros-Rodriguez v. Ashcroft*, C.A.3 2005, 125 Fed.Appx. 382, 2005 WL 236594, Unreported. Aliens  54.1(4.1)


Alien's eligibility for asylum was not defeated by fact that alien remained in his native country for a year after deserting army; alien was in hiding during that time, there was evidence that army was searching for alien, and policies concerning what army would do to deserters became increasingly more menacing. *Abdul Ritha v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 606, 2004 WL 2943194, Unreported. Aliens  53.10(3)

Incidents regarding which asylum applicant testified, specifically that on three occasions he was detained by military police in his native country of Argentina, and on one of these occasions he was beaten because he was participating in student demonstration against his high school, were isolated incidents which could not alone support contention of persecution, given that applicant did not leave Argentina until approximately two decades after incidents occurred and did not present any evidence of persecution in intervening years. *Pineiro v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 84, 2004 WL 2915235, Unreported. Aliens  53.10(3)

Substantial evidence supported finding that alien did not demonstrate a well-founded fear of future persecution which would entitle her to asylum; although alien's brother had been murdered years earlier, alien presented no evidence that, in the nearly four-year interim between her brother's death and her departure, she or her family were threatened or harmed as a result of land disputes which had allegedly led to her brother's death, and there was no evidence that alien's parents and siblings, who remained in native country, had been harmed or threatened since alien left. *Paraense-Almeida v. Ashcroft*, C.A.1 2004, 105 Fed.Appx. 295, 2004 WL 1852885, Unreported. Aliens  53.10(3)

Substantial evidence supported finding that alien failed to establish that he suffered past persecution or had well-founded fear of future persecution, based on his participation in political party, which would entitle him to asylum; alien claimed that he and his family received frequent death threats, that several colleagues were killed during three year period, and that he decided to flee at end of that period, but alien remained in country for ten years after first receiving threats, only notified authorities of threats on two occasions, alien's family remained in country without threats or harm since alien fled, and alien did not produce evidence to corroborate threats to him or harm to colleagues. *Diaz Flores v. Ashcroft*, C.A.5 2004, 104 Fed.Appx. 418, 2004 WL 1809281, Unreported, certiorari denied 125 S.Ct. 2270, 544 U.S. 1033, 161 L.Ed.2d 1061. Aliens  54.1(4.1)

Substantial evidence supported finding that alien failed to point to credible, direct, and specific evidence which would show an objectively reasonable fear of persecution required for asylum; alien continued to reside in her native country for three years after her husband's death, and alien's children remained in native country and appeared to be safe. *Rodas v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 145, 2004 WL 1435115, Unreported, opinion withdrawn on denial of rehearing. Aliens  54.1(4.1)

Alien failed to establish well-founded fear of future persecution if she returned to Cambodia, in support of asylum request, given that alien continued to live and work unharmed in Cambodia for nearly three months after her life allegedly was threatened for first time and remained in Cambodia for more than three weeks after violent political demonstration, despite having valid passport and United States visa, that alien was one of many supporters of rival to political leader and held no position in rival's party, that political stability had returned to Cambodia shortly after demonstration, and that alien's children and mother continued to live in Cambodia, apparently without objective fear of danger. *Chan v. Ashcroft*, C.A.1 2004, 93 Fed.Appx. 247, 2004 WL 626795, Unreported. Aliens  53.10(3)

Aliens, citizens of Columbia, failed to establish persecution, as required to support application for asylum;

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

although the family allegedly received three death threats based on family's political activities, the family continued to live in Columbia for approximately a year without incident following the threats. *Torres v. Ashcroft*, C.A.5 2004, 88 Fed.Appx. 706, 2004 WL 316025, Unreported. Aliens ⚡ 53.10(3)

Substantial evidence supported Immigration Judge's (IJ) decision that alien seeking asylum failed to establish a well-founded fear of future persecution, where evidence showed that alien remained living in Ghana for years following incident of past persecution, he attended a university and worked for government without any harm or threatened harm to him or his family, his family and children remained in Ghana, and country conditions in Ghana had changed since he left. *Amadu v. Ashcroft*, C.A.8 2003, 84 Fed.Appx. 711, 2003 WL 23100021, Unreported. Aliens ⚡ 53.10(3)

Substantial evidence supported determination that alien who had belonged to political party which lost Guatemala presidential election did not show well-founded fear of persecution that would support claim for asylum or clear probability of persecution that would support withholding of deportation; alien remained in country for several months after his party lost election, party that he claimed to fear was no longer in power, death of his party's presidential candidate was not tied to any perceived threat against himself, his father had not been persecuted in Guatemala, and his fear of recruitment by military group did not constitute persecution. *Carrera v. Ashcroft*, C.A.3 2003, 56 Fed.Appx. 95, 2003 WL 283167, Unreported. Aliens ⚡ 53.10(3)

Substantial evidence supported determination by Board of Immigration Appeals (BIA) that alien had failed to establish past persecution on account of an actual or imputed political opinion, or a subjectively genuine and objectively reasonable fear of future persecution, and thus that alien was not eligible for asylum and withholding of deportation; threats against alien's common law husband, on which she relied, may have resulted from his performance of his duties as local mayor, and alien remained in her home for four years following original threat to her husband, but was never physically harmed. *De Leon v. I.N.S.*, C.A.8 2000, 205 F.3d 1345, Unreported. Aliens ⚡ 53.10(3); Aliens ⚡ 54.1(4.1)

181. Return to country, refugee

Egyptian asylum applicant of Coptic Christian faith failed to establish subjective fear of future persecution based on religion, where he had returned to Egypt on three occasions after alleged persecution occurred, once for 23 days, allegedly to renew his passport, which he could have done outside of Egypt, once for 25 days to renew his visa to stay in Greece, and once for ten days to visit his mother. *Diab v. Ashcroft*, C.A.1 2005, 397 F.3d 35. Aliens ⚡ 53.10(3)

Evidence supported immigration judge's determination that alien did not have a well-founded fear of future persecution if he returned to his native Guatemala, as required to support his asylum application; alien willingly returned to Guatemala on several occasions during the time period when he was allegedly being threatened, remained in Guatemala for more than two years after the alleged persecution peaked, and his family had not suffered persecution since he left Guatemala. *Carcamo-Recinos v. Ashcroft*, C.A.1 2004, 389 F.3d 253. Aliens ⚡ 54.1(4.1)

Alien, a native and citizen of Kenya, failed to establish a well-founded fear of future persecution if returned to Kenya as required to support his application for asylum, even though alien established past persecution by Kenyan government based on his political activity in opposition to Kenya's tea farming policies, where alien returned to Kenya and home village for two months, alien undertook activities which placed him in direct contact with government officials, alien's presence in country was known by family, other tea farmers, and government officials, and alien suffered no mistreatment at hands of Kenyan government during two-month stay. *Ngaruruih v. Ashcroft*, C.A.4 2004, 371 F.3d 182. Aliens ⚡ 53.10(3)

Guatemalan national failed to establish either past persecution on account of her husband's participation in human

8 U.S.C.A. § 1101

rights group or well-founded fear of future persecution if she were returned to Guatemala, and was not eligible for grant of asylum based solely on fact that her family had received threatening telephone calls from unnamed persons, and that, for unknown reasons, certain unidentified persons had allegedly fired shots at her house, especially where, despite such alleged threats and firing of shots, she and her daughter had returned to Guatemala for 28 days in order to obtain medical treatment that was available more cheaply in Guatemala than in the United States. *Blanco de Belbruno v. Ashcroft*, C.A.4 2004, 362 F.3d 272. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that alien seeking asylum failed to show particularized risk of persecution needed to demonstrate objective, well-founded fear of persecution; alien was able to practice her religion, attend college, and work in her country, with only isolated incidents of harassment and discrimination by her neighbors of different religion, and alien made several trips between the United States and her country during four-year period without incident. *Tatiratu v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 91, 2005 WL 79100, Unreported. Aliens ↻ 53.10(3)

Alien's willingness to return to Armenia prior to applying for asylum did not rebut presumption of well-founded fear of persecution to which she was entitled upon finding that she was subjected to past persecution on account of political opinion; even if alien lacked well-founded fear of persecution at time she returned to Armenia because of her hope that political conditions had improved with election of new president, her subsequent experience, when government officials harassed her immediately upon her return to Armenia, confirmed her earlier subjective and objective fear that if she stayed in Armenia, or was sent back, further persecution would be likely. *Davtyan v. Ashcroft*, C.A.9 2004, 112 Fed.Appx. 620, 2004 WL 2404079, Unreported. Aliens ↻ 54.1(2)

Substantial evidence supported finding at asylum proceeding that alien did not have subjective fear of future persecution, given his repeated returns to his country after trips to two other countries. *Delva v. Ashcroft*, C.A.1 2004, 108 Fed.Appx. 648, 2004 WL 2107919, Unreported. Aliens ↻ 53.10(3)

Board of Immigration Appeals' (BIA) conclusion that alien failed to present credible, direct, and specific evidence that would support objectively reasonable fear of persecution was supported by substantial evidence in asylum proceeding; alien had returned to Poland for month-long visit during which he experienced no problems with the authorities, his father, an activist and distributor of propaganda for Polish anti-Communist group, testified that he was unaware of any former members of group having problems in Poland at present time, and State Department reports established that anti-Communists were not likely to be killed, kidnapped, tortured, arbitrarily arrested, arbitrarily detained, or prohibited from assembling. *Rusz v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 584, 2004 WL 1737942, Unreported. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals (BIA) erred in concluding that alien, who was otherwise credible as to his well-founded fear of persecution based on his participation in pro-democracy demonstrations in China, was not a refugee; alien's testimony that he hoped to return to China to see his fiancée and family after gaining refugee status did not undermine fact that he was unwilling or unable to return, and his several previous returns to China took place before he was caught, detained, tortured, and forced to confess to participating in anti-communist activities, such that he faced additional punishment if returned. *Lin v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 8, 2004 WL 1491657, Unreported. Aliens ↻ 53.10(3)

Husband's lengthy annual visits to Russia during three years after family came to the United States and before they applied for asylum rebutted presumption, for purposes of establishing refugee status, that family, who suffered past persecution in Russia as a result of their ties to an Armenian group and their support of Armenian refugees, had well-founded fear of future persecution. *Tatulyan v. Ashcroft*, C.A.10 2004, 103 Fed.Appx. 338, 2004 WL 1447979, Unreported. Aliens ↻ 54.1(2)

Substantial evidence supported immigration judge's conclusion that alien did not have a well-founded fear of future persecution in Togo, as required for alien's asylum claim; for two years following an arrest alien felt safe enough to

8 U.S.C.A. § 1101

travel back and forth to Togo, alien presented no evidence that security forces or other government officials continued to look for her following her arrest, and, although alien testified that Togolese forces destroyed her parent's home, alien failed to provide any evidence that the attack was directed at her. *Joppa v. Ashcroft*, C.A.8 2004, 97 Fed.Appx. 694, 2004 WL 1125366, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported finding that changed country conditions rebutted presumption, for purposes of alien's asylum claim, of well-founded fear of future persecution; alien had made three return trips to country to visit his family for substantial periods of time without encountering significant problems, and state department country conditions report stated that political conditions in country had improved substantially from those existing when alien departed and that political party of which alien's family was affiliated with when it suffered persecution under former Communist regime had become leading political party. *Lazarov v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 106, 2004 WL 363438, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported conclusion that alien did not have a well-founded fear of future persecution if he were returned to the Philippines; he failed to allege any facts to support a reasonable objective fear, and the subjective basis of his alleged fear was undermined by fact that he returned to the Philippines once after his first trip to the U.S., and his family continued to live there without harassment for three years before joining him in the U.S. *Mamalayan v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 657, 2003 WL 21751836, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals's (BIA) determination that alien did not have a well-founded fear of persecution as result of "whistle-blowing" against official corruption, as would support grant of asylum, was not supported by substantial evidence, although alien voluntarily returned to his home country after he had heard that local officials had issued a warrant for his arrest, where BIA failed to recognize difference between alien returning voluntarily and being placed by the Immigration and Naturalization Service (INS) into custody of allegedly corrupt local authorities pursuant to international arrest request issued against him based on fabricated documents and trumped-up criminal charges. *Derevianko v. Reno*, C.A.3 2003, 55 Fed.Appx. 609, 2003 WL 214464, Unreported. Aliens ↪ 54.1(4.1)

Finding of Board of Immigration Appeals (BIA), that asylum applicant of Romanian descent failed to establish well-founded fear of future persecution in Serbia based upon imputed political opinion resulting from her son's draft evasion, was supported by substantial evidence, where Serbian authorities did not harm her prior to her departure from Serbia, she returned to Serbia and lived there for eight months without encountering harm, and her son was still living in Serbia. *Caran v. Ashcroft*, C.A.3 2003, 55 Fed.Appx. 601, 2003 WL 152847, Unreported. Aliens ↪ 53.10(3)

Alien's uncorroborated testimony failed to establish he was victim of past persecution in El Salvador as result of government's alleged suspicion that his brother-in-law printed anti-government propaganda, and thus alien was not eligible for asylum, absent specific evidence of alien's persecution; alien had voluntarily returned to El Salvador after allegedly leaving to escape persecution, and was able to obtain passport and visa, his family remaining in El Salvador had not been harmed since he left, and political violence in El Salvador had subsided substantially. *Mendez-Fuentes v. I.N.S.*, C.A.8 2000, 230 F.3d 1363, Unreported. Aliens ↪ 53.10(3); Aliens ↪ 54.1(4.1)

182. Changed conditions, refugee--Generally

Board of Immigration Appeals (BIA) abused its discretion in denying Iranian applicants' motion to reopen their asylum case based on changed country conditions, given reports describing sharply deteriorating human rights situation, torture in prisons, increasingly virulent and official antisemitism, and prohibition against interfaith marriage which showed that situation had worsened since applicants' original application. *Norani v. Gonzales*, C.A.2 2006, 451 F.3d 292. Aliens, Immigration, And Citizenship ↪ 587(4)

8 U.S.C.A. § 1101

In reviewing the decision of the Board of Immigration Appeals (BIA) terminating Mauritanian alien's asylum status, the Court of Appeals would not consider the immigration judge's (IJ) decision concerning changed country conditions, where the BIA affirmed the IJ's termination decision, based entirely on its finding that alien committed fraud in his asylum application. *Diallo v. Gonzales*, C.A.10 2006, 447 F.3d 1274. Aliens, Immigration, And Citizenship ↻ 613

Determination by Board of Immigration Appeals (BIA), that circumstances had changed sufficiently to allow asylum applicant of Soninke ethnic background to return to Mauritania, was not supported by reasonable, substantial, and probative evidence in the record when considered as a whole, in that BIA used outdated State Department report, accepted general statements in report as fact, ignored complexities of reported information, did not make individualized assessment of applicant's situation, and failed to consider his evidence which contradicted changed conditions described in report. *Tambadou v. Gonzales*, C.A.2 2006, 446 F.3d 298. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Even assuming that government, to rebut presumption that Kosovar Muslim had well-founded fear of future persecution if she were returned to Kosovo based on persecution to which she had been exposed in past, had to produce evidence of changed country conditions which negated alien's individual fears of persecution, evidence presented by government was sufficient to satisfy this burden, where all instances of past persecution cited by alien involved persecution at hands of Serbian-dominated police or Serbian paramilitary forces, and where these Serbian paramilitary forces had since left Kosovo, and Kosovo administration and its police were no longer dominated by Serbs. *Shehu v. Gonzales*, C.A.5 2006, 443 F.3d 435. Aliens, Immigration, And Citizenship ↻ 54.1(2)

Board of Immigration Appeals (BIA) erred by failing to consider alien's argument, in his motion to reconsider, that a change in law had occurred which favorably affected his asylum claim, which was based on his wife's forced sterilization in China; an actual change in law occurred subsequent to issuance of deportation order, in that coercive family planning policies, including forced abortion and sterilization, were made per se persecutive. *Wu v. I.N.S.*, C.A.2 2006, 436 F.3d 157. Aliens ↻ 54(5)

Immigration Judge (IJ) could determine issue of future persecution of Guatemalan asylum applicant without first determining whether past persecution had occurred, since government provided enough evidence to rebut presumption established by any showing of past persecution, and showed that there was no sufficient likelihood that applicant would face persecution should he be returned to Guatemala, where Country Conditions Report indicated that guerillas no longer needed to engage in militant activities, and Report addressed head-on applicant's fear that guerillas would retaliate against him for frustrating their recruitment efforts. *Palma-Mazariegos v. Gonzales*, C.A.1 2005, 428 F.3d 30. Aliens ↻ 54.1(2)

Decision by the Board of Immigration Appeals (BIA) that alien's allegations of past persecution in disputed territory to which he was purportedly forced to relocate by Moroccan government, even if credited as true, were not such as to make him eligible for grant of asylum, on theory that changed conditions in Morocco had made alien's fears of future persecution unreasonable, was not supported by any inference that could rationally be drawn from country report on the BIA relied for this conclusion, so that case had to be remanded to the BIA so that it could provide requisite reasoned explanation or decide case on some other basis, where country report failed to discuss Morocco's alleged policy of requiring persons with alien's ethnic background to relocate to this disputed territory, so that no determination could be made about whether this alleged policy was still in place, and spoke only in very general terms about how Morocco's human rights record was improving. *Zarouite v. Gonzales*, C.A.1 2005, 424 F.3d 60. Aliens ↻ 54.3(6)

Substantial evidence supported determination of Immigration Judge (IJ) that ethnic Albanian alien was not "refugee," as required for alien to obtain asylum under Immigration and Nationality Act (INA); incidents of interrogation, detention and harassment by police were not severe enough to constitute persecution, and alien's fear of future persecution was not well-founded in light of changes in home region. *Prela v. Ashcroft*, C.A.7 2005, 394

8 U.S.C.A. § 1101

F.3d 515. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's determination that alien would not face an objectively significant risk of persecution if returned to the Former Yugoslav Republic of Macedonia, as required for alien's asylum claim; the country had transitioned into a democracy, and questioning sessions by the police, which alien had previously been subjected to, were no longer lawful. *Alimi v. Ashcroft*, C.A.7 2004, 391 F.3d 888. Aliens ↪ 53.10(3)

Administrative record did not demonstrate a fundamental change in circumstances in Somalia, as required to rebut presumption that asylum applicant, who was native of Somalia and member of minority clan, was subject to future persecution if returned to Somalia; State Department report referred to improved conditions in Somalia but noted absence of central government and continued clan based conflict, report contained no information regarding current status of applicant's clan, and report stated that members of minority clans continued to be harassed. *Awale v. Ashcroft*, C.A.8 2004, 384 F.3d 527. Aliens ↪ 54.1(2)

Finding that asylum applicant who had been arrested and beaten in past for participating in violent political demonstration in which people were allegedly killed failed to demonstrate requisite well-founded fear of future persecution if removed to his country of origin was supported by substantial evidence, and would not be disturbed on judicial review of the Board of Immigration Appeals' (BIA's) decision; even assuming that these police beatings qualified as past persecution, government presented evidence that political conditions had changed, and that alien would not be persecuted based upon his political affiliation. *Shardar v. Ashcroft*, C.A.3 2004, 382 F.3d 318. Aliens ↪ 54.1(4.1)

Government rebutted presumption that asylum applicant, who was ethnic Albanian and native of Kosovo, and who had suffered past persecution by Serbian soldiers, would suffer future persecution if returned to Yugoslavia, where Slobodan Milosevic had been removed from office, interethnic violence in Kosovo was now directed at Serbs, and neither regaining of control by "hard-line Serb nationalists" nor assassination of Prime Minister Zoran Djindjic caused wave of violence against ethnic Albanians. *Brucaj v. Ashcroft*, C.A.7 2004, 381 F.3d 602. Aliens ↪ 54.1(2)

Record did not compel conclusion that changed country conditions in Bulgaria, namely that former communist regime was no longer in power, would obviate any presumption that asylum applicant had well-founded fear of persecution, inasmuch as regime change would not necessarily eliminate objective basis for applicant's fear of persecution at hands of his former oppressors, and there was evidence that Bulgaria's former communist bigwigs retained significant power. *Mihaylov v. Ashcroft*, C.A.1 2004, 379 F.3d 15. Aliens ↪ 54.1(2)

Immigration Judge's (IJ) conclusion that, due to changed country conditions, asylum applicant, who was ethnic Albanian from Montenegro, had no reason to fear persecution from Montenegrin police, was not supported by substantial evidence, where applicant testified police had come to his parents' home looking for him, and IJ's observation that Montenegrin government had shown signs of self-determination did nothing to refute claims of police-initiated persecution. *Berishaj v. Ashcroft*, C.A.3 2004, 378 F.3d 314. Aliens ↪ 54.1(4.1)

Immigration judge's finding that Ethiopian national's subjective fears of persecution in his homeland, based upon his ethnicity and political activities abroad, were not objectively reasonable, as required to make him eligible for asylum, was supported by substantial evidence, including evidence of value of his education to his homeland and State Department report finding that Ethiopian government had actually encouraged expatriates to return to Ethiopia and participate in its political process, as long as they renounced violence. *Gebrehiwot v. Ashcroft*, C.A.8 2004, 374 F.3d 723. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding, upon denial of alien's application for political asylum on the basis of his Eritrean ethnicity and his political opinion, that alien did not have a well-founded fear of

8 U.S.C.A. § 1101

future persecution because conditions had changed in Ethiopia since the alien's departure from that country; IJ found that major New York newspaper reported that abuse of ethnic Eritreans had abated, that alien's family had not yet been deported from Ethiopia, and that no credible report was presented to indicate that Ethiopians of Eritrean descent were still being deported to Eritrea from Ethiopia, and Court of Appeals took judicial notice of current State Department report confirming that Ethiopian Government had stopped forcibly deporting Eritreans. *Medhin v. Ashcroft*, C.A.7 2003, 350 F.3d 685. Aliens ↻ 54.1(4.1)

Immigration judge (IJ) reasonably found that Immigration and Naturalization Service (INS) met its burden to rebut presumption of fear of persecution through changed country conditions in Guatemala, where 1997 State Department report indicated considerable change, and applicant's response merely contained reference to assassination of bishop. *Quevedo v. Ashcroft*, C.A.1 2003, 336 F.3d 39. Aliens ↻ 54.1(4.1)

Alien, an Ethiopian citizen, did not have a well-founded fear of future persecution in Ethiopia, as required for her application for asylum, where Ethiopia was undergoing a transition to a federal government system with elected government. *Fesseha v. Ashcroft*, C.A.1 2003, 333 F.3d 13. Aliens ↻ 53.10(3)

Finding of Board of Immigration Appeals (BIA), that Guatemalan asylum applicant failed to establish objectively reasonable fear of future persecution was supported by substantial evidence, where he had been kidnapped and beaten by persons believed to be guerillas, he had been threatened, and his cousin had been killed, but Guatemala's civil war had concluded, reason for threats was unclear, cause of cousin's death was unclear, and other relatives had lived, undisturbed, in Guatemala for more than decade. *Guzman v. I.N.S.*, C.A.1 2003, 327 F.3d 11. Aliens ↻ 53.10(3)

Substantial evidence supported the Board of Immigration Appeals's (BIA) decision that asylum seeker lacked well-founded fear of persecution, where it was unlikely, 11 years and two regime changes later, that anyone in a position of power would remember alien's activities or be motivated by those activities to persecute him, especially in light of fact that alien did not suffer severe consequences for his political or religious actions at time he acted. *Useinovic v. I.N.S.*, C.A.7 2002, 313 F.3d 1025. Aliens ↻ 54.1(4.1)

Even if asylum applicants had successfully established some form of past persecution, evidence supported finding that they were unlikely to experience a recurrence of that persecution upon return to Bulgaria, given the passage of time since their departure coupled with the country's progress toward democracy; applicants' family members continued to live unmolested in their native country, Bulgarian government did not interfere with their efforts to leave the country and had not interfered with their property in Bulgaria, and therefore applicants did not have a well-founded fear of future persecution. *Toptchev v. I.N.S.*, C.A.7 2002, 295 F.3d 714. Aliens ↻ 54.1(4.1)

State Department report prepared in 1998, indicating that peace accord had been signed by Guatemalan National Revolutionary Unity Guerrillas in 1996 and that many guerrilla forces were now disarmed, did not establish that conditions had changed in Guatemala since 1991 sufficiently to overcome presumption of well-founded fear of future persecution, for purposes of asylum application filed by wife and son of Guatemalan army colonel. *Rios v. Ashcroft*, C.A.9 2002, 287 F.3d 895. Aliens ↻ 54.1(2)

Asylum claim alleging past persecution in Russia by Communists was precluded by changed country conditions, where 1995 State Department report stated persecution in Russia based on views expressed in late eighties or early nineties was highly unlikely, applicant introduced no evidence of threats of persecution since early nineties, and applicant said he wasn't sure what would happen to him if he returned to Russia. *Yatskin v. I.N.S.*, C.A.1 2001, 255 F.3d 5. Aliens ↻ 53.10(3); Aliens ↻ 54.1(4.1)

Substantial evidence supported decision of Board of Immigration Appeals (BIA) that Romanian asylum applicant, who alleged that he was harassed both before and after overthrow of Ceausescu regime because of his anti-Communist beliefs and that Romania was currently run by former communists, failed to demonstrate

8 U.S.C.A. § 1101

well-founded fear of persecution; State Department report indicated that Romania had been profoundly transformed and that anti-Communist views were not mainstream, and applicant failed to identify any highly credible source contradicting Department's conclusions. *Roman v. I.N.S.*, C.A.7 2000, 233 F.3d 1027. Aliens 54.1(4.1)

Decision of Immigration Judge (IJ) that applicant, who had been political activist and supporter of women's rights in Suriname, lacked well-founded fear of future persecution was supported by substantial evidence; applicant testified that she moved to United States "to have a quiet life * * * and bring up her children," her alleged detentions had taken place more than four years prior to her request for asylum, Suriname government had since converted from dictatorship to democracy, and, although human rights abuses had not subsided entirely, they had diminished. *Nelson v. I.N.S.*, C.A.1 2000, 232 F.3d 258. Aliens 54.1(4.1)

Determination by Board of Immigration Appeals (BIA), that conditions in Uganda had improved sufficiently to permit asylum applicant to return without fear of persecution based on his political beliefs, was supported by substantial evidence, including State Department report detailing Uganda's human rights progress since applicant was arrested and beaten in 1993 for expressing viewpoints in support of opposition party. *Gonahasa v. U.S. I.N.S.*, C.A.4 1999, 181 F.3d 538. Aliens 54.1(4.1)

Alien failed to establish objectively reasonable fear of future persecution should he return to his home country of Bulgaria, and thus was not entitled to asylum; Immigration and Naturalization Service (INS) successfully rebutted presumption of future persecution by proving that conditions in Bulgaria had changed since alien's departure, and fact that military and court summons had been issued since his departure did not establish likelihood of future persecution, but represented only attempt by Bulgarian government to recoup cost of alien's police training. *Kratchmarov v. Heston*, C.A.8 1999, 172 F.3d 551. Aliens 54.1(2)

Substantial evidence, including evidence of changed country conditions, supported finding of immigration judge (IJ) that alien seeking asylum did not have well-founded fear of future persecution should he be returned to El Salvador; El Salvador's civil war ended over six years previously, guerilla organization which allegedly had persecuted alien had metamorphosed into a legitimate political party, and State Department reports indicated that the drumbeat of politically motivated murders had become inaudible. *Aguilar-Solis v. I.N.S.*, C.A.1 (Mass.) 1999, 168 F.3d 565. Aliens 54.1(4.1)

Nicaraguan national no longer had a well-founded fear of persecution by Sandinista government should he return, and, thus, was not entitled to asylum, where Sandinistas had ceased to control the Nicaraguan government following an election defeat. *Rhoa-Zamora v. I.N.S.*, C.A.7 1992, 971 F.2d 26, modified on denial of rehearing, certiorari denied 113 S.Ct. 1943, 507 U.S. 1050, 123 L.Ed.2d 649, rehearing denied 113 S.Ct. 2401, 508 U.S. 933, 124 L.Ed.2d 302, certiorari denied 113 S.Ct. 2331, 508 U.S. 906, 124 L.Ed.2d 243. Aliens 53.10(3)

Nature of change of government in alien's homeland was substantial evidence that alien did not have well-founded fear of persecution and thus was not eligible for asylum upon that ground. *Gutierrez-Rogue v. I.N.S.*, C.A.D.C.1992, 954 F.2d 769, 293 U.S.App.D.C. 338.

Evidence concerning political changes in Poland supported determination of Bureau of Immigration Appeals (BIA) that Polish alien who had been member of Solidarity union no longer had well-founded fear of persecution by Polish government on account of his activities, in determining whether he was entitled to asylum in United States. *Wojcik v. I.N.S.*, C.A.8 1991, 951 F.2d 172. Aliens 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien, a native of Macedonia, did not have well-founded fear of future persecution in light of changed country conditions; state department report indicated that ethnic Albanian insurgency had ended and that Macedonian government had granted amnesty to those who, like alien, had been accused of providing financial support to insurgents, abuses against Albanian population had

8 U.S.C.A. § 1101

decreased significantly, and government had granted Albanians many of the rights they had been demanding. *Reci v. Gonzales*, C.A.2 2006, 2006 WL 1506526, Unreported. Aliens, Immigration, And Citizenship ↩ 644

Finding, in asylum proceeding, that incidents of violence against ethnic Albanians in Macedonia were examples of mere discrimination, that several members of aliens' family had remained in Macedonia, and that Albanians had improved, but still "somewhat low," representation in several government ministries, was insufficient to establish such changed conditions for ethnic Albanians in Macedonia as to rebut presumption that aliens had a well-founded fear of future persecution. *Tringovski v. Gonzales*, C.A.2 2006, 2006 WL 1226706, Unreported. Aliens, Immigration, And Citizenship ↩ 639

Substantial evidence supported determination of immigration judge that, for purposes of alien's eligibility for asylum and withholding of removal, government's showing of changed country conditions rebutted any presumption of future persecution that arose from alien's having fled Montenegro to avoid compulsory military service; since alien left Montenegro, Serbia-Montenegro had undergone democratic reforms and government had offered amnesty to those who fled to avoid military conscription, and Yugoslavian military forces had been required to withdraw from Kosovo, obviating alien's fear of being forced to kill his fellow ethnic Albanian Muslims there. *Kajosevic v. Gonzales*, C.A.2 2006, 2006 WL 897923, Unreported. Aliens, Immigration, And Citizenship ↩ 639

Even if alien suffered past persecution in Macedonia, substantial evidence supported determination of immigration judge that in light of changed country conditions, alien's fear of future persecution was no longer well-founded; State Department country report indicated that Macedonia's new, democratically elected government had demonstrated a commitment to improving the country's human rights observance through concrete actions. *Mirzo v. U.S. Dept. of Homeland Sec.*, C.A.2 2006, 2006 WL 752145, Unreported. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

On application for asylum and withholding of removal, general changes in Armenia, such as demise of first president of Armenia and development of opposition parties in Armenia, would not have affected threat to freedom of alien, citizen of Armenia, in Armenia due to his political beliefs; individualized analysis was required of how changed conditions would have affected specific alien's situation. *Karapetyan v. Gonzales*, C.A.9 2006, 171 Fed.Appx. 94, 2006 WL 620832, Unreported. Aliens, Immigration, And Citizenship ↩ 543

Board of Immigration Appeals' (BIA's) finding that fundamental change in circumstances had occurred in Iraq, which rebutted presumption that asylum applicant who was Chaldean Christian had well-founded fear based on his past persecution at hands of Hussein government, was supported by substantial evidence, including newspaper articles and State Department press releases outlining overhaul of Iraqi government and overall goals of representative government, religious tolerance, and return of rule of law, and alien's admission that Iraqi government with which he had trouble no longer existed. *Khora v. Gonzales*, C.A.6 2006, 172 Fed.Appx. 634, 2006 WL 305682, Unreported. Aliens, Immigration, And Citizenship ↩ 644

Assuming asylum applicant was not relieved from requirement of showing well-founded fear of future persecution, evidence that ten years had elapsed since forced sterilization of asylum applicant's wife pursuant to China's one-child family planning policy, that ten years had elapsed since applicant's departure from China and that he had experienced no persecution during such period, and that he could no longer fear persecution through sterilization of his wife because the sterilization had already occurred, did not establish changed circumstances, as would rebut a presumption of future persecution, triggered by evidence of past persecution. *Jiang v. Attorney General of U.S.*, C.A.3 2005, 160 Fed.Appx. 239, 2005 WL 3527845, Unreported. Aliens ↩ 54.1(2)

Board of Immigration Appeals (BIA) did not abuse its discretion, in asylum proceeding, in denying alien's motion to reopen, despite alien's proffer of evidence of changed country conditions; alien's documents did not show that he would be denied entry into Israel, or that the treatment Palestinians faced in Israel amounted to persecution.

8 U.S.C.A. § 1101

Abauaelian v. Gonzales, C.A.9 2005, 132 Fed.Appx. 121, 2005 WL 1126983, Unreported. Aliens ☞ 54(5)

Evidence that alien's family previously received threatening letters and frequently hid from guerrillas between seven year period did not compel finding that alien had well-founded fear of persecution which would entitle him to asylum; guerrillas threatened alien's family because alien's father was in the military at the time, alien's father was no longer in the military, and there was no evidence that alien's mother and sister, who still lived in their home village, suffered any persecution. Ajanel v. Ashcroft, C.A.9 2005, 120 Fed.Appx. 729, 2005 WL 221876, Unreported. Aliens ☞ 53.10(3)

Changed country conditions rebutted any presumption of well-founded fear of future political persecution which alien was entitled to at asylum proceeding; government presented evidence that new prime minister was elected and had been described as generally more acceptable to population and intent on bringing a new approach to the country's political life, and according to state department report, there were no reports of killings based solely on persecution in the year after alien left the country and people were rarely targeted for mistreatment on political grounds. Gjinaj v. Ashcroft, C.A.6 2005, 119 Fed.Appx. 764, 2005 WL 221522, Unreported. Aliens ☞ 54.1(2)

Alien's shifting evidence regarding his identity and political involvement, when coupled with reports of changed country conditions, was insufficient to compel finding of past persecution or objectively well-founded fear of future persecution required for asylum. Ram v. Ashcroft, C.A.9 2005, 120 Fed.Appx. 120, 2005 WL 79017, Unreported. Aliens ☞ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) finding that, even if asylum applicants had established past persecution by Serbs in Kosovo, any presumption of well-founded fear of future persecution had been rebutted because of fundamental changes in Kosovo; Country Report on Human Rights Practices in Kosovo published by Department of State, noted that persecution by Serbs in Kosovo had ceased, as United Nations was now in control, and applicants had family remaining in Kosovo without incident. Jashanica v. Ashcroft, C.A.3 2004, 117 Fed.Appx. 839, 2004 WL 2977600, Unreported. Aliens ☞ 54.1(2)

Substantial evidence supported Immigration Judge's (IJ) finding that asylum applicant lacked objective basis for his fear of persecution on account of his former support for prior regime in the Philippines; wife of head of former regime subsequently won elected seat in legislature, State Department Asylum Profile reported that former supporters of prior regime had returned to the Philippines without difficulty and were not threatened because of their support for regime, and there was not specific and direct evidence to support fear of future persecution on basis of imputed political opinion. Para v. Ashcroft, C.A.9 2004, 119 Fed.Appx. 81, 2004 WL 2915229, Unreported. Aliens ☞ 54.1(4.1)

Government failed to introduce evidence or raise arguments of changed country conditions, as required to rebut presumption of well-founded fear of future persecution arising upon asylum applicant's establishing past persecution on account of statutorily protected ground; rather, country report buttressed applicant's account of ongoing persecution and corroborated his claims of past persecution and well-founded fear of future persecution. Mogos v. Ashcroft, C.A.9 2004, 117 Fed.Appx. 553, 2004 WL 2823316, Unreported. Aliens ☞ 54.1(2)

Government failed to demonstrate by preponderance of evidence that there had been fundamental change in circumstances such that asylum applicant, who established past persecution in Ethiopia on account of either her Amhara ethnicity or her political opinions, no longer had well-founded fear of future persecution; rather, record supported conclusion that there were still human rights violations in Ethiopia, which was also substantiated by other general background documentation in record. Alemayehu v. Ashcroft, C.A.9 2004, 117 Fed.Appx. 534, 2004 WL 2801736, Unreported. Aliens ☞ 54.1(4.1)

Evidence introduced on motion to reopen and remand asylum cases based on changed country circumstances, consisting of articles describing escalating violence in aliens' native country of Colombia, was too general to

8 U.S.C.A. § 1101

demonstrate well-founded fear that aliens would personally be persecuted upon return to Colombia. Carrillo Moreno v. Ashcroft, C.A.9 2004, 116 Fed.Appx. 137, 2004 WL 2711689, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding that, despite alien's past persecution under communist regime in Albania, including placement in internment camp, alien did not have well-founded fear of future persecution, in light of changed country conditions; because communist regime no longer controlled Albania, IJ found past persecution to be immaterial, IJ completed extensive analysis of country reports, determining that country conditions had changed since persecution occurred, and alien had experienced no problems for seven years after communists fell. Meraja v. Ashcroft, C.A.6 2004, 113 Fed.Appx. 147, 2004 WL 2452704, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to establish well-founded fear of future persecution in Albania on account of her political beliefs, as would support her claim for asylum; rather, according to documents produced by the United States State Department, immediately after alien's flight from Albania, Socialist Party came to power in that country, and neither alien nor State Department identified any evidence that Albanian government was engaging in systematic harassment or persecution of any supporters of political party of which alien was member. Preka v. Ashcroft, C.A.6 2004, 113 Fed.Appx. 140, 2004 WL 2452682, Unreported. Aliens ↪ 53.10(3)

Substantial evidence did not support finding, in asylum proceeding, that changed country conditions in Russia rebutted presumption that aliens had a well-founded fear of future persecution; Immigration Judge (IJ) failed to make the required individualized analysis of how changed country conditions would affect the aliens, and IJ's use of a State Department Profile on Georgia did not undermine aliens' claims of persecution in Russia. Minosyan v. Ashcroft, C.A.9 2004, 118 Fed.Appx. 116, 2004 WL 2370546, Unreported. Aliens ↪ 54.1(2)

Substantial evidence supported immigration judge's (IJ) finding that aliens did not have well-founded fear of future persecution if they returned to Bangladesh, even if alien's half-brother's takeover of his factory was in part motivated by alien's political opinion, rather than personal jealousy, where different political party was currently in control of government of Bangladesh, and members of party that alien supported had nothing to fear. Sarker v. Ashcroft, C.A.6 2004, 112 Fed.Appx. 413, 2004 WL 2320314, Unreported. Aliens ↪ 53.10(3)

Country conditions report and addendum did not demonstrate that conditions in alien's country had changed sufficiently to rebut any presumption of a well-founded fear of future persecution; report and addendum described a "lower" level of violence and general improvement in situation, but stated that there were still unexplained bombings and murders of activists, for which police officers were on trial, and noted that investigation of deaths at the hands of police was at best a slow process and that custodial abuse and other police abuses remained a significant problem. Khamba v. Ashcroft, C.A.9 2004, 109 Fed.Appx. 979, 2004 WL 2203935, Unreported. Aliens ↪ 54.1(2)

Substantial evidence supported IJ's reliance, for purpose of denying asylum claim, on state department report and findings that, with signing of peace accords, political landscape in alien's country had changed, civilian self-defense patrols had been eliminated, and alien's situation in the future would be one of personal vengeance and not persecution. Sanchez-Laparra v. Ashcroft, C.A.9 2004, 109 Fed.Appx. 954, 2004 WL 2203889, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ's) general statements regarding changed country conditions were insufficient to overcome alien's presumption of a well-founded fear of future persecution. Singh v. Ashcroft, C.A.9 2004, 109 Fed.Appx. 931, 2004 WL 2203851, Unreported. Aliens ↪ 54.1(2)

Alien did not have well-founded fear of persecution on basis of his anti-communist beliefs should he return to Russia, as would support his claim for asylum; even assuming incidents, of beating, institutionalization, expulsion from university, and firing for refusing to work as KGB informant, were past persecution on account of alien's

8 U.S.C.A. § 1101

political opinion, State Department reports established that Russia's political structure had changed dramatically. *Lemkhov v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 535, 2004 WL 1948436, Unreported. Aliens ↻ 53.10(3)

Even if alien's shooting amounted to past persecution based on political opinion, current circumstances, including fact that political party of alien's alleged attacker was not in power, rebutted alien's fear of future persecution. *Farrales v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 507, 2004 WL 1941278, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that alien's presumption of a well-founded fear of future persecution premised on his political views was rebutted by changed country conditions; country reports provided by state department indicated that country had advanced toward establishing a democracy and guaranteeing basic freedoms, and that people who were formerly persecuted were now receiving favored treatment from the government. *Pjetrushki v. Ashcroft*, C.A.3 2004, 108 Fed.Appx. 65, 2004 WL 1925389, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding by Board of Immigration Appeals (BIA) that changed country conditions rebutted alien's well-founded fear of future persecution premised on belief by authorities that he belonged to dissident political group; BIA noted information which indicated that there was still some entrenched racism within alien's society, but found that government of alien's country was cooperating with humanitarian groups in an effort to assist returning refugees who had been previously expelled, and that many refugees had their homes and at least some of their personal property and land returned to them by government. *Aw v. I.N.S.*, C.A.6 2004, 107 Fed.Appx. 585, 2004 WL 1894211, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's determination that alien failed to show an objectively reasonable fear of future persecution which would entitle her to asylum; in the decade since her departure, conditions had changed dramatically in alien's country and no would-be persecutors would have interest in her because she was never politically active and any information she may have possessed regarding her husband's party would be outdated. *del Rosario Zamora-Lopez v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 75, 2004 WL 1870372, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's determination at asylum proceeding that changed country conditions rebutted alien's presumption of well-founded fear of future persecution. *Singh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 43, 2004 WL 1869631, Unreported. Aliens ↻ 54.1(4.1)

Finding that alien did not meet statutory definition of "refugee," even if immigration judge credited his testimony about being persecuted by military in Mauritania due to belief that he belonged to dissident political group, was supported by State Department reports indicating that conditions in Mauritania had improved since alien left that country and alien's failure to present evidence compelling finding that he had well-founded fear of persecution. *Diaw v. Ashcroft*, C.A.6 2004, 108 Fed.Appx. 318, 2004 WL 1859625, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to establish either past persecution or a well-founded fear of future persecution; alien was unable to corroborate his claims that he was targeted because of his political beliefs, and state department reports and other articles supported conclusion that political climate in alien's country had changed substantially since alien's departure. *Delaj v. I.N.S.*, C.A.6 2004, 105 Fed.Appx. 831, 2004 WL 1791474, Unreported. Aliens ↻ 54.1(4.1)

State department's country conditions report was sufficient to negate alien's fear of deportation upon her return to her native country, for purposes of her asylum claim; report stated that government stopped forcibly deporting individuals of alien's descent after it signed a cessation of hostilities agreement, that thousands of such persons were repatriated, and that 80,000 to 100,000 individuals of such descent continued to reside in the country. *Chebude v. Ashcroft*, C.A.1 2004, 104 Fed.Appx. 190, 2004 WL 1775098, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported IJ's finding at asylum proceeding that changed country conditions rebutted alien's fear of future persecution on account of his ethnicity; state department reports indicated that although government had previously expelled thousands of individuals of alien's ethnicity, opposition parties participated in subsequent elections and many of the refugees had returned. *Mbaye v. Ashcroft*, C.A.6 2004, 106 Fed.Appx. 371, 2004 WL 1770610, Unreported. Aliens ↪ 54.1(4.1)

State Department Report which indicated that Ethiopian government was no longer forcibly deporting Eritreans or Ethiopians with Eritrean heritage was sufficient to rebut presumption that alien had well-founded fear of future persecution based on political opinion and Eritrean heritage which would entitle him to asylum. *Getachew v. Ashcroft*, C.A.5 2004, 103 Fed.Appx. 846, 2004 WL 1730377, Unreported. Aliens ↪ 54.1(2)

Alien, a citizen of Lebanon, did not have a well-founded fear of future persecution, as required in his application for asylum; background material on the country showed that although there was fighting and tension, the situation appeared to be substantially better and less volatile than some years previously. *Ohannessian v. Ashcroft*, C.A.3 2004, 105 Fed.Appx. 331, 2004 WL 1491654, Unreported. Aliens ↪ 53.10(3)

Board of Immigration Appeals (BIA) improperly determined, on review of withholding of removal application, that changed country conditions and regime change in former Federal Republic of Yugoslavia overcame presumption of future persecution created by alien's past persecution due to political opinion; BIA's determination was not sufficiently individualized to rebut alien's well-founded fear of future persecution. *Pavlovic v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 600, 2004 WL 1398688, Unreported. Aliens ↪ 54.1(2)

Board of Immigration Appeals' conclusion that alien's claim for asylum failed on grounds of changed country conditions was not supported by substantial evidence, where the most recent event to which the BIA referred as evidence of changed circumstances occurred 18 months before the incidents upon which the alien based his claims of persecution. *Singh v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 84, 2004 WL 1398336, Unreported. Aliens ↪ 54.1(4.1)

Evidence of changed conditions in India, including a State Department profile and addendum, supported conclusion that the alien lacked a well-founded fear of persecution on return to India, as required for asylum, despite alien's account of past persecution; the addendum specifically addressed the treatment of persons with the alien's religious and political beliefs. *Gill v. I.N.S.*, C.A.2 (N.Y.) 2004, 101 Fed.Appx. 858, 2004 WL 1396346, Unreported. Aliens ↪ 54.1(4.1)

Evidence did not compel conclusion that alien established well-founded fear of future persecution based on his political opinion, as would warrant reversal of Board of Immigration Appeals' (BIA) denial of his application for asylum; although alien testified he feared future persecution if he returned to his native country of Albania due his political opinions against Democratic party, Democratic party was no longer in power, State Department country reports did not indicate reprisals by Democratic party, and although his brother had been granted asylum, his brother was politically active and had been shot. *Jaho v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 468, 2004 WL 1380086, Unreported. Aliens ↪ 54.3(4)

Evidence supported Immigration Judge's holding that a presumption of future persecution was rebutted by evidence that conditions in Kosovo had changed, thus defeating asylum claim by an alien asserting that she was an ethnic Albanian who had been an active member of a dissident political party; several State Department reports and other documentary evidence supported finding that conditions in Kosovo had changed substantially since the alien fled the country in 1999. *Grishaj v. I.N.S.*, C.A.6 2004, 101 Fed.Appx. 631, 2004 WL 1380085, Unreported. Aliens ↪ 54.1(2)

Evidence, even aside from credibility determinations, supported finding that alien seeking asylum did not have the requisite well-founded fear of persecution; Immigration Judge (IJ) found that the alien had not been politically

8 U.S.C.A. § 1101

active and could safely return to Mauritania and probably get at least some of his property back, and while the alien asserted that the human rights record of the Mauritanian government was still generally poor, a State Department report indicated that conditions in Mauritania had improved since the alien left the country in 1992. *Ba v. Ashcroft*, C.A.6 2004, 101 Fed.Appx. 617, 2004 WL 1379952, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported conclusion, in asylum proceeding, that alien's journalistic career would not subject him to a reasonable possibility of future persecution in Guatemala; since the end of the civil war the Guatemalan government had been tolerant of journalists criticizing the government and of human rights groups. *De Leon v. I.N.S.*, C.A.6 2004, 99 Fed.Appx. 597, 2004 WL 1088243, Unreported. Aliens ↩ 54.1(4.1)

There was no reasonable probability that alien would be singled out for persecution if he returned to Albania, inasmuch as verbal threats against him, based on his refusal to take part in election fraud, did not constitute past persecution, and therefore alien did not have a well-founded fear of future persecution, even if both political parties in Albania continued to harass and intimidate members of the other party; local police and politicians were no longer exclusively controlled by the party alien had purportedly been threatened by, and alien's father had been hired as an government officer. *Hysaj v. Ashcroft*, C.A.7 2004, 99 Fed.Appx. 73, 2004 WL 1064472, Unreported. Aliens ↩ 53.10(3)

Board of Immigration Appeals' (BIA) failure to take notice of evidence of changed country conditions contained in alien's second motion to reopen was an abuse of discretion, even though the motion was facially untimely; the alien offered specific, uncontroverted evidence of Taliban-ordered mass killings of Shiites and Tajiks, a significant change in country conditions which would support his claim of persecution or a well-founded fear of persecution based on his ethnic and religious heritage, and he could not have presented proof of the increasing atrocities at the time of an earlier motion, because they had did yet begun to occur. *Naser v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 532, 2004 WL 1041891, Unreported. Aliens ↩ 54.1(1)

Even if alien's testimony in asylum proceeding were accepted as true, substantial evidence supported finding that he was not eligible for asylum, despite opinion of alien's expert and despite any alleged translation problems; alien was not prejudiced by alleged translation problems inasmuch as State Department reports showed that conditions in Mauritania had changed to such an extent that alien no longer had a well-founded fear of being persecuted, and expert produced no evidence in support of his contrary opinion. *Diop v. Ashcroft*, C.A.6 2004, 97 Fed.Appx. 571, 2004 WL 959571, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported determination of Board of Immigration Appeals (BIA) that alien was not likely to be tortured if returned to Georgia; alien cited three incidents in which he was beaten by members of paramilitary group, allegedly for being half Armenian, but other explanations were reasonable, incidents happened over ten years ago, paramilitary group had disbanded, and country report stated that conditions in Georgia were improving. *Martirossian v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 606, 2004 WL 785308, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported conclusion that alien had no well-founded fear of future persecution, as necessary for him to be eligible for asylum; immigration judge used State Department reports to note changes in governing regime of South Korea and reforms in laws under which alien had been arrested. *Mah v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 628, 2004 WL 785295, Unreported. Aliens ↩ 54.1(4.1)

Assuming that mistreatment to which alien was subjected on account of his political and religious beliefs amounted to persecution, giving rise to presumption of future persecution, evidence of changed country conditions in Ghana supported conclusion of immigration judge that presumption had been rebutted and that alien could safely return to Ghana and once again become minister there without any particular problem, and thus supported denial of alien's application for asylum. *Asante v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 626, 2004 WL 785078, Unreported. Aliens ↩ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported immigration judge's determination that alien's arrest in connection with political rally for release of political party's president from prison did not support granting of asylum due to changed country conditions, given president's subsequent release from prison and party's attainment of substantial government representation. *Mowla v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 69, 2004 WL 784099, Unreported. Aliens 53.10(3)

Changed country conditions, reflected in State Department report indicating that alien's political party was part of governing coalition in Bangladesh, supported immigration judge's determination that alien failed to establish well-founded fear of future persecution, given alien's inability to explain why, in light of such political changes, he would face persecution if he returned to that country. *Mowla v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 69, 2004 WL 784099, Unreported. Aliens 54.1(4.1)

Albanian citizen who had been persecuted for anti-communist beliefs did not establish a well-founded fear of future persecution or a likelihood of future torture in Albania based upon political opinion after fall of communist government, and, thus, she was not entitled to asylum; the immigration judge could rely on State Department's country report in determining that presumption of future persecution was rebutted, no objective evidence supported a finding that the threatened kidnapping of citizen's child was motivated by a desire to persecute citizen for failure to support socialist party, and there was no evidence of persecution by post-communist governments. *Trimi v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 464, 2004 WL 742280, Unreported. Aliens 53.10(3)

Even if Immigration Judge (IJ) erred in finding, in asylum proceeding, that alien's testimony, as to the basis for his asylum claim, was not credible, alien was not entitled to relief inasmuch as he did not have the requisite fear of future persecution if returned to Mauritania; country reports established that conditions had changed such that there was no longer any impediment to the return of refugees. *Seck v. Ashcroft*, C.A.6 2004, 93 Fed.Appx. 721, 2004 WL 500982, Unreported. Aliens 53.10(3)

Substantial evidence supported immigration judge's (IJ) finding that alien, a citizen of Peru, did not qualify for asylum or withholding of removal on basis of past persecution or well-founded fear of future persecution; Department of State country report for Peru indicated that the group the alien named as her persecutors was weakening as a terrorist group, and her own testimony supported the IJ's determination that she was incorrect in her belief that the group was targeting her. *Gutierrez-Curi v. Ashcroft*, C.A.3 2004, 90 Fed.Appx. 648, 2004 WL 322572, Unreported. Aliens 54.1(4.1)

Alien, a citizen of Albania, was not entitled to asylum; substantial evidence supported finding that alien was not fully credible in his testimony as to his persecution, and State Department Country Report indicated that political conditions in Albania had improved since alien left. *Marku v. Ashcroft*, C.A.6 2004, 89 Fed.Appx. 500, 2004 WL 232727, Unreported. Aliens 54.1(4.1)

Evidence of conditions in alien's native country of Kazakhstan did not compel finding that alien, an ethnic minority, had well-founded fear of future persecution if compelled to return there which would support claim for asylum; although discrimination against ethnic minorities still existed in country, according to State Department, country had largely abandoned such a campaign over a decade earlier and had stated publicly that all nationalities were welcome. *Khachatryan v. Ashcroft*, C.A.7 2004, 86 Fed.Appx. 207, 2004 WL 179221, Unreported. Aliens 53.10(3)

Albanian Catholic failed to establish well-founded fear of future persecution because of his religion sufficient to support his applications for asylum and withholding of removal, despite past harassment for attending church, and alleged changes since his departure from Albania, where his sister currently had no problem going to church in Albania, and country report on Albania indicated that "freedom of religion has been established both in theory and in practice." *Lekaj v. I.N.S.*, C.A.6 2004, 85 Fed.Appx. 508, 2004 WL 68533, Unreported. Aliens 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported decision that alien did not show past persecution or a well-founded fear of future persecution, as required in his application for asylum and withholding of removal; guerrillas did not attempt to recruit alien and his family because of any protected characteristic, and there was evidence that country conditions had changed, inasmuch as civil war had ended and guerrillas had disbanded. *Castillo v. Ashcroft*, C.A.8 2003, 78 Fed.Appx. 550, 2003 WL 22350610, Unreported. Aliens ↻ 53.10(3)

Alien failed to establish a particularized connection between his political activity and any fear of persecution if he returned to Bangladesh, and thus was not entitled to asylum; country conditions had changed such that members of political party to which alien belonged were now serving in government, and there was no reason why opposition party would still be interested in persecuting alien. *Hoque v. Ashcroft*, C.A.5 2003, 77 Fed.Appx. 709, 2003 WL 22287509, Unreported. Aliens ↻ 53.10(3)

Alien failed to demonstrate well-founded fear of future persecution if he was returned to his native country, and thus, he was not entitled to grant of asylum, although alien testified that a political group had killed his brother and his uncle and had ordered that alien be executed, where substantial evidence established that same political group was no longer in power in native country and that its leaders were no longer in a position to visit mistreatment upon others throughout the whole country, so that alien could live safely in parts of country. *Shah v. Ashcroft*, C.A.3 2003, 72 Fed.Appx. 875, 2003 WL 21960986, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien did not have a well-founded fear of persecution if returned to Albania; there were discrepancies between alien's application, his testimony before the Immigration Judge (IJ), and his statements to an asylum officer, the brother whose political activities caused alien's imprisonment was employed by government after his release from prison, and the political climate in Albania had changed since alien's departure. *Lulaj v. I.N.S.*, C.A.6 2003, 71 Fed.Appx. 524, 2003 WL 21801445, Unreported. Aliens ↻ 54.1(4.1)

Alien did not have a well-founded fear of persecution if he returned to Albania, as required in his application for asylum, even though evidence showed members of alien's family were persecuted by the Communist government of Albania, and alien himself was harassed; Communist government had been removed from office, and no compelling evidence indicated alien would be persecuted if he returned to Albania. *Potka v. Ashcroft*, C.A.6 2003, 65 Fed.Appx. 50, 2003 WL 21054683, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported finding that Guatemalan citizen who was subject of deportation proceeding, and who claimed to have been threatened, followed, and beaten while in Guatemala based on her participation in a pro-labor organization, did not have an objectively reasonable fear of persecution, and thus was not eligible for asylum; Guatemalan civil war had ended four year earlier, with government agreeing to more equitably distribute government services, labor activists were no longer subject to systematic physical attacks, and nothing indicated that organization to which she had belonged still existed. *Esquivel-Ramirez v. I.N.S.*, C.A.8 2000, 221 F.3d 1342, Unreported. Aliens ↻ 53.10(3); Aliens ↻ 54.1(4.1)

183. ---- Amnesty, changed conditions, refugee

Finding that asylum applicant, who had been abducted as a child and forcibly conscripted into service by guerrilla organization opposed to the government of Uganda, did not have an objectively reasonable fear of future persecution by the Ugandan government on account of his membership in a "particular social group" or an imputed anti-government political opinion, was supported by evidence that Uganda had instituted an amnesty policy for former rebels, that the Ugandan government's policies toward abducted child soldiers who escaped had become more humane than in the past, and that United States Embassy was of the opinion that it was unlikely that the Ugandan government would harm former abductees. *Lukwago v. Ashcroft*, C.A.3 2003, 329 F.3d 157. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Alien did not have objective basis to fear future persecution based on his avoidance of military service, so as to entitle him to asylum, given evidence of changed country conditions as demonstrated by country report indicating that draft evaders had been granted amnesty and were permitted to travel freely. *Ujkic v. Ashcroft*, C.A.6 2004, 107 Fed.Appx. 560, 2004 WL 1859585, Unreported. Aliens ↪ 53.10(3)

Aliens did not have a well-founded fear of future persecution if returned to Montenegro; government had granted amnesty to conscription evaders, and State Department reported that ethnic Albanians were treated relatively well in Montenegro. *Gjokic v. Ashcroft*, C.A.6 2004, 104 Fed.Appx. 501, 2004 WL 1491638, Unreported. Aliens ↪ 53.10(3)

Testimony of alien, an ethnic Albanian, that he feared he would be imprisoned and probably killed for his evasion of military service if returned to Yugoslavia, failed to demonstrate an objectively reasonable fear of future persecution to support application for asylum; government of Serbia and Montenegro had granted amnesty to military evaders, and according to profile of country conditions, military rarely recruited ethnic Albanians. *Vuljaj v. I.N.S.*, C.A.6 2003, 77 Fed.Appx. 793, 2003 WL 22146135, Unreported. Aliens ↪ 53.10(3)

184. Relocation, refugee

Government failed to show that relocation within Colombia was a viable option for aliens, who sought asylum and withholding of removal under the Immigration and Nationality Act (INA), to escape persecution; the evidence, including Department of State Country Reports and documentary evidence from Amnesty International and reputable news agencies, showed that the guerilla group that persecuted aliens in the past operated country-wide in Colombia, that the group had 15,000 to 17,000 combatants, that the group committed killings, kidnappings, and other atrocities against the civilian population, and that at least 300,000 people had been displaced due to guerilla violence, and alien testified that even after he relocated his family to an urban area, the group destroyed their property and continued to threaten them. *Arboleda v. U.S. Atty. Gen.*, C.A.11 2006, 434 F.3d 1220.

Substantial evidence demonstrated that asylum applicants could not relocate safely anywhere in Pakistan to avoid persecution, and thus applicants were eligible for asylum; areas where applicants had lived peacefully were areas they lived before they began receiving life-threatening phone calls, after that time applicants received threatening phone calls in multiple areas, including in two cities on opposite sides of Pakistan. *Kaiser v. Ashcroft*, C.A.9 2004, 390 F.3d 653. Aliens ↪ 54.1(4.1)

Administrative record did not demonstrate that asylum applicant, who was native of Somalia and member of minority clan, could avoid future persecution by relocating to another part of Somalia, as required to rebut presumption that applicant was subject to future persecution if returned to Somalia, even though applicant had lived in another area of Somalia for 4 years without incident; same militia that persecuted applicant and her family took over area where applicant had lived after she left, there was continued clan-based fighting in area where applicant had lived, applicant's clan did not control any area in Somalia, and applicant had no home to return to in Somalia. *Awale v. Ashcroft*, C.A.8 2004, 384 F.3d 527. Aliens ↪ 54.1(2)

Decision of Board of Immigration Appeals (BIA), that Lebanese Christian asylum applicant did not have well-founded fear of future persecution after he was detained by Syrian forces, was supported by substantial evidence, including Country Report indicating that Lebanese Christians could settle in and around Beirut without fear of persecution, and that Lebanon's government was reconstituted with cessation of civil war. *Dandan v. Ashcroft*, C.A.7 2003, 339 F.3d 567, rehearing and rehearing en banc denied. Aliens ↪ 54.1(4.1)

Determination by Board of Immigration Appeals (BIA) that Somali asylum applicant failed to establish that he had well-founded fear of persecution in South Africa was supported by sufficient evidence, including evidence that his fear of persecution, resulting from violence he suffered while working as street vendor in Cape Town, did not exist country-wide. *Abdille v. Ashcroft*, C.A.3 2001, 242 F.3d 477. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Government did not have burden in asylum proceeding of showing that alien could safely relocate in Colombia, where alien failed to show that he was a victim of past persecution in Columbia. *Cuartas v. U.S. Atty. Gen.*, C.A.11 2006, 2006 WL 891031, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(2)

Substantial evidence supported Board of Immigration Appeals' (BIA) determination that even if asylum applicant established past persecution in Guatemala, the presumption of well-founded fear of future persecution was rebutted; State Department country report indicated that civil war in Guatemala had ended, applicant acknowledged the same, and applicant successfully relocated to another area in Guatemala prior to his coming to United States. *Lopez v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 65, 2004 WL 2915019, Unreported. Aliens ↻ 54.1(2)

Asylum applicant did not have well-founded fear of future persecution in Bangladesh, in light of evidence, based on his own testimony, that relocation within country was safe and reasonable alternative to asylum; applicant had lived in Chittagong, which was three hundred miles from site of his and his family's persecution, for three years without incident, and his family had lived there as well without any instances of political persecution. *Ahmed v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 272, 2004 WL 2914058, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding that alien failed to establish a well-founded fear of future religious persecution which would entitle him to asylum; although there was evidence of horrific violence against individuals of alien's religion in certain parts of the country, evidence put forward by alien did not establish that persecution existed country-wide or in area where alien had resided. *Hartono v. Ashcroft*, C.A.3 2004, 115 Fed.Appx. 111, 2004 WL 2904730, Unreported. Aliens ↻ 54.1(4.1)

Bureau of Immigration Appeals (BIA) properly denied alien, a native and citizen of Mexico, withholding of removal and Convention Against Torture (CAT) relief, given that his admissions, that he lived peacefully for several years outside Mexico City after he fled his persecutors, established that internal relocation was reasonable option. *Guerrero-Hernandez v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 547, 2004 WL 2823308, Unreported. Aliens ↻ 53.10(3); Treaties ↻ 8

Substantial evidence supported IJ's determination that aliens' current fear of future persecution was not well-founded, so as to entitle them to asylum, in light of fact that aliens had gone unharmed for almost nine years after they relocated to another part of their country. *Araneta v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 109, 2004 WL 1663268, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien could avoid future persecution by relocating to another part of his country, and thus alien was not entitled to asylum; record reflected that prior to leaving country, alien had relocated to different part of country where he lived without incident for over three years, and alien's reluctance to return to that part of country was based only on concern that he would be unable to find work there. *Acevedo v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 97, 2004 WL 1663257, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's finding at asylum proceeding that government rebutted presumption that alien had well-founded fear of future persecution by proving that alien could safely relocate within her country; state department report, introduced by government and specifically cited by IJ, specifically stated that religious missionaries could safely carry on their work in parts of the country where group of guerrillas was not active. *Solis v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 633, 2004 WL 1613893, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported determination that alien, an Albanian, had failed to prove a well-founded fear of future persecution in support of his asylum claim; the alien could not identify the individuals who allegedly tried to kill him or show that their alleged actions were politically motivated, he had been allowed to leave Albania even after alleged detentions and the alleged attempt on his life; moreover, he had safely relocated to a different area of Albania for several months after an alleged assault, and he testified that his current wife and daughters still lived

8 U.S.C.A. § 1101

there. *Abati v. Ashcroft*, C.A.6 2004, 101 Fed.Appx. 626, 2004 WL 1380073, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien's mistreatment at the hands of two policemen was not based on his political opinion but on corruption; the policemen extorted money from alien and sought to have him renege his previous testimony against them, and alien did not show that he could not have avoided the mistreatment by relocating to another part of the country. *Gjolaj v. Ashcroft*, C.A.6 2004, 97 Fed.Appx. 531, 2004 WL 950078, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported decision, in asylum proceeding, that alien failed to establish a well-founded fear of future persecution if he returned to India; State Department report explained that relocation within India was a viable option to avoid the violence in Kashmir, and alien's own testimony indicated he faced no problems with political opposition groups when he traveled to other areas of India. *Jhamb v. Ashcroft*, C.A.9 2004, 97 Fed.Appx. 95, 2004 WL 856771, Unreported. Aliens ↻ 54.1(4.1)

Alien did not have a well-founded fear of future persecution, for purposes of his application for asylum, where he failed to show that the threat to ethnic Russians was countrywide and that relocation in Kazakhstan was not reasonable, or that he faced a particularized fear separate from that of the general ethnic minority population. *Makarov v. Ashcroft*, C.A.8 2004, 95 Fed.Appx. 841, 2004 WL 540270, Unreported. Aliens ↻ 53.10(3)

Board of Immigration Appeals (BIA) did not err in its determination that alien from Phillipines failed to establish a well-founded fear of persecution, which must be both subjectively genuine and objectively reasonable, where alien's testimony about his alleged fear of persecution was not credible, possibility of his relocation within the Philippines to avoid the Moro National Liberation Front (MNLF), which was anti-government movement active in the southern Philippines, undercut his attempts to show his fear was objectively reasonable. *Samin v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 698, 2003 WL 22782682, Unreported. Aliens ↻ 53.10(3)

Government rebutted presumption, that alien from India had well-founded fear for future persecution after he established past persecution, on request for withholding of removal, where government presented substantial evidence that conditions in India had changed and alien was able to relocate to different part of country. *Hothi v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 343, 2003 WL 22434507, Unreported. Aliens ↻ 54.1(4.1)

185. Resettlement, refugee

The immigration judge's (IJ) finding that alien had 16 years of peaceful residence in Mexico and could apply to establish permanent residency, as would establish rebuttable presumption that alien was firmly resettled in Mexico on basis of lengthy and undisturbed residence, for asylum purposes, was not supported by substantial evidence; during time that alien was refugee in Mexico, he was restricted by the Mexican government to the municipality in which his refugee camp was located, he was not allowed to attend Mexican schools, and he was threatened with deportation to his native country. *Camposeco-Montejo v. Ashcroft*, C.A.9 2004, 384 F.3d 814. Aliens ↻ 54.1(4.1)

In determining whether aliens, who were ethnic Serbs and citizens of Bosnia-Herzegovina, were refugees for purposes of asylum applications, aliens could safely relocate to Serb-held parts of Bosnia Herzegovina; almost half of Bosnia-Herzegovina had been returned to Serbs and there was no evidence in record that Muslims had actually attacked parts of country held by Serbs. *Knezevic v. Ashcroft*, C.A.9 2004, 367 F.3d 1206. Aliens ↻ 53.10(3)

Decision of Board of Immigration Appeals (BIA), that Hindu citizen of India failed to establish fear of persecution from Hindu radicals based on his aid to Moslems during riots, and that he thus was not eligible for asylum, was supported by substantial evidence; alien's testimony regarding threats and harm was vague, none of his family members had been harmed, and he failed to provide evidence refuting Department of State's conclusion that internal resettlement in India was a viable solution. *Bhatt v. Reno*, C.A.7 1999, 172 F.3d 978. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported finding that alien had firmly resettled in Ethiopia, thus barring her from seeking asylum from Eritrea; alien obtained a valid Ethiopian passport and exit visa, lived in Ethiopia for five months without incident, and was a citizen or national of Ethiopia. *Tewelde v. Ashcroft*, C.A.4 2004, 114 Fed.Appx. 91, 2004 WL 2667415, Unreported. Aliens ↪ 54.1(4.1)

Alien failed to rebut presumption of firm resettlement in third country, arising from his testimony that he had lived undisturbed in third country for significant period prior to applying for asylum, and thus was barred from seeking asylum in the United States. *Punsalan v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 792, 2004 WL 1895024, Unreported. Aliens ↪ 54.1(2)

Even if alien's testimony were credible, evidence did not compel finding that alien was refugee, as required to reverse Board of Immigration Appeals' (BIA) denial of his asylum claim, because it did not show that he had well-founded fear of persecution; Immigration Judge's (IJ) finding that alien could resettle in part of Lebanon that was not controlled by Syrian militia, for whom alien allegedly was a target, was consistent with State Department report, which indicated that Lebanese Army still controlled part of Lebanon and that alien could safely resettle in portion of Lebanon that was controlled by Israel. *Jaber v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 465, 2004 WL 1380006, Unreported. Aliens ↪ 54.3(4)

Substantial evidence supported finding that alien, a citizen of Egypt, was firmly resettled in Italy and thus ineligible for asylum; alien lived in Italy for more than two decades, operated a business, lived with his girlfriend and had two daughters with her, and by his own admission did not want to leave because he was happy in Italy, and there were no indicia that petitioner was still in flight in Italy or that Italy, as country of refuge, restricted him in any way. *Zakhary v. Ashcroft*, C.A.1 2004, 99 Fed.Appx. 250, 2004 WL 1171393, Unreported. Aliens ↪ 53.10(3)

186. Time passage

Finding that the two occasions when, based upon his active participation in political rallies and protests, Albanian national was arrested, beaten and allegedly threatened with death by police unless he severed his ties with opposition political party did not rise to level of past "persecution," of kind supporting application for asylum, was supported by substantial evidence and would not be disturbed on judicial review, where these incidents occurred over eight-year period when alien was involved with opposition political party and were separated by more than 25 months. *Bocova v. Gonzales*, C.A.1 2005, 412 F.3d 257. Aliens ↪ 54.1(4.1)

187. Persecutors, refugee

Evidence supported finding that Peruvian alien's role as translator during police interrogations in which detainees were tortured constituted "assistance in persecution," within meaning of statutory bars to granting of asylum and withholding of removal; alien performed integral role in facilitating persecution, and his only justification was concern for economic and career consequences of nonparticipation. *Miranda Alvarado v. Gonzales*, C.A.9 2006, 449 F.3d 915. Aliens, Immigration, And Citizenship ↪ 508

Alien who, while in employ of a local government in China, helped transport captive women to undergo forced abortions, thereby assisted in persecution and so was not eligible for asylum, even though he released one woman, resulting in his termination from the job; alien was not coerced, but had the ability to quit the job at any time. *Xie v. I.N.S.*, C.A.2 2006, 434 F.3d 136. Aliens ↪ 53.10(3)

Substantial evidence supported immigration judge's determination that alien assisted or otherwise participated in the persecution of another on account of race, religion, nationality, membership in a particular social group, or political opinion, precluding eligibility for asylum or withholding or removal; by his own admission, alien was aware that his fellow officers were systematically persecuting innocent Sikhs from about 1983 until the time he fled in 1993, alien took innocent Sikhs into custody during that period and transported them to the police station, where

8 U.S.C.A. § 1101

he knew they would be subjected to unjustified physical abuse, and, further, alien participated in raids on the homes of innocent Sikh families, guarding homes to prevent escapes while other officers were inside arresting and beating family members without cause. *Singh v. Gonzales*, C.A.7 2005, 417 F.3d 736.

To extent that Bosnian Serb who filed application for asylum, in admittedly breaking noses and foreheads of Croats who had entered his town, was merely acting in self defense and had not participated in unprovoked attacks upon Croats on their soil, he would not be a "persecutor" ineligible for grant of asylum or for withholding of removal; acts of true self-defense do not qualify as "persecution," since they are not "on account of" race, religion, nationality, membership in a particular social group, or political opinion. *Vukmirovic v. Ashcroft*, C.A.9 2004, 362 F.3d 1247. Aliens ↻ 53.10(3)

To be ineligible for grant of asylum as "persecutor," it is not enough that alien was member of ethnic or other group that engaged in persecution; individual accountability must be established. *Vukmirovic v. Ashcroft*, C.A.9 2004, 362 F.3d 1247. Aliens ↻ 53.10(3)

Alien participated in persecution in Sierra Leone, so as to be ineligible for withholding of removal, even if he was forced to join Revolutionary United Front (RUF) and did not share its intent of political persecution, where, as active member of RUF, he murdered villager, and chopped off limbs and heads of noncombatants, and he testified that RUF undertook such practices to scare noncombatants so they would not support government. *Bah v. Ashcroft*, C.A.5 2003, 341 F.3d 348. Aliens ↻ 53.10(3)

Board of Immigration Appeals (BIA) failed to conduct proper *Fedorenko* analysis in deciding whether Guatemalan applicant was precluded from eligibility for asylum and withholding of deportation due to his participation in action in which guerillas shot civilians, in that BIA did not consider applicant's uncontroverted testimony that his involvement with guerillas was at all times involuntary and compelled by threats of death, that he participated in action in fear for his life, that commander stood behind him during shooting and checked magazine of his rifle afterwards, that immediately after incident he expressed his disagreement with guerillas' actions to his commander, and that at first available opportunity he risked his life to escape guerrillas. *Hernandez v. Reno*, C.A.8 2001, 258 F.3d 806, rehearing and rehearing en banc denied. Aliens ↻ 54(3.1)

In deportation proceedings pursuant to Holtzman amendment, alien was collaterally estopped from contesting his date of birth, his service in World War II as concentration camp guard and prison transport guard, and fact that inmates at concentration camps were horribly mistreated, due to prior litigation of such issues in proceedings in which he was denaturalized; issues were extensively litigated in denaturalization proceedings, issues were necessary and essential to judgment in denaturalization proceedings, and denaturalization hearing comported with due process. *Hammer v. I.N.S.*, C.A.6 1999, 195 F.3d 836, certiorari denied 120 S.Ct. 1247, 528 U.S. 1191, 146 L.Ed.2d 105. Judgment ↻ 644

Immigrant who was former Nazi concentration camp guard personally advocated or assisted in the persecution of persons because of their race, religion, or national origin, and thus was ineligible to receive a visa under Refugee Relief Act; as guard his duty was to prevent prisoners from escaping, he carried either a machine gun or rifle and stood watch over camp or work-details outside camp, he walked only a few feet away from prisoners with a rifle, gave prisoners orders, told them that he would shoot them should they try to escape, and assisted in search for escaped prisoner who was shot when captured. *U.S. v. Hansl*, S.D.Iowa 2005, 364 F.Supp.2d 966, affirmed 439 F.3d 850, rehearing and rehearing en banc denied. Aliens ↻ 71(5)

Asylum applicant from Ghana who worked for eight years as senior officer of Committee for Defense of the Revolution, which was quasi-police force directed against political opponents of government, was ineligible for asylum, as he was persecutor of others; he admitted arresting political opponents of government whom he believed would be killed, tortured, or imprisoned indefinitely without trial on account of their political actions. *Ofofu v. McElroy*, S.D.N.Y.1995, 933 F.Supp. 237, stay granted 98 F.3d 694. Aliens ↻ 53.10(3)

8 U.S.C.A. § 1101

Substantial evidence supported determination of Board of Immigration Appeals that alien assisted or participated in at least one instance of persecution on account of a protected ground, so as to bar alien from eligibility for asylum and withholding of removal; although she later gave conflicting testimony, alien stated in asylum interview that while working as prison guard in Armenia, she escorted a political prisoner to isolator, and that prisoner was beaten there, needing three days to recover, alien admitted she knew at time of prisoner's beating that isolator was used for beatings, and prisoner was imprisoned on account of her political beliefs. *Ghazaryan v. Gonzales*, C.A.9 2006, 172 Fed.Appx. 139, 2006 WL 475416, Unreported. Aliens, Immigration, And Citizenship ¶ 642

Any confusion on the part of IJ regarding connection between group in which alien was involved and another group which was characterized by state department report as having links to extremist groups that had been implicated in violent acts against Christians and Muslims was harmless, at proceeding at which alien, a citizen of India, was found to be ineligible for asylum due to participation in persecution of non-Hindus in his country; it was evident from state department's report about India that the two groups espoused similar principles, and what was important was alien's own evidence about his role in anti-Muslim activities. *Sah v. Gonzales*, C.A.10 2005, 143 Fed.Appx. 990, 2005 WL 2114165, Unreported. Aliens ¶ 54.3(5)

Substantial evidence supported Immigration Judge's (IJ) determination that alien was a persecutor, as basis for denying asylum, withholding of removal, and relief under Convention Against Torture (CAT); while alien did not personally strike a Jehovah's Witness, he was active participant in encounters during which such events occurred, he knew that he and fellow police officers were going to homes of Jehovah's Witnesses and that officers would beat Jehovah's Witnesses, and he nevertheless chose to participate in the raiding parties and to continue in his job as policeman, knowing he would be expected to participate in persecution of Jehovah's Witnesses. *Shirvanyan v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 196, 2005 WL 1085787, Unreported. Aliens ¶ 53.10(3); Treaties ¶ 8

Immigration judge's (IJ) statement that "credible testimony and evidence provided by the asylum officer" supported finding that alien had assisted and participated in "persecuting others on account of their political opinion" did not make adverse credibility finding with adequate specificity, even though IJ stated that he "does discount" alien's testimony. *Cardona-Rivas v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 512, 2005 WL 1027163, Unreported. Aliens ¶ 54(3.1)

Detailed descriptions of torture committed by alien upon individuals in prison contained in alien's two asylum applications, copy of Immigration and Naturalization Service's (INS's) notice of intent to deny, witness testimony, and country reports, demonstrated that alien participated in persecution of others and thus was ineligible for asylum or withholding of deportation. *Zevallos-Diaz v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 139, 2005 WL 670686, Unreported. Aliens ¶ 53.10(3)

Although alien was persecuted, his own testimony provided substantial evidence to establish that he was also a persecutor, and thus, excluded from eligibility for asylum and withholding of deportation; alien testified that he conducted about 150 vasectomies each year on men required to have them by government, and the fact that he protected four individuals, who were medically unfit, from sterilization did not entitle to conscientious objector status. *Zheng v. Board of Immigration Appeals*, C.A.2 2005, 119 Fed.Appx. 321, 2005 WL 18006, Unreported. Aliens ¶ 53.10(3)

Substantial evidence supported IJ's determination that alien assisted in the persecution of persons in his native country, and thus was not eligible for asylum or withholding of removal; alien testified extensively about his positions, over the course of more than a decade, within a police unit that, as he explained, surveilled, arrested under false pretenses, and detained persons on the basis of their political opinions. *Tan v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 123, 2004 WL 1687950, Unreported. Aliens ¶ 54.1(4.1)

Court of Appeals did not consider issue of whether immigration judge (IJ) erred in denying alien refugee status, though alien properly appealed IJ's adverse credibility determination regarding his refugee status to Board of

8 U.S.C.A. § 1101

Immigration Appeals (BIA), as alternate finding that alien assisted or otherwise participated in persecution of another person on account of his political opinion independently supported final order of removal. *Chen v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 930, 2004 WL 835786, Unreported. Aliens ↪ 54.3(2.1)

Substantial evidence supported immigration judge's (IJ) finding that alien was barred from asylum and withholding of removal because he participated in firing squad that summarily executed prisoner of war. *Johns v. I.N.S.*, C.A.9 2004, 93 Fed.Appx. 157, 2004 WL 605027, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's decision that alien was ineligible for asylum or withholding of deportation on the basis that he assisted in persecution of individuals on account of their political opinion by providing names to military group and by helping to raise funds for group through the transportation of goods. *Calimlim v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 103, 2004 WL 363436, Unreported. Aliens ↪ 53.10(3)

Substantial evidence, in asylum proceeding, supported determination that alien lacked credibility as to his denials that he participated in persecuting others, and therefore alien was not a refugee and was not eligible for asylum; alien's testimony, that he never participated in such persecution, was inconsistent with testimony given at an earlier interview, as well as with testimony during the removal hearing itself. *Kiyaga v. Ashcroft*, C.A.1 2003, 77 Fed.Appx. 16, 2003 WL 22299613, Unreported. Aliens ↪ 54.1(4.1)

Evidence that alien worked for ministry of security (SAVAK) in Shah of Iran's government was insufficient to disqualify him from asylum on basis of persecution of others, absent concrete evidence that he assisted in persecution. *Ghashghaee v. I.N.S.*, C.A.9 2003, 70 Fed.Appx. 936, 2003 WL 21675512, Unreported. Aliens ↪ 54.1(4.1)

Former commander of Guatemalan military police was not eligible for withholding of deportation and asylum, even if he acted pursuant to his superiors' orders, in light of evidence that, during Guatemalan civil war, his regiments tortured suspected guerrillas and massacred rebel supporters in effort to wipe out insurgency. *Molina-Valladares v. I.N.S.*, C.A.9 2003, 60 Fed.Appx. 32, 2003 WL 683593, Unreported. Aliens ↪ 53.10(3)

188. Waiver, refugee

Asylum applicant, who was native of China, waived claim that his past persecution established a presumption that his fear of future persecution was well-founded by not arguing point to Board of Immigration Appeals (BIA) in his appeal from denial of asylum claim by Immigration Judge (IJ). *Xu v. Gonzales*, C.A.1 2005, 424 F.3d 45. Aliens ↪ 54.3(1)

Sri Lankan applicant waived argument that he was eligible for asylum because he feared persecution based on his status as returned asylum seeker, where he argued below that he was entitled to relief under Convention Against Torture (CAT) because returning Tamil asylum seekers were subject to torture, but failed to argue below that his status as returned asylum seeker, without more, made him "refugee" under Immigration and Nationality Act (INA). *Ramsameachire v. Ashcroft*, C.A.2 2004, 357 F.3d 169. Aliens ↪ 54.3(1)

189. Application for asylum, refugee

Immigration Judge's failure to address asylum applicant's argument that his untimely filing of application was due to extraordinary circumstances was error requiring remand, where IJ believed that one-year deadline was absolute and not subject to any exception. *Sagaydak v. Gonzales*, C.A.9 2005, 405 F.3d 1035. Aliens ↪ 54.3(6)

Failing to permit Albanian national to supplement his asylum application with various documents, including photographs of himself, purportedly with the King of Albania, police reports relating to two of his alleged incidents of persecution, hospital records documenting his vascular disease, and letter confirming his membership in political

8 U.S.C.A. § 1101

party, was not reversible error; documents were supported by affidavits that were not made under oath or authenticated, and documents allegedly translated from Albanian to English lacked certificates of translation. *Bleta v. Gonzales*, C.A.6 2006, 2006 WL 773745, Unreported. Aliens, Immigration, And Citizenship ☞ 54.1(3)

190. Assistance of counsel, refugee

Retrial was required in asylum proceeding involving a citizen of the Islamic Republic of Mauritania of Fulani ethnicity; alien's counsel incompetently failed to comply with local rule requiring advance submission of evidence, resulting in exclusion of documents and testimony, Immigration Judge (IJ) rejected alien's testimony on basis that it contained details not in his asylum interview without explaining why he did not believe alien's explanation for the omissions, and neither IJ nor Board of Immigration Appeals (BIA) considered reports of human rights violations and mistreatment of Fulani in Mauritania. *N'Diom v. Gonzales*, C.A.6 2006, 442 F.3d 494. Aliens, Immigration, And Citizenship ☞ 54.1(4.1)

Substantial evidence supported finding that alien's allegations of ineffective assistance of counsel, premised on argument that counsel was responsible for inaccuracies in her initial testimony before immigration judge (IJ), only further compromised alien's credibility and did not provide basis for reopening of immigration proceedings at which initial adverse credibility finding was made. *Li Fang Guo v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 206, 2004 WL 2890812, Unreported. Aliens ☞ 54(5); Aliens ☞ 54.1(4.1)

Alien was not procedurally barred from raising claim that he received ineffective assistance of counsel in deportation proceeding, in violation of Fifth Amendment, by failure to report whether complaint of ethical or legal violation has been filed against attorney, as required in Bureau of Immigration Appeal's *Lozado* decision; administrative record otherwise showed alien had substantial claim and was denied effective assistance. *Gwaduri v. I.N.S.*, C.A.9 2003, 69 Fed.Appx. 878, 2003 WL 21659419, Unreported, on subsequent appeal 362 F.3d 1144. Constitutional Law ☞ 42.4

191. Presumptions, refugee

Board of Immigration Appeals (BIA) did not abuse its discretion in rejecting asylum applicants' claim that BIA had previously applied incorrect standard of review to factual determinations of Immigration Judge (IJ), in case in which BIA had affirmed without opinion and there thus was no direct evidence of BIA's standard of review, inasmuch as it would be presumed in such situation, absent evidence to contrary, that BIA acted in accordance with regulations. *Sukhov v. Gonzales*, C.A.8 2005, 403 F.3d 568. Aliens ☞ 54(5)

Showing of past persecution by alien applying for grant of asylum presumptively demonstrated his well-founded fear of future persecution, and burden was on the Immigration and Naturalization Service (INS) to demonstrate that conditions had changed. *Baballah v. Ashcroft*, C.A.9 2004, 367 F.3d 1067. Aliens ☞ 54.1(2)

If an applicant for asylum has suffered past persecution, he or she is presumed to have a well-founded fear of future persecution. *Gonzalez-Hernandez v. Ashcroft*, C.A.9 2003, 336 F.3d 995. Aliens ☞ 54.1(2)

192. Burden of proof, refugee

If an asylum applicant has suffered persecution in the past, he is entitled to a rebuttable presumption of a well-founded fear of future persecution; otherwise, he must establish that he genuinely fears persecution based on a protected ground and show, based upon credible, direct, and specific evidence, that a reasonable person in the same circumstances would fear persecution if returned to the petitioner's country. *Hernandez-Baena v. Gonzales*, C.A.7 2005, 417 F.3d 720. Aliens ☞ 54.1(2)

Once an applicant for asylum establishes that he has been a victim of persecution, the burden shifts to the

8 U.S.C.A. § 1101

government to convince the immigration judge that, nevertheless, because of changed country conditions the applicant has no well-founded fear of being persecuted should he return. *Miljkovic v. Ashcroft*, C.A.7 2004, 376 F.3d 754. Aliens ↪ 54.1(2)

Assuming that the Board of Immigration Appeals (BIA) found that asylum applicant had demonstrated that he was persecuted in past and had applied regulatory presumption of a well-founded fear of future persecution, the BIA improperly required applicant to demonstrate that the presumption was not overcome by fundamental change in circumstances, such that he no longer had objectively reasonable fear of persecution; burden was on the Immigration and Naturalization Service (INS) to overcome this presumption, not on alien to demonstrate the contrary. *Hernandez-Barrera v. Ashcroft*, C.A.1 2004, 373 F.3d 9. Aliens ↪ 54.1(2)

Asylum applicant bears the burden of establishing that she fits within the statutory definition of refugee, and thus qualifies for asylum consideration. *Pierson v. Ashcroft*, C.A.1 2004, 364 F.3d 38. Aliens ↪ 54.1(2)

Burden of rebutting presumptive fear of future persecution shifted to Immigration and Naturalization Service (INS), where aliens established past persecution such that their lives or freedom were threatened in Albania on account of husband's political opinion; although aliens could not identify their attackers and generalized State Department report partly contradicted their testimony, husband, as election judge, witnessed serious voting improprieties and refused to certify vote, he was repeatedly beaten by multiple assailants over course of month, his wife was raped, and assailants made statements suggesting that attack was politically motivated. *Bace v. Ashcroft*, C.A.7 2003, 352 F.3d 1133, modified on denial of rehearing. Aliens ↪ 54.1(2)

An applicant for asylum bears the burden of establishing that he was persecuted or has a well-founded fear of persecution on account of, inter alia, his political opinion. *Wu Biao Chen v. I.N.S.*, C.A.2 2003, 344 F.3d 272. Aliens ↪ 54.1(2)

In seeking to overturn adverse credibility determination of immigration judge (IJ), asylum applicant was required to do more than simply offer a "plausible" alternative theory; instead, he had to demonstrate that a reasonable fact-finder would be compelled to credit his testimony. *Wu Biao Chen v. I.N.S.*, C.A.2 2003, 344 F.3d 272. Aliens ↪ 54.3(4)

In order to establish eligibility for asylum, alien must establish that he or she was persecuted or fears persecution on account of race, religion, nationality, membership in particular social group, or political opinion. *Lopez-Zeron v. U.S. Dept. of Justice*, I.N.S., C.A.8 1993, 8 F.3d 636. Aliens ↪ 53.10(3)

Applicant for asylum bears burden of proof as to whether he is "refugee," and must present specific, detailed facts showing good reason to fear that he will be singled out for persecution if forced to return to his country. *Khano v. I.N.S.*, C.A.7 1993, 999 F.2d 1203. Aliens ↪ 54.1(2); Aliens ↪ 54.1(4.1)

To be eligible for asylum, alien must establish that he meets statutory definition of refugee, which requires him to show either past persecution or well-founded fear of future persecution on account of race, religion, nationality, membership in particular social group or political opinion. *Rhoa-Zamora v. I.N.S.*, C.A.7 1992, 971 F.2d 26, modified on denial of rehearing, certiorari denied 113 S.Ct. 1943, 507 U.S. 1050, 123 L.Ed.2d 649, rehearing denied 113 S.Ct. 2401, 508 U.S. 933, 124 L.Ed.2d 302, certiorari denied 113 S.Ct. 2331, 508 U.S. 906, 124 L.Ed.2d 243. Aliens ↪ 54.1(1); Constitutional Law ↪ 274.3

Key "on account of" language of United States Supreme Court's *Elias-Zacarias* decision applies equally to religious and political persecution and, thus, alien seeking relief from deportation on alternate grounds of persecution on account of religion and persecution based on imputed political opinion must show some evidence of persecutor's intent. *Canas-Segovia v. I.N.S.*, C.A.9 (Cal.) 1992, 970 F.2d 599.

8 U.S.C.A. § 1101

Immigration judge (IJ) committed legal error in requiring asylum applicant to show that there was clear-cut tradition of anti-Semitism in Kyrgyzstan, after crediting applicant's testimony that he had been threatened and assaulted because of his religion, on basis that applicant's account of religious persecution in Kyrgyzstan was not corroborated by objective evidence from U.S. Department of State, Amnesty International, or news sources; IJ improperly shifted burden to applicant to refute the Department of State report that there was no clear-cut tradition of anti-Semitism in Kyrgyzstan. *Kanivets v. Riley*, E.D.Pa.2004, 320 F.Supp.2d 297, review denied 424 F.3d 330. Aliens ↩ 54.1(2)

Alien was provided sufficient opportunity to present evidence prior to immigration judge's (IJ's) denial of his application for asylum and other relief, despite alien's claim that had he known the IJ was not persuaded that he had met his burden, he would have offered further evidence supporting his claims; there was nothing in the record indicating that IJ prohibited or discouraged alien from providing any additional evidence that may have supported his case or that alien ever requested permission to offer further evidence, and IJ did not indicate that there was evidence missing from the record, the presence of which may have motivated him to grant alien's application. *Paparizo v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 827, 2004 WL 1683089, Unreported. Aliens ↩ 54(3.1)

Whether substantial evidence supported immigration judge's determination that there was not a reasonable possibility that alien who was Colombian native would be subject to persecution if she returned to Colombia did not need to be resolved, where alien had failed to show that any persecution she suffered was result of her political opinion or her participation in political group, and so alien had not shown she was refugee entitled to asylum. *Gonzalez-Hernandez v. Ashcroft*, C.A.5 2004, 98 Fed.Appx. 345, 2004 WL 1161823, Unreported, certiorari denied 125 S.Ct. 882, 543 U.S. 1051, 160 L.Ed.2d 773. Aliens ↩ 53.10(3)

193. Evidence generally, refugee

The Court of Appeals had jurisdiction to review decision of the Board of Immigration Appeals (BIA) that Mauritanian alien's amended asylum application was untimely because it was not filed within a year of his last entry into the United States, where alien was a returning asylee at the time he last entered the United States and he was not aware that his asylum status was being questioned until it was later terminated. *Diallo v. Gonzales*, C.A.10 2006, 447 F.3d 1274. Aliens, Immigration, And Citizenship ↩ 600

Expert forensic testimony was not necessary to support immigration judge's (IJ's) finding that burn marks on Liberian alien's passport were inconsistent with house fire that alien testified about, in asylum proceeding, where judge stated that he had reviewed hundreds of passports, and passport was burned in suspicious place on the passport. *Bropleh v. Gonzales*, C.A.8 2005, 428 F.3d 772. Aliens ↩ 54.1(4.1)

Immigration and Naturalization Service (INS) did not rebut asylum applicant's well-founded fear of future persecution if returned to Somalia; country report indicated that members of applicant's clan were still experiencing persecution similar to that experienced by applicant. *Ali v. Ashcroft*, C.A.9 2005, 394 F.3d 780. Aliens ↩ 54.1(2)

An alien seeking a grant of asylum should provide documentary support for material facts which are central to his or her claim and easily subject to verification, such as evidence of his or her place of birth, media accounts of large demonstrations, evidence of a publicly held office, or documentation of medical treatment. *El-Sheikh v. Ashcroft*, C.A.8 2004, 388 F.3d 643. Aliens ↩ 54.1(4.1)

Immigration Judge (IJ) should have considered harm inflicted by Fijian asylum applicants' relatives on account of their mixed-race, mixed-religion marriage when he determined whether they experienced past persecution within meaning of asylum statute. *Faruk v. Ashcroft*, C.A.9 2004, 378 F.3d 940, 199 A.L.R. Fed. 759. Aliens ↩ 53.10(3)

8 U.S.C.A. § 1101

Board of Immigration Appeals (BIA) erroneously rejected validity of abortion certificate that alien seeking asylum submitted to prove that his wife had been forced to have two abortions under China's family planning policies, where validity of certificates was rejected on nothing more than State Department country report indicating that "such purported certificates, if they exist at all, may be documents issued to women who voluntarily submit to an abortion and are entitled to the resulting benefits." *He Chun Chen v. Ashcroft*, C.A.3 2004, 376 F.3d 215. Aliens ↪ 54.1(4.1)

In ruling upon alien's application for asylum, immigration judge could take note of alien's earlier statements to asylum officer, and could rely on discrepancies between those statements and statements that alien made in proceedings before judge as basis for adverse credibility finding, where immigration judge expressly disavowed any reliance on asylum officer's own credibility assessments. *Prokopenko v. Ashcroft*, C.A.8 2004, 372 F.3d 941. Aliens ↪ 54.1(4.1)

Immigration Judge (IJ) did not abuse her discretion in requiring Chinese asylum applicant to provide additional documentation, where she believed applicant failed to provide plausible account, and undisputed government reports indicated that documents from Fuzhou area were subject to widespread fabrication and fraud. *Lin v. Ashcroft*, C.A.1 2004, 371 F.3d 18. Aliens ↪ 54.1(4.1)

Alien was not entitled to file evidence pertaining to his asylum application seven months after hearing on application. *Chay-Velasquez v. Ashcroft*, C.A.8 2004, 367 F.3d 751. Aliens ↪ 54.1(1)

Immigration judge did not err, in asylum proceeding in which alien sought relief on basis of ethnic persecution, in failing to take into account alien's claims that he was victim of a break-in at age 13 or 14, he received only limited secondary education, and he was allegedly abused by his mother, where none of those factors had any logical connection to whether it was reasonable for alien to fear persecution in Indonesia on basis of his Chinese ethnicity. *Wiransane v. Ashcroft*, C.A.10 2004, 366 F.3d 889. Aliens ↪ 53.10(3)

Board of Immigration Appeals (BIA) was entitled to rely on Sri Lankan asylum applicant's airport interview in determining whether he was credible, where BIA considered dangers inherent in airport interviews, interview was conducted in non-coercive and careful manner, applicant was asked whether he understood his Tamil interpreter, officer asked follow-up questions, and record of statement was typewritten, signed, and initialed by applicant on each page. *Ramsameachire v. Ashcroft*, C.A.2 2004, 357 F.3d 169. Aliens ↪ 54.1(4.1)

Country report issued by the State Department, concluding that the government of the Congo was no longer engaged in practice of arresting and detaining those of Tutsi ethnicity, was substantial evidence supporting determination by the Board of Immigration Appeals (BIA) that alien petitioning for grant of asylum did not have the requisite well-founded fear of persecution if returned to the Congo, at least not based on his alleged Tutsi ethnicity. *Kayembe v. Ashcroft*, C.A.3 2003, 334 F.3d 231. Aliens ↪ 54.1(4.1)

Asylum applicant's candid, credible, and sincere testimony demonstrating genuine fear of persecution satisfies subjective component of well-founded fear standard for granting of asylum. *Berroteran-Melendez v. I.N.S.*, C.A.9 1992, 955 F.2d 1251. Aliens ↪ 53.10(3)

Jewish asylum applicant, who requested to stay removal pending habeas review, had a reasonable likelihood of success in showing that immigration judge (IJ) committed legal error in its reliance on the State Department report to refute credible testimony of applicant as to his own experience with anti-Semitic violence in Kyrgyzstan, in finding that the undisputed facts did not support a finding of past persecution and then shifting the burden of proof to applicant, and in finding that his application for asylum was time-barred. *Kanivets v. Riley*, E.D.Pa.2003, 286 F.Supp.2d 460. Habeas Corpus ↪ 679

State department report could not be used at asylum proceeding to discredit alien's specific testimony and

8 U.S.C.A. § 1101

reasonable explanation for why his father and brother were not arrested with him. *Singh v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 835, 2004 WL 2668576, Unreported. Aliens ☞ 54.1(3)

Substantial evidence supported finding that alien failed to establish clear probability that he would be subject to persecution if returned to his native country, and thus was not entitled to withholding of removal; alien's testimony did not constitute past persecution, general country conditions did not show future persecution, and alien's children and other family members continued to live and practice their religion in country. *Budihardjo v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 262, 2004 WL 2579210, Unreported. Aliens ☞ 54.1(4.1)

Existence of counterfeit Liberian birth certificate, in conjunction with undisputed authentic Guinean passport, was a sufficient basis upon which IJ could find that alien was in fact a Guinean and not a Liberian as he claimed to be, and thus was not entitled to asylum based on his alleged persecution in Liberia. *Walker v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 243, 2004 WL 2526298, Unreported. Aliens ☞ 54.1(4.1)

What academic subjects alien taught was not central to his asylum claim, and thus any vagueness in alien's testimony on such issue did not provide basis for adverse credibility finding. *Hampaul v. Ashcroft*, C.A.9 2004, 112 Fed.Appx. 628, 2004 WL 2473869, Unreported. Aliens ☞ 54.1(4.1)

Immigration Judge (IJ) erred, in asylum proceeding, in using translated hospital report, which contradicted alien's testimony that he had been living in Russia at time he was beaten, as basis for finding that alien's claims were not credible; translation was not properly certified and original doctor's report was never admitted into evidence. *Minosyan v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 116, 2004 WL 2370546, Unreported. Aliens ☞ 54.1(4.1)

Immigration Judge (IJ) erred, in asylum proceeding, by rejecting alien's documentary evidence as to his marriage status for lack of certification by the local American consulate; such certification was not the only authentication procedure. *Xing Chan Yang v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 254, 2004 WL 1588178, Unreported. Aliens ☞ 54.1(3)

Affidavits alien submitted to corroborate his claim of persecution in India did not contradict or undermine alien's testimony and, thus, omission of information regarding alien's support of political party, death of his friend, alien's speech at a political rally, and his father's arrest following that rally was not a proper basis for immigration judge to determine alien, who sought asylum, was not credible. *Sahota v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 611, 2004 WL 1435143, Unreported. Aliens ☞ 54.1(4.1)

Immigration judge could consider experiences of alien and his wife in Armenia and Russia in connection with their asylum petitions, which were filed after they fled from Azerbaijan. *Vartanian v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 557, 2004 WL 720164, Unreported. Aliens ☞ 53.10(3)

Immigration judge could consider State Department country reports on Azerbaijan and Armenia in determining that alien who fled Azerbaijan had no well-founded fear of persecution that would support alien's application for asylum and withholding of removal. *Vartanian v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 557, 2004 WL 720164, Unreported. Aliens ☞ 53.10(3)

Alien was not prejudiced, in asylum proceeding, by IJ's prepermission of testimony of alien's father, inasmuch as alien's attorney did not plan to have alien's father testify. *Markarian v. Ashcroft*, C.A.9 2003, 87 Fed.Appx. 28, 2003 WL 23098056, Unreported. Aliens ☞ 54.3(5)

Immigration Judge (IJ) did not err, in asylum proceeding, in relying on asylum officer's testimony at the deportation hearing or on the officer's interview notes; officer testified that he took the notes during the asylum interview, alien's counsel cross-examined officer at the deportation hearing, and alien's counsel did not object at the deportation hearing to the admission of the notes into the record. *Kaur v. Ashcroft*, C.A.9 2003, 84 Fed.Appx.

8 U.S.C.A. § 1101

840, 2003 WL 23097702, Unreported. Aliens ↪ 54.1(3)

Immigration Judge, in asylum proceeding, properly relied on State Department reports of changed country conditions in Guatemala. *Ceron-Pineda v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 834, 2003 WL 23097609, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals (BIA) was not required to consider sua sponte most recent State Department report on Uganda before affirming denial of asylum; alien failed to point to material differences between report considered by IJ and most recent report, and to explain how any differences might impact his claim. *Mwesige v. Ashcroft*, C.A.7 2003, 59 Fed.Appx. 888, 2003 WL 1120154, Unreported. Aliens ↪ 54(5)

194. Admissibility of evidence, refugee

In deciding Indonesian applicant's asylum claim, Immigration Judge (IJ) should have considered relevant evidence including applicant's statement that Muslim leaders had publicly declared that Christians who refused to convert to Islam would be killed, his statement that he had been physically attacked by people calling him "Dirty Christian," his statement that government had made no effort to stop Muslim violence against Christians, and country conditions report and articles supporting such testimony. *Rizal v. Gonzales*, C.A.2 2006, 442 F.3d 84. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Report of international commission concerning Guatemalan civil war, which contained information about attack on village where alien, a Mayan Indian, resided as a child was required to be considered by immigration judge (IJ) when ruling on alien's application for asylum. *Jorge-Tzoc v. Gonzales*, C.A.2 2006, 435 F.3d 146. Aliens ↪ 54.1(3)

Immigration judge (IJ) did not abuse discretion in refusing to admit psychiatric affidavit in support of asylum application; doctor who prepared affidavit was not made available at asylum hearing, affidavit was result of one-time consultation, IJ determined consultation wasn't thorough enough for IJ to give credence to affidavit's finding, affidavit contained information contradicting alien's testimony, and alien failed to explain discrepancies regarding how many siblings she had, when she moved from one Nigerian city to another, and what she saw at gathering at Mosque that allegedly caused her to fear Mosque members. *Akinfolarin v. Gonzales*, C.A.1 2005, 423 F.3d 39. Aliens ↪ 54.1(3)

Immigration Judge (IJ) did not abuse his discretion, or violate due process rights of applicant seeking withholding of removal, in excluding videotaped news program, purportedly showing harsh conditions experienced by Palestinians living in Lebanon, where applicant made offer of such evidence on day of hearing, in violation of local rule, after case had been continued several times, and where program had nothing to do with applicant's personal circumstances. *Sharari v. Gonzales*, C.A.1 2005, 407 F.3d 467. Aliens ↪ 54.1(3); Constitutional Law ↪ 274.3

Records corroborating alien's claim of forced abortion, including abortion certificate, notice fining alien for attempt to give birth secretly, and notice ordering alien and her husband to submit to sterilization procedures, could not be excluded, in asylum proceeding, based solely on alien's failure to comply with Immigration and Naturalization Service (INS) regulation requiring certification of foreign official records by Foreign Service officer, inasmuch as such a certification was not the exclusive method for authenticating such records. *Zhang v. Gonzales*, C.A.3 2005, 405 F.3d 150. Aliens ↪ 54.1(3)

Alien's airport interview by immigration officer was reliable, and thus immigration judge hearing alien's asylum application reasonably relied on interview as one consideration in determining that asylum claim was not credible; record contained full transcript of interview, interview was ed to the same substantive point contained in the letter, namely that members of the organization were still looking for him. *Jamal-Daoud v. Gonzales*, C.A.7 2005, 403

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

F.3d 918. Aliens ↻ 54.1(3); Constitutional Law ↻ 274.3

Board of Immigration Appeals (BIA) did not abuse its discretion in denying asylum applicant's request to supplement record with additional reports and articles or to remand case to Immigration Judge (IJ) to consider such additional evidence, where proffered evidence described violence and political unrest generally in Ivory Coast, but did not relate specifically to applicant or his family, and BIA implied that such evidence would be unlikely to change result. *Berte v. Ashcroft*, C.A.8 2005, 396 F.3d 993, rehearing denied. Aliens ↻ 54(5)

Board of Immigration Appeals (BIA) and immigration judge (IJ) erred in rejecting admissibility of hospital documents that, if found genuine, would have corroborated asylum-seeker's claims regarding physical attacks, on basis of noncompliance with regulation requiring attestation of records by foreign official, inasmuch as regulation was not exclusive means for authenticating records. *Leia v. Ashcroft*, C.A.3 2005, 393 F.3d 427. Aliens ↻ 54.1(3)

Asylum applicant who claimed past persecution and fear of future persecution based on Chinese authorities belief that she was member of outlawed Falun Gong organization was not prejudiced when IJ excluded evidence of her mother's forced sterilization 15 years earlier for violating family planning mandates; evidence could not have affected outcome as it was old and unrelated to imputed membership claim that formed basis for application. *Liu v. Ashcroft*, C.A.7 2004, 380 F.3d 307. Aliens ↻ 54.3(5)

Error, if any, in immigration judge's denial of alien's motion to suppress evidence discovered by Immigration and Naturalization Service (INS) agents during warrantless search of alien's residence did not affect propriety of immigration judge's removal order, where alien, through her counsel, admitted that she was alien, who had not been legally admitted into the United States, and who was not eligible for any form of relief, and where immigration judge, in ordering alien's removal, did not rely on any of evidence that alien sought to have suppressed. *Miguel v. I.N.S.*, C.A.6 2004, 359 F.3d 408. Aliens ↻ 54.3(5)

Asylum applicant was not prejudiced by decision of Immigration Judge (IJ) to admit State Department Profile on Serbia and Montenegro in asylum proceedings, and thus could not prevail on due process claim, where he had full opportunity to rebut opinions expressed in Profile, and Profile did not irreparably color IJ's view of ethnic Albanians as group. *Capric v. Ashcroft*, C.A.7 2004, 355 F.3d 1075. Aliens ↻ 54.1(3); Aliens ↻ 54.3(5); Constitutional Law ↻ 274.3

Alien's statutory and due process rights were not violated by admission, in asylum proceeding, of a tape and partial transcript of her asylum interview; evidence was probative and its admission essentially fair, tape and transcript were made a part of the record, and alien was not prejudiced since Immigration Judge (IJ) listened to the entire tape, as requested by alien's counsel, counsel agreed that the transcript was accurate, and counsel was given a generous amount of time to review the tape and transcript. *Kaur v. Gonzales*, C.A.9 2006, 173 Fed.Appx. 625, 2006 WL 680074, Unreported. Constitutional Law ↻ 274.3

Immigration judge (IJ) considering asylum application properly excluded exhibits associated with alien's prior Canadian asylum application, even though IJ accepted Canadian asylum application into evidence, where application bore seal of Federal Court of Canada and included chain of custody, but exhibits were unauthenticated. *Naqvi v. Attorney General of U.S.*, C.A.3 2004, 103 Fed.Appx. 455, 2004 WL 1462704, Unreported. Aliens ↻ 54.1(3)

195. Sufficiency of evidence, refugee

Substantial evidence did not support finding, in asylum proceeding, that the harm to which alien testified did not rise to the level of past persecution; alien testified he was a leader of an opposition political party and was arrested and imprisoned for two weeks, during which he was beaten daily and denied adequate food and water, requiring

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

medical care, he was fired from his job as part of a government campaign against people of his religion, ethnic group, and political party, and one of his subordinates was killed during the violent suppression of a demonstration in which alien took part. *Soumahoro v. Gonzales*, C.A.7 2005, 415 F.3d 732. Aliens ↻ 53.10(3)

Substantial evidence supported determination by Board of Immigration Appeals (BIA) that asylum applicant failed to establish either past persecution or well-founded fear of future persecution, based on applicant's claim of forced sterilization, due to applicant's inconsistent testimony; applicant's testimony was replete with inconsistencies, including date of marriage and date of birth of first child, and applicant was generally unable to provide a coherent chronological account of her personal history. *Lin v. U.S. Dept. of Justice*, C.A.2 2005, 413 F.3d 188. Aliens ↻ 54.1(4.1)

Substantial evidence did not support Immigration Judge's (IJ) credibility determination in asylum proceeding; hostile and abusive atmosphere at hearing, which included bullying questions as to alien's sexual abuse by her father, resulted in memory loss, blocking, dissociation, and breakdown, alien's inability to recall year she returned to her father's house was immaterial, alien was not inconsistent as to how she knew there were idols in one room of the house, IJ did not accurately recite alien's testimony or contents of a psychologist's letter, and issues of what alien told her boyfriend about her sexual abuse, or how he was killed, were immaterial. *Fiadjoe v. Attorney General of U.S.*, C.A.3 2005, 411 F.3d 135. Aliens ↻ 54.1(4.1)

Immigration judge's finding that citizen of the Democratic Republic of Congo (DRC) had not established that it was more likely than not that he would be tortured or persecuted if removed to the DRC was supported by substantial evidence, notwithstanding alien's credible testimony as to his family's association with former ruling regime, where none of alien's remaining family members in the DRC have been physically harmed following change in government, and where State Department reported that it was "not aware of family members of former [regime] being mistreated by the [new] government"; accordingly, immigration judge's denial of alien's applications for withholding of removal and protection under the Convention Against Torture (CAT) would not be disturbed. *Mompongo v. Gonzales*, C.A.8 2005, 406 F.3d 512, certiorari denied 126 S.Ct. 425, 163 L.Ed.2d 323. Aliens ↻ 54.1(4.1)

It was not abuse of discretion for Immigration Judge (IJ) to determine that member of "SDF" political party failed to establish well-founded fear of persecution if returned to Cameroon, given that he had not joined SDF until he moved to United States, his participation was limited to paying dues and attending meetings, and, although he claimed his father and brother were killed because of their SDF affiliation, Immigration and Naturalization Service (INS) investigation found no record of father's membership, and death certificate indicated brother was killed in accident. *Etchu-Njang v. Gonzales*, C.A.8 2005, 403 F.3d 577. Aliens ↻ 53.10(3)


Asylum applicant failed to satisfy burden of showing past persecution on statutorily protected ground, on theory that he had been arrested and beaten in past based on his alleged membership in organizations advocating the unification of northern and southern Yemen, where alien submitted no evidence to prove the existence of, or his membership in, political organizations in which he claimed membership. *Allabani v. Gonzales*, C.A.6 2005, 402 F.3d 668. Aliens ↻ 53.10(3)


Evidence regarding general conditions in alien's homeland, including newspaper articles indicating that those protesting current government were beaten, imprisoned and murdered, was insufficient to establish that alien, based on her membership in certain political organizations, would more likely than not suffer torture if she were removed, as required to warrant relief under United Nations Convention Against Torture (CAT). *Esaka v. Ashcroft*, C.A.8 2005, 397 F.3d 1105. Aliens ↻ 53.10(3); Treaties ↻ 8


To demonstrate a well-founded fear of future persecution, asylum applicant must prove that his fear is both genuine and objectively reasonable; applicant's testimony may be sufficient to demonstrate the objective reasonableness of his fear, but the testimony must constitute credible and specific evidence of a reasonable fear of persecution.


8 U.S.C.A. § 1101


Carcamo-Recinos v. Ashcroft, C.A.1 2004, 389 F.3d 253. Aliens  53.10(3)


Finding that Ethiopian asylum applicant did not suffer past persecution or have well-founded fear of future persecution was supported by substantial evidence, even though he resisted recruitment into Mengistu militia and was member of Amhara ethnic group, where he was not arrested for resisting recruitment, he kept his position with customs department even after fall of Mengistu regime, and he was never arrested or physically harmed by any Ethiopian government. *Wondmneh v. Ashcroft*, C.A.8 2004, 361 F.3d 1096. Aliens  53.10(3)


Substantial evidence supported decision of Immigration Judge (IJ) that alien, a native and citizen of China, fabricated her story about a forced abortion, and thus alien was not entitled to asylum; alien testified that government officials started harassing husband about her pregnancy one month after she got pregnant, officials would not have discovered alien was pregnant within first month of pregnancy, alien offered contradictory testimony regarding how her mother was able to convince officials to not sterilize alien after alleged abortion, and country report indicated province had relatively liberal family planning policies. *Qin v. Ashcroft*, C.A.1 2004, 360 F.3d 302. Aliens  54.1(4.1)


Substantial evidence, which included State Department country conditions report, supported finding that asylum applicant and his family had not established a well-founded fear of future persecution. *Yuk v. Ashcroft*, C.A.10 2004, 355 F.3d 1222. Aliens  54.1(4.1)

Immigration and Naturalization Service (INS) failed to rebut presumption of persecution established by Chinese asylum applicant, based on evidence that she had been forced to have two abortions and accept insertion of intrauterine contraceptive device (IUD), where INS offered no evidence to rebut presumption, and State Department report supported application. *Wang v. Ashcroft*, C.A.9 2003, 341 F.3d 1015. Aliens  54.1(4.1)

Board of Immigration Appeals (BIA) erred in denying asylum to citizen of People's Republic of China based upon insufficient testimonial specificity, inasmuch as his testimony that his wife was apprehended for sterilization by "birth control officers," "committee members," and "brigade cadres," that his wife did not want to be sterilized, and that she was taken away by force was sufficiently specific. *Qiu v. Ashcroft*, C.A.2 2003, 329 F.3d 140. Aliens  54.1(4.1)

Finding of Board of Immigration Appeals (BIA), that Guatemalan asylum applicant failed to establish past persecution, was supported by substantial evidence, where record showed only that, while in army, applicant was kidnaped by unknown individuals who may have been guerrillas, thrown into truck, beaten, and held captive for three hours, resulting in superficial physical harm. *Guzman v. I.N.S.*, C.A.1 2003, 327 F.3d 11. Aliens  54.1(4.1)

Mexican national requesting asylum, on theory that his membership in a Mexican labor unions subjected him to acts of persecution in Mexico, failed to present substantial evidence of threats or of specific incidents of violence sufficient to constitute persecution against him, based solely on evidence of one occasion on which he was briefly detained for questioning by alleged members of judicial police, or of another occasion on which he fled from certain unidentified individuals whom he assumed to be police officers. *Regalado-Garcia v. I.N.S.*, C.A.8 2002, 305 F.3d 784. Aliens  54.1(4.1)

Evidence supported Board of Immigration and Appeals' determination that alien failed to show objective fear of persecution were he to return to his homeland, as necessary to obtain asylum; native of Nicaragua had remained in that country for five years without incident following four hours of interrogation by Sandinistas. *Castillo v. I.N.S.*, C.A.9 1991, 951 F.2d 1117. Aliens  53.10(3)

Alien's conclusory allegations that his entire family had long been associated with the Shah's regime in Iran, that his parents faced constant surveillance and harassment and that he would be subject to persecution and possible

8 U.S.C.A. § 1101

military induction upon his return to Iran, letter from two former high-ranking Iranian military officials confirming that alien's family was closely connected to the Shah and opining that alien would undoubtedly run very high risk of prosecution upon return, and letter from Amnesty International describing conditions in Iran generally, were insufficient to establish prima facie case of eligibility for asylum, absent specific description of harassment suffered by alien's parents and reasonably specific factual basis for prediction that alien would be subject to even worse persecution, based only on his relationship with his parents. *Haftlang v. I.N.S.*, C.A.D.C.1986, 790 F.2d 140, 252 U.S.App.D.C. 318.

Substantial evidence supported IJ's finding that alien failed to establish persecution required for asylum; IJ noted that alien's testimony was very vague and lacking in specificity as to her activities and threats that she received, and that the only supporting documentation alien offered was a letter from a parson in a different parish and town than alien stated she was involved in. *Agudelo v. U.S. Attorney General*, C.A.11 2005, 140 Fed.Appx. 824, 2005 WL 1669604, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding at asylum proceeding that alien failed to establish that he had well-founded fear of future persecution due to his status as a pro-American, liberal, Sufi Muslim; alien pointed to no record evidence that he had faced past persecution, basing most of his claim on general country conditions, and there was no evidence showing an unwillingness or inability on the part of government to protect alien. *Akhtar v. Attorney General of U.S.*, C.A.3 2005, 138 Fed.Appx. 481, 2005 WL 1608591, Unreported. Aliens ↻ 53.10(3)

Immigration judge's (IJ) conclusion that alien failed to prove past persecution or well-founded fear of future persecution, and thus was not entitled to asylum or withholding of removal, was supported by substantial evidence, despite alien's contention that he was persecuted in Indonesia based on his Chinese ethnicity and Roman-Catholic religion, where incidents described by alien were result of common childhood behavior, extortion carried out by common criminals or gangsters, and widespread riots and demonstrations, alien was never physically injured or detained, and there was no evidence that any incident occurred on account of protected ground. *Sugianto v. Gonzales*, C.A.3 2005, 138 Fed.Appx. 451, 2005 WL 1583516, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported determination, in asylum proceeding, that alien did not experience past persecution in Albania and lacked a well-founded fear of future persecution there; experiences of alien's family members did not establish that alien himself was harmed, other incidents were merely random acts rather than coordinated, sustained, and systematic acts of persecution, alien was not harmed in instances in which he was threatened, and alien admitted he did not know what caused the explosion of his car. *Kalaj v. Gonzales*, C.A.6 2005, 137 Fed.Appx. 851, 2005 WL 1506555, Unreported, rehearing denied. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien did not suffer past persecution or establish that she had a well-founded fear of persecution if she returned to China, as required in her application for asylum; threats to arrest alien and her family because of her grandfather's religious opinion, and fact that alien's family was able to relocate in China without further incident, did not compel a finding of persecution. *Zhang v. U.S. Attorney General*, C.A.11 2005, 136 Fed.Appx. 236, 2005 WL 1349859, Unreported. Aliens ↻ 54.1(4.1)

Aliens seeking asylum failed to establish past persecution or well-founded fear of future persecution based on race, religion, nationality, membership in particular social group, or political opinion, given that harassing visits received by alien were ambiguous in nature and that threatening telephone calls received, which had extortionist context, did not alarm alien enough to prompt her to take protectionist measures. *Ruiz v. Gonzales*, C.A.3 2005, 132 Fed.Appx. 983, 2005 WL 1332610, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's determination that alien had not suffered persecution by his wife having been sterilized, and, as a result of having participated, in, and led, pro-democracy protests, as required for alien's petition for asylum; with respect to alien's assertion that his wife was sterilized, he submitted insufficient proof that he was married, and, even assuming that he had a wife, he submitted insufficient proof that she was

8 U.S.C.A. § 1101

sterilized, and, further, with respect to alien's asserted persecution stemming from his participation in pro-democracy protests, he did not explain the purpose or motivation for his purported pro-democracy protests, and did not explain how, as a plain laborer, he was able to lead a large group of co-workers as he claimed to have done. *Shi v. U.S. Dept. of Justice*, C.A.2 2005, 135 Fed.Appx. 452, 2005 WL 1317018, Unreported.

Substantial evidence supported IJ's finding at asylum proceeding that alien had not credibly established his identity as member in particular clan, based primarily on his failure to offer any corroborating evidence, and thus was not eligible for asylum; alien did not submit identification documents or affidavits from his family in refugee camp, despite fact that he left refugee camp with intent of seeking asylum and should have had enough time to secure such supporting evidence, nor did alien present any witnesses to testify regarding his identity, despite his testimony that he had contact with people in the area where hearing was held who had known him in his native country. *Ali v. Gonzales*, C.A.6 2005, 132 Fed.Appx. 594, 2005 WL 1312320, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) finding that alien was not a "refugee," as required for asylum eligibility, because he could not show he was unable to avail himself of protection of his country; alien testified that after attempted kidnapping of his son and incident in which armed people came to his office looking for him, he went to specialized group of Colombian army dealing with terrorism and kidnapping, who gave him information and guidelines for protecting himself and his family, and he contacted local police, who took his statement and said they would pass it on to prosecutor. *Pareja-Valencia v. U.S. Atty. Gen.*, C.A.11 2005, 132 Fed.Appx. 344, 2005 WL 1240258, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding that alien failed to establish well-founded fear of future persecution required for asylum; although alien claimed to fear religious and ethnic persecution, he testified that he remained in the country for over six months without any difficulty following alleged bombing of his church, and that his mother, brother, and two sisters remained in the country without any difficulty. *Sunarjo v. Gonzales*, C.A.3 2005, 130 Fed.Appx. 621, 2005 WL 1231958, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA's) adverse credibility determination regarding alien who was native and citizen of China was not supported by substantial evidence, where immigration judge's (IJ's) demeanor finding regarding how much emotion alien should have displayed when discussing an abortion was based on improper speculation, and alien's addition of separate basis for relief at the hearing, where she provided credible explanation for not raising the claim earlier, was not a sufficient reason to require corroborating evidence or to support sweeping adverse credibility determination; thus, alien's testimony would be accepted as true, and case would be remanded to BIA for further asylum proceedings based on persecution under China's one child policy. *Zhu v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 907, 2005 WL 1127048, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA) finding that alien's testimony in support of his application for asylum, withholding of removal, and relief under the Convention Against Torture (CAT) was not credible was supported by substantial evidence; there were inconsistencies going to the heart of alien's asylum claim between his testimony, his asylum interview, and his application, regarding the length of his detention, whether he participated in a particular political demonstration, and what occurred at that demonstration. *Khachatryan v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 102, 2005 WL 1126994, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that alien did not establish past persecution or a well-founded fear of future persecution on account of an enumerated ground; threats alien received from guerillas, who demanded that he provide them with information relating to his job providing security to the Minister of Finance, were not on account of an enumerated ground. *Callejas Rodriguez v. Gonzales*, C.A.9 2005, 133 Fed.Appx. 369, 2005 WL 1126993, Unreported. Aliens ↪ 53.10(3)

Board of Immigration Appeals' (BIA's) decision upholding immigration judge's denial of asylum to alien, who was native of Albania, on grounds that alien failed to demonstrate past or future persecution was supported by

8 U.S.C.A. § 1101

substantial evidence, including adverse credibility determination that was based on inconsistencies in the record, demeanor of applicants, and insufficient corroboration of testimony, and evidence of relatively stable country conditions. *Drishiti v. Gonzales*, C.A.3 2005, 130 Fed.Appx. 583, 2005 WL 1111795, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding by immigration judge (IJ) that alien, who was Chinese national, did not suffer past persecution or have well-founded fear of persecution based on his political opinion, and thus did not qualify for asylum, withholding of removal, or relief under Convention Against Torture (CAT), given that IJ had grounds for questioning testimony in which alien claimed that he fought with government officials who came to take his sister for forced abortion, in light of fact that alien was never arrested or harmed for such conduct during year he remained in China, that alien did not seek asylum for four years after leaving China illegally, that country reports indicated that Chinese government opposed coercive methods of implementing family planning policies, and that Chinese government accepted repatriated asylees who left country illegally, punishing first-time offenders with a fine. *Jiang v. U.S. Attorney General*, C.A.11 2005, 130 Fed.Appx. 406, 2005 WL 1052604, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) findings that alien's asylum hearing testimony about past persecution in Albania was not credible, and that he did not establish well-founded fear of future persecution based on his political affiliations; testimony regarding dates and events of alleged past persecution were inconsistent and conflicting in substance and chronology with documents submitted in support of asylum, alien offered no credible evidence that events were motivated by his political affiliations, and he was subsequently able to live for several years in Albania without incident. *Bregu v. Attorney General of U.S.*, C.A.3 2005, 127 Fed.Appx. 622, 2005 WL 858022, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien's testimony regarding his political involvement and injuries following his alleged persecution was both inconsistent and vague, and none of the documentary evidence presented compelled a contrary conclusion in order to overcome the special deference accorded to credibility determinations. *Banga v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 115, 2005 WL 844724, Unreported. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals' (BIA) refusal to grant alien from Iraq humanitarian asylum on the "compelling reasons" or the "other serious harm" grounds was not an abuse of discretion where the alien did not present any medical or other evidence that the severity of his past persecution had caused or would cause him particular problems other than general distress were he to return to Iraq, and presented no evidence that he would suffer serious harm were he to return to an Iraq not governed by a former dictator and his party. *Hadad v. Ashcroft*, C.A.6 2005, 127 Fed.Appx. 800, 2005 WL 758237, Unreported. Aliens ↻ 53.10(3)

Aliens failed to present sufficient evidence to warrant asylum on claim of pattern or practice of persecution in Fiji of citizens of Indian descent; documentary evidence did not compel conclusion that all Indo-Fijians had objectively well-founded fear of future persecution, and aliens did not express a subjectively genuine fear of future persecution, but rather testified only to concerns that they would be subject to petty crime and workplace discrimination. *Sharma v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 239, 2005 WL 670675, Unreported. Aliens ↻ 54.1(4.1)

Alien's failure to submit additional facts to rebut adverse credibility determination did not preclude establishment of prima facie case for relief under Convention Against Torture (CAT), where BIA did not consider changed country conditions or other relevant factors. *Papioian v. Gonzales*, C.A.9 2005, 126 Fed.Appx. 802, 2005 WL 663517, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding that alien, a former nursing student, failed to establish likelihood that she would be arrested if returned to her native country, based on her refusal to participate in forced abortion and

8 U.S.C.A. § 1101

act of complaining to various officials about requirement that she do so, as required to establish eligibility for withholding of removal; alien testified that police officers repeatedly visited her home to arrest her, but alien did not personally observe police visits and relied on information conveyed to her by relatives, including her parents, and statements issued by alien's parents did not mention police visits. *Zheng v. Ashcroft*, C.A.2 2005, 120 Fed.Appx. 877, 2005 WL 348388, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien failed to show past persecution required for political asylum; other than his own testimony, alien presented little, if any, evidence demonstrating that his family's opposition to communism was well known, that he was imprisoned or beaten, or that he received medical treatment as a result of those beatings, and alien failed to support his allegation that communists covertly continued to control his country's government after their apparent fall from power, an allegation directly contradicted by state department reports. *Talelli v. Ashcroft*, C.A.6 2005, 119 Fed.Appx. 756, 2005 WL 106800, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien failed to show that his brothers' murders were politically motivated or that he had reasonable basis to fear political persecution, as required to demonstrate entitlement to asylum; although alien offered proof that his brothers and brother-in-law had been killed, his claim that killings were politically motivated was scarcely explained, and alien admitted that the murders could have been the result of a "robbery gone bad." *Ribeiro-Dos Santos v. Ashcroft*, C.A.1 2005, 119 Fed.Appx. 297, 2005 WL 100776, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported order of the Board of Immigration Appeals (BIA) affirming a decision of an immigration judge (IJ) denying application of alien, a citizen of Pakistan, for asylum and withholding of removal; alien said very little about his alleged political activities in Pakistan and why his activity would cause the police to arrest him in 1991, provided no affidavits or other documents to show he was a member of Pakistan People's Party or was ever arrested, admitted that his trip to the United States in 1991 was not his first, and that he waited two years after arriving in the United States in 1991 before applying for asylum in 1993. *Shoeb v. Ashcroft*, C.A.3 2004, 117 Fed.Appx. 818, 2004 WL 2830842, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding that alien, who was native and citizen of China, failed to show well-founded fear of future persecution; record did not compel disagreement with IJ's finding that past incident in which alien received blow to head during political demonstration did not rise to level of persecution, nor did record compel conclusion that alien was likely to face persecution upon his return to China because of his involvement in single, small protest more than ten years ago. *Li v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 237, 2004 WL 2453306, Unreported. Aliens ↻ 54.1(4.1)

Alien's testimony regarding threat made by neighbor and two instances of brief detention were insufficient to establish past persecution, as would support claim for asylum. *Youssef v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 227, 2004 WL 2423739, Unreported, amended on denial of rehearing. Aliens ↻ 53.10(3)

Substantial evidence supported finding at asylum proceeding that two incidents in which alien was detained and mistreated did not constitute past persecution. *Kapoor v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 73, 2004 WL 1870366, Unreported. Aliens ↻ 54.1(4.1)

Absent showing that Nigeria maintained a system of residence permits that restricted internal movement within the country, or other showing why relocation was not feasible, alien claiming that Muslims frequently detained and beat her and other executives in her Christian organization could not prevail on her asylum claim where the record indicated that the southern part of Nigeria was safe for Christians, even if the north was not. *Akinsanya v. Ashcroft*, C.A.7 2004, 105 Fed.Appx. 848, 2004 WL 1663533, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported IJ's denial of aliens' applications for withholding of removal, based in part on lack of credibility and in part on inconsistent documentation; alien's testimony regarding nature of his entry into United

8 U.S.C.A. § 1101

States, use of aliases, filing of tax returns, former addresses, number of family members, and former accounts of physical and sexual abuse in his native country were markedly inconsistent with responses given on his application, and aliens did not dispute that other alien gave testimony regarding her entry into United States that was inconsistent with her written application, or that they submitted false newspaper article in support of applications. *Lakhani v. Ashcroft*, C.A.5 2004, 104 Fed.Appx. 951, 2004 WL 1540548, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's conclusion that threats made to alien did not constitute past persecution which would entitle alien to asylum. *Gabasan v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 213, 2004 WL 1447784, Unreported. Aliens 54.1(4.1)

Testimony by citizen of Albania that he was detained and allegedly beaten by police once did not compel reversal of immigration judge's decision to deny application for asylum and withholding of removal, where alien's testimony about severity of his injuries conflicted with his wife's testimony as well as with a medical report, and his testimony about an altercation with the police conflicted with his son's testimony, and State Department's report on Albania indicated that there had been no confirmed cases of political killings by government in past year. *Mirashi v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 916, 2004 WL 1367465, Unreported, rehearing en banc denied. Aliens 54.1(4.1)

Substantial evidence supported immigration judge's factual determination that aliens, a husband and wife, intentionally fabricated testimony at asylum hearing, supporting immigration judge's determination that aliens were inadmissible; none of the specific instances of alleged persecution to which the aliens testified at the hearing were mentioned in their written asylum applications, the testimony of each alien was internally inconsistent, husband's testimony was not consistent with that of his wife, no documentary evidence supported the aliens' testimony, and the aliens' demeanor while discussing the attempted rape of wife caused the immigration judge to disbelieve them. *Pribec v. Ashcroft*, C.A.3 2004, 100 Fed.Appx. 121, 2004 WL 1326774, Unreported. Aliens 54.1(4.1)

Sri Lankan citizen failed to establish past persecution or a well-founded fear of future persecution based on political views, religion, or membership in the Tamil ethnic group and, therefore, was not entitled to asylum, withholding of removal, or relief under the Convention Against Torture; the citizen was not a member of separatist group, two arrests before 1980 were brief and resulted in no injuries, the citizen was released from third arrest without serious injury after a bribe, and the reasons given for fearing future persecution were speculative, were based on dated events in the face of changed circumstances, or were not based on evidence of a particularized fear or situation posing danger different from that faced by other Sri Lankans. *Anandanadesan v. Ashcroft*, C.A.8 2004, 100 Fed.Appx. 588, 2004 WL 1244401, Unreported, certiorari denied 125 S.Ct. 623, 543 U.S. 1003, 160 L.Ed.2d 463. Aliens 53.10(3); Treaties 8

Substantial evidence supported Board of Immigration Appeals' (BIA) determination that alien did not suffer past persecution or have well-founded fear of future persecution, as required to support his claim for asylum; although alien was detained in his native country of Yemen and experienced professional setbacks after writing article critical of government, he was not physically punished, and alien lacked proof to support argument that government of Yemen targeted and killed journalists, which argument was not supported by State Department's Country Report. *Faqee v. I.N.S.*, C.A.6 2004, 100 Fed.Appx. 394, 2004 WL 1202955, Unreported. Aliens 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) denial of asylum based on alien's failure to submit direct or specific evidence that he was persecuted in his native country of the Philippines on account of protected ground. *Ibea v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 672, 2004 WL 1197795, Unreported. Aliens 54.1(4.1)

Board of Immigration Appeals (BIA) reasonably determined that Russian asylum applicant's claim of past persecution was vague, conclusory, and supported by insufficient evidence to establish refugee status. *Veksler v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 525, 2004 WL 957849, Unreported. Aliens 54.1(4.1)

8 U.S.C.A. § 1101

Finding of Immigration Judge (IJ) that Mexican citizens who were husband and wife were ineligible for asylum was supported by substantial evidence, despite alleged threats made against husband, who was a police officer; there was no evidence to confirm citizens' hunch that men who threatened them were also police officers, there was insufficient proof that any fear of persecution was based on protected activity or classification, and evidence did not show that Mexican government would be unwilling or unable to protect them. *Sanchez-Cabrera v. Ashcroft*, C.A.9 2004, 96 Fed.Appx. 511, 2004 WL 899630, Unreported. Aliens ↻ 54.1(4.1)

Letter from State Department indicating that it had received no reports of ruling party in Georgia attacking members of other parties was insufficient to support immigration judge's (IJ) rejection of Georgian citizen's application for asylum, where letter did not exclude possibility that members of opposition party suffered physical attacks, expert testimony explained why United States Embassy had not received any reports of ruling party attacking members of opposing political parties, expert gave example of one politically motivated attack, and country reports noted numerous reports of beatings, arrests, and intimidation in connection with elections that took place within two months of events alleged by applicant. *Archvadze v. Ashcroft*, C.A.3 2004, 92 Fed.Appx. 925, 2004 WL 605429, Unreported. Aliens ↻ 54.1(4.1)

Even if she testified credibly, alien's testimony did not show that she suffered past persecution or was at risk of persecution in the future, as required to be entitled to grant of asylum; there was no evidence that guerillas targeted alien or imputed anything about her father's military service to her. *Martinez-Mendez v. Ashcroft*, C.A.9 2004, 90 Fed.Appx. 975, 2004 WL 324748, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported conclusion of Board of Immigration Appeals (BIA) that foreign national who was citizen of Cameroon failed to establish eligibility for asylum, as required to qualify for relief from deportation; foreign national failed to establish past persecution or a well-founded fear of future persecution in a protected category. *Kenlak v. Ashcroft*, C.A.4 2004, 88 Fed.Appx. 562, 2004 WL 260995, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported the denial of asylum and withholding of removal; alien, who failed to identify who his persecutors would be with sufficient specificity, did not demonstrate a well-founded fear of past and future persecution on account of his association and support of a group opposed to military government in power in Pakistan. *Younas v. Ashcroft*, C.A.8 2004, 88 Fed.Appx. 152, 2004 WL 260770, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding that alien did not have a well-founded fear of persecution on account of his political opinion or membership in a particular social group which would entitle him to asylum or withholding of removal. *Nasserddine v. Ashcroft*, C.A.5 2004, 84 Fed.Appx. 466, 2004 WL 49094, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported conclusion, in asylum proceeding, that police treatment of alien in Armenia did not rise to level of persecution. *Isayan v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 253, 2003 WL 23097815, Unreported. Aliens ↻ 54.1(4.1)

American consulate's report of its investigation into alien's Chinese abortion certificate did not provide substantial evidence in support of the denial of alien's application for asylum; report contained multiple hearsay which did not provide any first-hand knowledge of the investigation, and did not describe how the investigation was conducted, who checked the records, when the records were checked, what hospital records were reviewed, or whether there were any identifying criteria--other than alien's name--used in searching the records. *Lin v. Ashcroft*, C.A.3 2003, 83 Fed.Appx. 480, 2003 WL 22995197, Unreported. Aliens ↻ 54.1(4.1)

Evidence was insufficient, in asylum proceeding, to compel any determination that aliens had a well-founded fear of persecution based on wife's Chinese ancestry or their political opposition to Communism. *Moa v. Ashcroft*,

8 U.S.C.A. § 1101

C.A.5 2003, 85 Fed.Appx. 354, 2003 WL 22975451, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding that alien, a citizen of India, did not have well-founded fear of future persecution which would entitle him to asylum; alien claimed that while he was sleeping on roof of his home, masked individuals had attempted to climb onto roof, that he thought they were trying to kidnap him, and that it was possible that the individuals were police, but there was no proof of alien's beliefs, and no evidence of a government policy targeting alien or his family. *Singh v. Ashcroft*, C.A.3 2003, 83 Fed.Appx. 407, 2003 WL 22956019, Unreported. Aliens ↻ 54.1(4.1)

Compelling evidence existed, that alien had a subjectively genuine and objectively reasonable fear that there was at least a ten percent chance he would be subjected to persecution in the future, were he to return to China; police had told alien he would have trouble if he kept hiding pregnant women illegally and opposing the birth control policy, police came looking for alien, and his fear of being caught led him to go into hiding before he left China for America. *Zhou v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 566, 2003 WL 22928794, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported ruling that alien failed to establish her refugee status, as required to be eligible for asylum; alien failed to demonstrate she was a refugee based on past persecution or a well-founded fear of future persecution on account of a protected ground. *Laksono v. Ashcroft*, C.A.4 2003, 81 Fed.Appx. 809, 2003 WL 22867895, Unreported. Aliens ↻ 53.10(3)

Substantial evidence supported immigration judge's (IJ) conclusions that alien had not been persecuted and that she did not have a well-founded fear of persecution if removed to native country, warranting denial of application for asylum and withholding of removal; although alien claimed that she underwent a forced abortion in her native country, alien gave inconsistent and vague testimony regarding the alleged abortion, testimony of witness who claimed to have been an eyewitness to events surrounding the abortion was evasive, unresponsive, and contradictory, and state department report on native country conditions did not find any evidence of forced abortions in province where alien lived. *Zou v. U.S. Dept. of Justice*, C.A.2 2003, 75 Fed.Appx. 834, 2003 WL 22183561, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported conclusion that alien, who testified he was harassed and beaten by members of a Mexican political party opposed to party his family supported, did not suffer from past persecution or have a well-founded fear of future persecution, as required for grant of asylum; alien was beaten only once and did not testify that he sustained any injury, there was no evidence that he would be targeted if he returned to Mexico, and his father and brothers continued to reside there unmolested while remaining politically active. *Suarez v. Ashcroft*, C.A.9 2003, 75 Fed.Appx. 689, 2003 WL 22176670, Unreported. Aliens ↻ 54.1(4.1)

Aliens had no well-founded fear of persecution if returned to Guatemala, as required in their application for asylum; evidence submitted was too vague to compel such conclusion. *Reyes-Mendoza v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 300, 2003 WL 21995294, Unreported. Aliens ↻ 53.10(3); Aliens ↻ 54.1(4.1)

Substantial evidence supported denial of asylum application of Chinese citizen who testified to having been beaten by communist Vietnamese after he provided intelligence to the U.S. government during Viet Nam war; there was no evidence of past persecution by the Chinese government. *Luu v. Ashcroft*, C.A.9 2003, 71 Fed.Appx. 659, 2003 WL 21751839, Unreported. Aliens ↻ 54.1(4.1)

196. Credibility, refugee--Generally

Immigration judge (IJ) may rely on an inconsistency in an asylum applicant's account to find that applicant not credible--provided the inconsistency affords substantial evidence in support of the adverse credibility

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

finding--without soliciting from the applicant an explanation for the inconsistency. *Majidi v. Gonzales*, C.A.2 2005, 430 F.3d 77. Aliens ↪ 54.1(4.1)

Immigration judge (IJ) could deem already not credible Lebanese aliens even less credible when they failed to back up their claims for asylum with information reasonably available. *Kheireddine v. Gonzales*, C.A.1 2005, 427 F.3d 80. Aliens ↪ 54.1(4.1)

On application for asylum and withholding of removal, finding by Board of Immigration Appeals (BIA) that alien's testimony about past persecution suffered was not credible was supported by specific, cogent reasons for disbelief, and thus asylum and withholding of removal claims failed. *Sivakaran v. Ashcroft*, C.A.8 2004, 368 F.3d 1028. Aliens ↪ 54.1(4.1)

If an asylum applicant's testimony on a particular issue is not found incredible for purposes of determining whether applicant is eligible for asylum, the testimony must be taken as true, and cannot be found incredible, on the same issue for purposes of determining whether applicant is entitled to asylum as a discretionary matter. *Kalubi v. Ashcroft*, C.A.9 2004, 364 F.3d 1134. Aliens ↪ 54.3(4)

Asylum applicant failed to meet the strict standard of review necessary to overcome adverse credibility finding; ex post justifications for the discrepancies in his testimony were not plausible. *Wu Biao Chen v. I.N.S.*, C.A.2 2003, 344 F.3d 272. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ's) characterization of alien's testimony as memorized and lacking details regarding alleged events was based upon flawed reasoning, and could not form basis for adverse credibility finding at asylum proceeding; IJ noted that alien's confusion of date of her abortion with date of her birth evinced that she "simply memorized the dates and that they had no meaning for her because these things did not happen," but there was no indication that search for incidental details was conducted. *Quiao Ying Zheng v. Gonzales*, C.A.2 2006, 2006 WL 1193337, Unreported. Aliens, Immigration, And Citizenship ↪ 575

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ provided specific, cogent reasons for credibility assessment, including fact that alien's hearing testimony regarding dates he was interrogated differed from dates that he had initially told asylum officer and that alien demonstrated only superficial knowledge of religion which he claimed as basis of his persecution. *Qingfeng Ni v. Gonzales*, C.A.10 2005, 140 Fed.Appx. 795, 2005 WL 1785333, Unreported. Aliens ↪ 54.1(4.1)

Credibility findings of immigration judge (IJ) were reasonable and supported by substantial evidence, and thus supported denial of alien's application for asylum and withholding of deportation. *Omar v. Gonzales*, C.A.5 2005, 124 Fed.Appx. 281, 2005 WL 673310, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ's) adverse credibility finding at asylum proceeding was not supported by substantial evidence; finding was based on combination of speculative conclusions, inaccurate or insufficiently explained findings of contradictions, and arbitrary rejection of probative testimony. *Nyombi v. Ashcroft*, C.A.10 2004, 86 Fed.Appx. 380, 2004 WL 100518, Unreported. Aliens ↪ 54.1(4.1)

Finding, that aliens' allegations of past persecution and fear of future persecution were not credible, was sufficient to support ruling which denied aliens' requests for asylum and withholding of removal. *Abedi v. Ashcroft*, C.A.5 2003, 82 Fed.Appx. 141, 2003 WL 22880790, Unreported. Aliens ↪ 54.1(4.1)

In assessing application for asylum, immigration judge (IJ) was required to determine credibility of applicant's allegation that he received multiple beatings by police after organizing opposition rally in Bangladesh, and whether those beatings rose to level of political prosecution, regardless of whether Bangladesh police might have had legitimate grounds for prosecuting him for property damage inflicted during rally, or whether applicant had

8 U.S.C.A. § 1101

engaged in past destructive behavior. *Tuhin v. Ashcroft*, C.A.7 2003, 60 Fed.Appx. 615, 2003 WL 1342995, Unreported. Aliens ↩ 54.1(4.1)

197. ---- Inconsistency, credibility, refugee

Substantial evidence supported adverse credibility determination, warranting denial of Mauritanian alien's asylum application; alien gave inconsistent testimony at two separate hearings regarding which family members he was reunited with at refugee camp, how he lost his teeth, and the details of his alleged arrest. *Diallo v. Gonzales*, C.A.10 2006, 447 F.3d 1274. Aliens, Immigration, And Citizenship ↩ 643

Determination by Board of Immigration Appeals (BIA) that alien, who was native and citizen of Sierra Leone, was not credible was supported by specific, cogent reasons, and thus was fatal to his claims for asylum, withholding of removal, and relief under the Convention Against Torture (CAT); alien's testimony regarding his father's death, his flight from Sierra Leone to United States, and whether family was safely living in Sierra Leone, all critical to his claims of past persecution and fear of future persecution, was inconsistent and inadequate. *Fofanah v. Gonzales*, C.A.8 2006, 447 F.3d 1037. Aliens, Immigration, And Citizenship ↩ 643

Inconsistencies in statements by Chinese asylum applicant, consisting of his application claiming that family planning officials took him to government office to "teach [him] a lesson," and his subsequent testimony that he was detained for three days and beaten, were self-evident, and therefore Immigration Judge (IJ) and Board of Immigration Appeals (BIA) were not required to give applicant opportunity to respond before basing adverse credibility determination on such inconsistencies. *Ye v. Department of Homeland Security*, C.A.2 2006, 446 F.3d 289. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Inconsistencies between testimony of asylum applicant, who was native of Albania, and information provided in his two declarations provided cogent reasons for Immigration Judge's adverse credibility determination; applicant claimed persecution based on political activity, discrepancies and omissions regarding dates of beatings and when police set fire to his home went to heart of claim, poor drafting did not explain the wide spread discrepancies, applicant indicated he reviewed application with his attorney and used interpreter, existence of corroborating evidence did not overcome the significant discrepancies and omissions, and applicant failed to provide reasonable explanations for the inconsistencies at hearing. *Hoxha v. Gonzales*, C.A.1 2006, 446 F.3d 210. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Findings of Immigration Judge (IJ), that Albanian asylum applicant was not credible, and thus failed to establish past persecution or fear of future persecution on account of his affiliation with Democratic Party (DP), was supported by substantial evidence; his testimony as to his year of birth contradicted his birth certificate, his testimony about primary episodes of alleged persecution was inconsistent, and other discrepancies, though minor in isolation, added to reasonable inference of lack of candor. *Lumaj v. Gonzales*, C.A.1 2006, 446 F.3d 194. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Substantial evidence supported determination of immigration judge (IJ) that alien's testimony in support of asylum application was not credible; alien's asylum application did not mention arrest and five-month detention in Guinea to which she testified, alien stated in asylum interview that she had been raped, but she did not mention rape in either of her two asylum applications, and IJ questioned alien at hearing about that inconsistency and found alien's explanation to be evasive and hesitant, and bordering on incoherent. *Diallo v. Gonzales*, C.A.2 2006, 445 F.3d 624. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Presence of photograph of injury to alien's brother, who also sought asylum, in alien's asylum application was not discrepancy warranting adverse credibility finding, given extensive evidence in support of application indicating that alien suffered variety of injuries in India, likelihood that inclusion of photograph was clerical error by application preparer, which was further supported by numerous spelling and grammatical errors in application

8 U.S.C.A. § 1101

suggesting that preparer was generally careless or otherwise unqualified or incompetent, and IJ's failure to explain reason for rejecting clerical explanation for discrepancy or to seek an explanation of the discrepancy from applicant. *Kumar v. Gonzales*, C.A.9 2006, 444 F.3d 1043. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence did not support adverse credibility determination in asylum proceeding, where Immigration Judge (IJ), after finding three letters from alien's mother to be unreliable, nonetheless relied on one of them to find discrepancies between mother's statements and those of alien; IJ improperly rejected alien's explanation for the discrepancies, testifying that her mother had trouble with English, and in any case the letters clearly supported alien's testimony that she would be subjected to female genital mutilation (FGM) in Nigeria. *Unreroro v. Gonzales*, C.A.10 2006, 443 F.3d 1197. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Indian alien's testimony describing beating administered by Indian police, stating that police laid alien on his back, and also were holding him from behind was not inconsistent, and thus did not support adverse credibility finding in alien's application for asylum, where alien explained that the officers first tied his arms behind his back and later untied his arms, laid him on the floor, and kicked him. *Singh v. Gonzales*, C.A.9 2006, 439 F.3d 1100. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Discrepancies that are capable of being attributed to clerical errors may not form the basis of an adverse credibility finding unless the IJ or the Board of Immigration Appeals (BIA) specifically explains the significance of the discrepancy or points to obvious evasiveness of the petitioner for asylum when asked about it. *Kumar v. Gonzales*, C.A.9 2006, 435 F.3d 1019. Aliens ↻ 54.1(4.1)

Denial of asylum on factual finding that application of alien, native of former Union of Soviet Socialist Republics (USSR) and citizen of Ukraine, was not credible, based upon impeachment of her general credibility through material inconsistencies that existed between narrative of her life that had been filed prior to her initial asylum application and account she presented in her supplemental affidavit, was supported by substantial evidence; although benign explanation may have existed for inconsistencies, court's role did not extend to hypothesizing excuses for them. *Borovikova v. U.S. Dept. of Justice*, C.A.2 2006, 435 F.3d 151. Aliens ↻ 54.3(4)

Substantial evidence supported adverse credibility determination, warranting denial of Albanian alien's applications for withholding of removal and relief under the Convention Against Torture (CAT); alien gave testimony in initial hearing, which was inconsistent with testimony he gave in subsequent hearings, about the name and passport he used upon entry into the United States and the date of his arrival, he later admitted that he lied in his initial testimony, and documentary evidence did not support his subsequent testimony regarding alleged persecution and abuse he suffered in Albania. *Mehilli v. Gonzales*, C.A.1 2005, 433 F.3d 86. Aliens ↻ 54.1(4.1)

Adverse credibility findings, made by immigration judge (IJ) and Board of Immigration Appeals (BIA) in denying asylum and withholding of deportation to alien who was citizen and native of China, were supported by total inconsistency between alien's account of persecution in airport interview, in which she claimed she was fleeing a forced marriage, and at asylum hearing, in which she claimed she had been persecuted for her protests of police corruption, which had caused her to close her business; inconsistencies were not minor, isolated, or immaterial, and IJ did not overlook any explanation offered for different accounts. *Guan v. Gonzales*, C.A.2 2005, 432 F.3d 391. Aliens ↻ 54.1(4.1)

Adverse credibility finding made by immigration judge (IJ), in denying asylum application of alien from Bangladesh, was supported by substantial evidence in form of inconsistencies between alien's accounts of political persecution in supplement to asylum application and alien's direct testimony regarding events of same year; supplement asserted that alien's home had been ransacked in his absence, while alien testified that he was personally abused and threatened by opposing political party. *Majidi v. Gonzales*, C.A.2 2005, 430 F.3d 77. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Adverse credibility finding by immigration judge (IJ) was not supported by substantial evidence, in application for asylum, by Chinese alien, on grounds of religious persecution; although IJ made adverse credibility determinations based on inconsistencies concerning date alien began practicing Christianity, date alien told her husband she was practicing Christianity, where her husband resided during his father's illness, alien's arrest, and her release on bond, alien's husband did not testify that his wife began practicing Christianity at an earlier date than claimed by alien, accounts of when alien told her husband she was practicing were only off by about one month, where husband resided during his father's illness was only marginally relevant to claim, and determinations that account of arrest and release were implausible were based on speculation. *Quan v. Gonzales*, C.A.9 2005, 428 F.3d 883. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) adverse credibility finding, in denying Albanian alien's application for asylum based on past political persecution, was supported by substantial evidence involving discrepancies that went to heart of alien's asylum claim, including discrepancy between alien's asylum application, which omitted any mention of leadership role in local party, and his testimony that he had occupied leadership position, and between his testimony that his notoriety made it impossible for him to seek hospital treatment for injuries allegedly sustained in police beating and documentary evidence implying that he had been treated in hospital. *Shkabari v. Gonzales*, C.A.6 2005, 427 F.3d 324. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Confusion in asylum applicant's testimony that appeared to be due to translation problems and that did not rise to level of an inconsistency, or that, at most, was inconsistent with respect to trivial or minor facts not going to heart of his asylum claim, could not support immigration judge's adverse credibility finding, at least not under current law. *Jibril v. Gonzales*, C.A.9 2005, 423 F.3d 1129. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals (BIA) erred in accepting Immigration Judge's (IJ) adverse credibility finding regarding Albanian asylum applicant who testified that he was repeatedly detained, beaten, and threatened with death by Albanian police as result of his political activities on behalf of Albanian Democratic Party on basis of minor inconsistencies in alien's testimony that came nowhere close to supporting conclusion that substance of claim of political persecution was false; for example, IJ rejected credibility of applicant regarding one beating, in which applicant's left scapula was fractured, due to IJ's confusion over misspellings of medical description of bone in hospital record, notwithstanding IJ's personally observing protruding bone when applicant removed shirt during testimony. *Mece v. Gonzales*, C.A.6 2005, 415 F.3d 562. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination by immigration judge (IJ) regarding Albanian national who sought asylum, stemming from fears of reprisal due to anti-government activities; significant inconsistencies existed in national's accounts of arrest for supporting hunger strike and reasons for release, severity of beating by police, and sale of house to pay persons who smuggled him into United States. *Vasha v. Gonzales*, C.A.6 2005, 410 F.3d 863, rehearing and rehearing en banc denied. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding concerning alien's failure to demonstrate past persecution or a well-founded fear of future persecution, as required to be eligible for asylum; several inconsistencies existed between alien's testimony, his asylum application and the documents he submitted as evidence, including failure to include in his application that he was working for slain officials at the time of their murders, discrepancies concerning when alien joined the Palestinian Liberation Organization (PLO) and his role in the PLO, and his reasons for leaving the country. *Hassan v. Gonzales*, C.A.6 2005, 403 F.3d 429. Aliens ↻ 54.1(4.1)

Unexplained inconsistencies in statements that alien made regarding her nationality and the Yugoslavian province in which she lived, in statements that she made to Immigration and Naturalization Service (INS) interviewer at time of her admission and in various documents that she filed, and as to her relatives or lack of relatives in the United States, provided substantial evidentiary support for adverse credibility finding, and supported denial of alien's application for asylum, withholding of removal and relief under the Convention Against Torture (CAT);

8 U.S.C.A. § 1101

discrepancies as to alien's nationality and residence went to heart of her withholding-of-removal claim. *Kasneovic v. Gonzales*, C.A.9 2005, 400 F.3d 812. Aliens ↪ 54.1(4.1)

Decision of Board of Immigration Appeals (BIA) that Somali applicant was not eligible for asylum and withholding of removal was supported by substantial evidence, notwithstanding applicant's claims that his misunderstanding of proceedings and time constraints led him to be less complete at some times than others, and that interpreter was incompetent, where adverse credibility findings of BIA and Immigration Judge (IJ) were supported by multiple inconsistencies between applicant's asylum application, interview, and testimony. *Ismail v. Ashcroft*, C.A.8 2005, 396 F.3d 970. Aliens ↪ 54.1(4.1)

Sufficient evidence supported determination by Immigration Judge (IJ) that alien applying for withholding of removal was not credible, and therefore that alien did not have well-founded fear of future persecution if returned to home country; alien provided three different scenarios regarding her claim that she was raped by members of another clan, which included different years of when rape occurred, different people present during rape, and different locations for where rape occurred and there was no corroborating evidence. *Aden v. Ashcroft*, C.A.8 2005, 396 F.3d 966. Aliens ↪ 54.1(4.1)

Adverse credibility determinations made by immigration judge (IJ) on application for asylum were conclusive on Court of Appeals, notwithstanding that IJ drew all possible inferences against alien, where reasonable adjudicator would not have been compelled to find alien credible, given internal inconsistencies in alien's testimony, inconsistencies between his testimony and asylum application, inconsistencies with testimony of alien's brother, and failure to provide corroborating evidence. *Pilica v. Ashcroft*, C.A.6 2004, 388 F.3d 941. Aliens ↪ 54.3(4)

Minor and irrelevant inconsistencies in asylum applicant's testimony, regarding number of Guinean Francs that he had paid for membership in political party opposed to ruling party in his homeland of Guinea, or regarding date that his schooling ended, could not constitute basis for adverse credibility determination. *Sylla v. I.N.S.*, C.A.6 2004, 388 F.3d 924. Aliens ↪ 54.1(4.1)

Finding of Immigration Judge (IJ), that Somali failed to present credible evidence in support of his asylum application, was supported by substantial evidence, given numerous inconsistencies between his asylum application, his hearing testimony, and documentary evidence, IJ's disbelief of applicant's statements that he lived for over two years without suffering harm in house that clan attacked daily, and IJ's belief that applicant could have safely left house without incident since he finally arranged to leave Somalia. *D-Muhumed v. U.S. Atty. Gen.*, C.A.11 2004, 388 F.3d 814. Aliens ↪ 54.1(4.1)

Alien failed to support her application for withholding of removal with credible testimony, where there were inconsistencies in her testimony, she failed to support her testimony with sufficient detail, alien submitted unsigned affidavits from her brother, and advisory letter from Department of State contradicted vast majority of alien's statements. *Njenga v. Ashcroft*, C.A.1 2004, 386 F.3d 335. Aliens ↪ 54.1(4.1)

Finding of Immigration Judge (IJ) that husband and wife asylum applicants from Bangladesh were not credible was not supported by substantial evidence, where alleged discrepancy between original and copy of letter did not aid applicants' case, minor inconsistencies regarding dates of hiding could not form basis of adverse credibility finding, and wife's failure to bring up certain incidents on her own during structured testimony did not make her incredible. *Hoque v. Ashcroft*, C.A.9 2004, 367 F.3d 1190. Aliens ↪ 54.1(4.1)

Alien's testimony during his asylum hearing was not credible, and thus alien failed to establish past persecution or well-founded fear of future persecution based on political activity; alien's testimony that he was in hiding for five years was inconsistent with testimony that he was in charge of family farm, alien had date of arrest wrong on asylum application, alien testified that he saw political leader at a time when country report indicated that leader was in custody, alien knew little about political party he claimed to be part of and could not articulate work he did

8 U.S.C.A. § 1101

for group, and alien did not participate in elections even though establishing separate state through electoral process was objective of alleged political activity. *Singh v. Ashcroft*, C.A.9 2004, 367 F.3d 1139. Aliens 54.1(4.1)

Inconsistencies in testimony by alien requesting asylum on basis of past persecution in Ethiopia, and her mother, were not significant and relevant, and thus did not support Immigration Judge's (IJ) adverse credibility determination; alien persuasively explained that she did not report rape by Ethiopian soldiers in her asylum interview and application because she was ashamed to discuss it, and record indicated that disagreement between alien's testimony and her mother's on another issue had more to do with mother's difficulties with English than with prevarication. *Kebede v. Ashcroft*, C.A.9 2004, 366 F.3d 808. Aliens 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility finding in asylum case; there were three major inconsistencies going to the heart of applicant's asylum claim, including fact that applicant never mentioned his connection to illegal "Falun Gong" movement during his initial airport interview, but only asserted it later in his application, as well as other minor inconsistencies and implausibilities. *Yu v. Ashcroft*, C.A.6 2004, 364 F.3d 700. Aliens 54.1(4.1)

Absent a conclusive determination of alien's Italian language skills, IJ's characterization of alien's testimony as incredible, due to inconsistencies between her answers at credible fear interview, which was conducted in Italian, and her testimony before IJ, which was aided by a translator of Amharic, the alien's native language, was not supported by reasonable, substantial, and probative evidence on the record. *Ememe v. Ashcroft*, C.A.7 2004, 358 F.3d 446. Aliens 54.1(4.1)

Substantial evidence supported the immigration judge's (IJ) conclusion that asylum applicant was not eligible for asylum; applicant's failure to call her mother as a witness had a major adverse impact on her credibility since she was only potential witness with first-hand knowledge of the alleged persecution, and applicant's testimony contained other material inconsistencies that cast doubt on her credibility. *Loulou v. Ashcroft*, C.A.8 2003, 354 F.3d 706, rehearing granted, certiorari denied 125 S.Ct. 509, 543 U.S. 987, 160 L.Ed.2d 370. Aliens 54.1(4.1)

Inconsistencies and gaps in alien's persecution claim established substantial reasons for the immigration judge (IJ) reviewing her asylum application to question her credibility and deny her claim for asylum and withholding of deportation; inconsistencies included alien's failure to explain why, at her hearing, she conceded that she told the immigration inspector on the date of her arrival that she was seeking political asylum solely for economic reasons and that she had not been persecuted in her native Nigeria, and this was inconsistent with her testimony at the hearing that she fled because of her political activity and because the Nigerian government had arrested and killed her husband. *Oforji v. Ashcroft*, C.A.7 2003, 354 F.3d 609. Aliens 54.1(4.1)

Adverse credibility determinations of Board of Immigration Appeals (BIA) and Immigration Judge (IJ), based on inconsistencies in testimony between Chinese asylum applicant and her husband regarding such things as date of forced abortion and husband's normal work hours at time of abortion, were not supported by substantial evidence, inasmuch as inconsistencies were not material to whether applicant was forced to have abortions. *Wang v. Ashcroft*, C.A.9 2003, 341 F.3d 1015. Aliens 54.1(4.1)

Purported inconsistencies between alien's application for asylum and alien's testimony, concerning dates of her arrest in native country, dates of husband's arrest, and whether she knew of her son's whereabouts, were insufficient to support the immigration judge's (IJ) decision to discredit alien's testimony regarding her fear of persecution, upon review of denial of application for asylum and withholding of deportation; government conceded that such inconsistencies were minor, alien's native country used different calendar system, alien repeatedly expressed her confusion regarding the differences between the calendars and trying to convert dates, and testimony that she did not know her son's whereabouts was not inconsistent with claim in application that son was in jail. *Georgis v. Ashcroft*, C.A.7 2003, 328 F.3d 962. Aliens 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported determination by Board of Immigration Appeals (BIA) that testimony of alien at deportation hearing regarding her fears of persecution if she returned to her native Philippines was not credible, and thus, that alien had not established that she was a refugee eligible for grant of asylum; alien's first and second petitions for asylum differed in a material way, and discrepancy went to heart of alien's claim that she was persecuted on account of her political opinion. *Valderrama v. I.N.S.*, C.A.9 2001, 260 F.3d 1083. Aliens 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA's) finding that alien did not satisfy burden required for asylum because of his lack of credibility; alien's inconsistent testimony regarding events causing his departure from Morocco and number of times he was arrested for political activities, along with implausibility of his testimony regarding Morocco's exile practices, related to basis for his fear of persecution and went to heart of asylum claim, and he inexplicably failed to submit corroborative evidence that should have been readily available. *Chebchoub v. I.N.S.*, C.A.9 2001, 257 F.3d 1038. Aliens 54.1(4.1)

Alien's testimony that he decided to leave his native country of Albania after he was arrested was not contradicted by his gathering of evidence well in advance of that date, so as to support adverse credibility finding at asylum proceeding. *Turmalaj v. Gonzales*, C.A.2 2006, 2006 WL 1476204, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there were several inconsistencies between alien's hearing testimony and his asylum affidavit, as well as inconsistencies in testimony which alien gave during course of his hearing. *Marzouk v. Attorney General of U.S.*, C.A.3 2006, 2006 WL 1360166, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien testified that two of his arrests were at his pastor's house, while at his asylum interview he stated that first arrest was at another individual's house and second was at pastor's, and alien offered clearly contradictory accounts of circumstances surrounding his third arrest, indicating on direct examination that he was arrested as he was about to enter police station, but claiming on redirect that he was picked up by police while walking towards station and placed in car for six to seven minute drive. *Avdalyan v. Gonzales*, C.A.9 2006, 2006 WL 1308347, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's testimony was materially inconsistent with his airport interview, in which he stated that he came to the United States to seek better employment and that he had not been mistreated by Chinese authorities. *Ji Zu Shi v. Gonzales*, C.A.2 2006, 2006 WL 1228832, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported adverse credibility determination in asylum proceeding; alien was inconsistent in his statements concerning how many times Serbian police came to his home to coerce him into serving in the military, alien's testimony was inconsistent with a letter of support from one of his relatives, there was a discrepancy concerning alien's military service and contradictions between alien's testimony and the State Department report concerning treatment of Muslims in Serbia and Montenegro, and alien lacked credible corroborating evidence. *Admir v. Gonzales*, C.A.2 2006, 2006 WL 1228688, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien was inconsistent as to date of first attack and as to what happened to him during two months of particular year, and alien could not recall where his wife lived in particular country and waited significant amount of time before submitting supporting documents to court. *Rumizak v. Gonzales*, C.A.2 2006, 2006 WL 1169116, Unreported. Aliens, Immigration, And Citizenship 643

8 U.S.C.A. § 1101

Substantial evidence supported adverse credibility determination in asylum proceeding, despite any improper speculation by Immigration Judge (IJ) that alien's obtaining of a notarial birth certificate indicated she was planning on leaving China before the events which allegedly led to her departure; alien's statement of her residence was inconsistent with her later claim she had been in hiding elsewhere, her documentary evidence undermined her claim of employment, and her testimony she had used her passport to leave China was implausible, given her claim of being wanted for violation of family planning policies. *Ai Xiang Li v. Gonzales*, C.A.2 2006, 175 Fed.Appx. 464, 2006 WL 918726, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there were inconsistencies in aliens' testimony regarding fires in their home, which formed basis for asylum claim, in that aliens could not provide consistent accounts of whether any threats were made during either fire, who had reported first fire, extent of damage caused by first fire, and whether there were any witnesses to first fire, and alien's assertion that same individuals who were responsible for fires killed her sister-in-law was implausible, given her testimony that she had not seen anyone start either fire. *Gorka v. U.S. Department of Justice*, C.A.2 2006, 2006 WL 898085, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; aliens provided inconsistent testimony concerning nature and scope of threats from terrorist group, with lead alien vacillating between saying that threats were directed to entire family and that they were directed only to him personally, which distinction went to plausibility of aliens' claim of persecution because, if threats were directed at entire family, it was less plausible that lead alien would have left for United States without his wife and children, and there was unexplained delay between alleged torture of alien and family's eventual departure from their country. *Saleh v. Gonzales*, C.A.3 2006, 2006 WL 839064, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there was glaring inconsistency between alien's first application, in which alien stated that he had never been detained, interrogated, convicted, sentenced, or imprisoned, and his application six years later and testimony before IJ, in which alien stated that he had been imprisoned for one week, and alien stated in his later application that when he traveled to look for his family, he found them in a refugee camp and that he stayed there for a few months, while alien contradicted such version of events in his testimony when he stated that his family had not been held at refugee camp. *Aw v. Gonzales*, C.A.6 2006, 174 Fed.Appx. 873, 2006 WL 786803, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported adverse credibility determination by immigration judge (IJ) as to Chinese national seeking asylum, withholding of removal and relief under Convention Against Torture (CAT); national's testimony and airport interview provided two different accounts of why he came to United States, national's testimony relating to fines he may have received in China was internally inconsistent and not supported by documents in record, and fact that national's children attended public school contradicted his claim that family was in hiding. *Lin v. Gonzales*, C.A.2 2006, 169 Fed.Appx. 624, 2006 WL 482560, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration judge (IJ) deciding application for asylum, withholding of removal, and relief under Convention Against Torture (CAT) was not compelled, as reasonable adjudicator, to credit Chinese alien's explanation that he could not register his marriage until certain year, because his wife was not of age until then, when alien previously testified that he had registered marriage two years earlier. *Chen v. Bureau of Citizenship and Immigration Services*, C.A.2 2006, 167 Fed.Appx. 838, 2006 WL 374119, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; among other things, there was inconsistency between alien's testimony that he received visa within three months of being released from prison and his visa, which was dated more than 18 months after date alien repeatedly gave as release date, alien's claim that he

8 U.S.C.A. § 1101

was afraid government was seeking to re-arrest him but that he had secured new passport from government after he was released from prison was suspicious, and there was inconsistency between alien's testimony and his affidavit as to when he made plans to flee the country and as to whether his father and brother were both killed by government. *Balde v. Gonzales*, C.A.2 2005, 159 Fed.Appx. 272, 2005 WL 3425379, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility determination with respect to alien's asylum claim; alien initially testified that he had "three sons," only to later claim that he had two sons and one daughter, testified that he did not pay for the false passport that he used to gain entry in the United States only to later concede that he paid \$16,000 to come to the United States, and gaps in his asylum application indicated that his wife was sterilized and then later underwent a forced abortion. *Chang v. Bureau of Citizenship and Immigration Services*, C.A.2 2005, 151 Fed.Appx. 96, 2005 WL 2899691, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at proceeding for withholding of removal; although alien originally claimed to have suffered one beating and no torture in his country, he later testified to numerous instances of physical and sexual abuse, alien's testimony was vague, incoherent, and dismissive, and there was lack of corroborating evidence. *Atmaca v. Gonzales*, C.A.3 2005, 153 Fed.Appx. 833, 2005 WL 2847166, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ's) adverse credibility determination, in asylum claim asserted by alien, a native of Indonesia; although alien asserted in her asylum application that she was abducted by a taxi driver who made discriminatory statements about her Chinese ethnicity, and he attempted to rape her, and that she was saved from the rape by a group of Chinese Catholic high school students, she testified at the hearing that she could not recall the identity of ethnicity of her rescuers. *Kuswadi v. Attorney General of U.S.*, C.A.3 2005, 153 Fed.Appx. 116, 2005 WL 2847165, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility determination made by immigration judge (IJ) in proceeding on applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT), in view of IJ's identification of material inconsistencies within alien's testimony, as well as discrepancies between alien's hearing testimony and statements he made at his asylum interview; IJ noted that alien's inconsistent testimony regarding the duration of his detention and location of his arrests was material to his claim, and not adequately explained during proceedings. *Singh v. Gonzales*, C.A.9 2005, 150 Fed.Appx. 730, 2005 WL 2662734, Unreported. Aliens ↪ 54.1(4.1)

Inconsistencies between alien's entry interview, credible fear interview, asylum application, and hearing testimony were insufficient to constitute substantial evidence in support of immigration judge's finding that alien lacked credibility; inconsistency between alien's testimony that he was imprisoned and tortured in Iraq and his failure to specify imprisonment and torture when alleging persecution, beating, and harassment in application was technical and minor, lack of Arabic translator contributed to inconsistencies between interview and other allegations, and alien's lack of fluency in Chaldean tongue was not inconsistent with claim that he was Christian Chaldean but lived in Arabic-speaking area. *Abbo v. Gonzales*, C.A.6 2005, 150 Fed.Appx. 524, 2005 WL 2660431, Unreported. Aliens ↪ 54.1(4.1)

In asylum and withholding of removal proceedings, substantial evidence supported adverse credibility finding for alien, a native and citizen of India; evidence demonstrated discrepancies between alien's testimony and a letter he submitted from a hospital regarding a major injury his cousin allegedly suffered while in police custody, which went to the heart of alien's claim because he testified that his own arrest was related to his cousin's alleged arrest and political activism, as well as inconsistencies regarding the date of alien's arrest and the omission of any reference to alien's own arrest from two supporting affidavits. *Singh v. Gonzales*, C.A.9 2005, 147 Fed.Appx. 700, 2005 WL 2650270, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien neglected to include

8 U.S.C.A. § 1101

relevant information regarding his employment and past residences on his biographical information form, and IJ described numerous inconsistencies in alien's testimony which were supported by record. *Warsameh v. Gonzales*, C.A.9 2005, 147 Fed.Appx. 696, 2005 WL 2640964, Unreported. Aliens ↪ 54.1(4.1)

Evidence supported the immigration judge's (IJ) conclusion that Chinese citizen was not credible and was not entitled to asylum; his admission on cross-examination that he returned to and worked in his hometown for a year was inconsistent with his earlier testimony that he did not dare to return to his hometown because the authorities were looking for him, he obtained a passport in his own name and returned to China and his hometown for nineteen days in 1995 without incident, and country reports described a mild reaction by authorities in the region to anti-government protests in 1989. *Huang v. Gonzales*, C.A.9 2005, 150 Fed.Appx. 685, 2005 WL 2640960, Unreported. Aliens ↪ 54.1(4.1)

Discrepancy between application for asylum and applicant's testimony as to identity of individual whose statue applicant had helped to tear down during a political protest was insufficient to support adverse credibility finding by immigration judge, where discrepancy was only tangentially related to applicant's claim of persecution and did not amount to attempt to enhance such claim. *Vucaj v. Gonzales*, C.A.6 2005, 150 Fed.Appx. 444, 2005 WL 2445976, Unreported. Aliens ↪ 54.1(4.1)

Alleged inconsistency regarding alien's reasons for attending particular celebration was unrelated to circumstances surrounding alien's detention and abuse she suffered on account of her imputed political beliefs, and thus could not form basis for adverse credibility finding at asylum proceeding. *Kaur v. Gonzales*, C.A.9 2005, 144 Fed.Appx. 679, 2005 WL 2330410, Unreported. Aliens, Immigration, And Citizenship ↪ 54.1(4.1)

Substantial evidence supported adverse credibility finding with respect to alien's asylum claim; Board of Immigration Appeals (BIA) pointed out that alien testified before IJ that during period when she claimed to have been in hiding from government, she personally picked up her resident identification card from government officials. *Zheng v. Gonzales*, C.A.2 2005, 144 Fed.Appx. 178, 2005 WL 2277597, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility determination by immigration judge (IJ), who found that testimony of alien who was native and citizen of the People's Republic of China was not credible because it lacked plausible detail and was in direct contradiction to alien's own documents, and therefore substantial evidence supported IJ's determination that alien, in seeking asylum and withholding of removal, failed to establish either past persecution or a well-founded fear of future persecution. *Zheng v. U.S. Dept. of Justice*, C.A.2 2005, 147 Fed.Appx. 208, 2005 WL 2108095, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien was unclear about date of his abduction and the number of times he was harassed by the Islamic Brotherhood, his testimony regarding bullet holes in his house was inconsistent with his sister's testimony, and he failed to offer corroborating evidence for important parts of his claim. *Feras-Salman v. Gonzales*, C.A.9 2005, 147 Fed.Appx. 648, 2005 WL 1950880, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ's) disbelief that alien was detained and beaten by police because his asylum application indicated that he was detained for three weeks, whereas he testified at his hearing that he was detained only for a day and a half, did not provide basis for adverse credibility finding; IJ failed to consider alien's explanation for the inconsistency, which was that the person who drafted the application made a mistake in the translation, and asylum officer's notes indicated that alien previously attempted to correct the discrepancy. *Singh v. Gonzales*, C.A.9 2005, 139 Fed.Appx. 891, 2005 WL 1684947, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ noted several serious inconsistencies in alien's various statements, and stated that alien had submitted no evidence that she practiced

8 U.S.C.A. § 1101

particular religion other than her own testimony and a statement from her parents, and that alien's story warranted skepticism because she claimed she was practicing religion for less than one month, could not adequately explain what religion was, and was not really detailed as to what she did to practice. *Lin v. U.S. Atty. Gen.*, C.A.11 2005, 140 Fed.Appx. 196, 2005 WL 1652202, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien was inconsistent regarding his political involvement in India, and his inconsistency as to his stance on the Terrorism and Destructive Activities Act (TADA), went to the heart of his claim because his activism against TADA formed the basis of his alleged persecution. *Singh v. Gonzales*, C.A.9 2005, 135 Fed.Appx. 943, 2005 WL 1473622, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; there were inconsistencies in the record regarding whether the police came to alien's house after his final arrest, and inconsistencies about the dates that alien attended college, and those issues went to the heart of alien's claim. *Singh v. Gonzales*, C.A.9 2005, 135 Fed.Appx. 926, 2005 WL 1463486, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; there were inconsistencies between alien's testimony, his application, and his documentary evidence regarding his membership in a political party in India and the arrests and detentions he and his wife experienced, those discrepancies went to the heart of his claims of past persecution and fear of future persecution, and alien failed to produce corroborating evidence. *Singh v. Gonzales*, C.A.9 2005, 135 Fed.Appx. 907, 2005 WL 1463444, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding, even though the majority of the inconsistencies between alien's testimony and his asylum application were minor or were not actually inconsistencies; attack on alien, allegedly by neo-Nazis hired by a government security officer, was probably not motivated by alien's religion, but by his refusal to report about foreign students in his school, and there was no connection between the security officer and the threatening phone calls, vandalism, and assault on alien's father. *Petrov v. U.S. Atty. Gen.*, C.A.11 2005, 135 Fed.Appx. 377, 2005 WL 1412175, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support adverse credibility finding in asylum proceeding; minor inconsistency as to whether political opponents came to alien's home several times or many times revealed nothing about alien's fear for his safety, alien's testimony about threats against his brothers did not conflict with brother's letter, alien's statement that a friend who was murdered was "fine" was result of language problems, and there was no evidentiary support for allegation of discrepancies between asylum interview and alien's direct testimony. *Kazi v. Gonzales*, C.A.9 2005, 135 Fed.Appx. 66, 2005 WL 1400280, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there were significant inconsistencies between alien's original asylum application and testimony at later hearing, including fact that alien did not mention that his wife had actually been sterilized, as claimed at his hearing, but asserted instead that his family had been fined and otherwise pressured because she refused to be sterilized, and certificate of sterilization offered by alien was dated almost seven years after sterilization allegedly took place. *Dong v. Board of Immigration Appeals*, C.A.2 2005, 133 Fed.Appx. 811, 2005 WL 1389441, Unreported. Aliens ↻ 54.1(4.1)

Inconsistency respecting whether alien was attacked by two persons or four was minor one that could not support adverse credibility finding by immigration judge (IJ) in proceeding on asylum application, particularly given that alien did not claim in her application that she suffered any worse injury at hands of four, rather than two, attackers, and that poor translation was likely explanation for inconsistency. *Nikoghosyan v. Gonzales*, C.A.9 2005, 133 Fed.Appx. 450, 2005 WL 1331789, Unreported, rehearing denied. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ) adverse credibility findings were properly based on inconsistencies in asylum applicant's testimony regarding the use of different names and identification cards, knowledge of the birthdate that applicant

8 U.S.C.A. § 1101

used regularly for nearly ten years, and the lack of corroborative evidence as to the alternate name and identification card that applicant used. *Zheng v. U.S. Dept. of Justice*, C.A.2 2005, 135 Fed.Appx. 456, 2005 WL 1317023, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding which was premised on forced sterilization of alien's wife; alien presented differing versions of his travels with his wife after she was allegedly informed she had to have an abortion, the distances between various towns, details of his employment after fine was levied, and similar matters. *Zhou Yu Yuan v. Gonzales*, C.A.3 2005, 131 Fed.Appx. 843, 2005 WL 1164211, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's finding that alien's testimony in support of his asylum application was not credible; alien's testimony was inconsistent with his asylum application on issues of how many people were arrested at political demonstration that was the only true instance of government mistreatment described in application, whether police at demonstration beat demonstrators, including alien, or only chased them away, whether defendant belonged to Communist Party Youth Organization in China, and circumstances leading to issuance of certificate of employment from his former employer. *Chen v. U.S. Atty. Gen.*, C.A.2 2005, 131 Fed.Appx. 323, 2005 WL 1130258, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA's) adverse credibility determination was supported by inconsistencies between alien's testimony and his declaration regarding identity of individuals who vandalized his store, inconsistencies in his testimony regarding whether his wife was threatened, and inconsistencies in his account of physical attacks supported; thus, because discrepancies went to heart of his asylum claim, asylum would be denied. *Bhandari v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 894, 2005 WL 1126997, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien testified inconsistently regarding the time between his first and second arrest, the length of his detention, and the alleged nature of his torture, and his documentary evidence failed to compel a contrary conclusion sufficient to overcome the special deference accorded to credibility determinations. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 375, 2005 WL 844892, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding involving Indian citizen, where there were inconsistencies regarding his alleged arrests and his involvement in Sikh politics. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 369, 2005 WL 844725, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's adverse finding on credibility of asylum applicant was supported by substantial evidence, and would not be disturbed, given numerous inconsistencies in applicant's testimony on matters central to his asylum claim, including alleged incidents of persecution that he experienced in Kenya on account of his Indian ancestry, why he sent his daughter to the United States, whether to study or so that she could be safe, whether he had intended to remain permanently in the United States at time of his entry, and when he decided to apply for asylum; numerous inconsistencies could not be explained based on memory problems that applicant allegedly experienced due to his diabetes or, given his familiarity with English and ample opportunities to correct any perceived translation errors, by inexperience of his interpreter. *Patel v. Gonzales*, C.A.6 2005, 126 Fed.Appx. 283, 2005 WL 735920, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ identified inconsistencies among alien's hearing testimony, testimony at initial asylum interview, and amended asylum application, focusing in particular on alien's failure to mention his 15-month detention in his first asylum application and in his asylum interview, discrepancy between his alleged detention and alleged date of birth of one of his children, voluntary return to his country after detention, government's willingness to issue him visas, and lack of any showing that alien's family, who remained in his country, had been persecuted in any way. *Alshaef v. Ashcroft*, C.A.2 2005, 124 Fed.Appx. 53, 2005 WL 481700, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Immigration Judge's (IJ) adverse credibility finding against asylum applicant was not supported by substantial evidence; IJ cut short applicant's attempted explanation concerning inconsistencies between his written asylum application and his oral testimony, and IJ's assumption that office that prepared applicant's written application would be motivated to complete application fully and properly, and his resulting disbelief of alien's statement that office did not ask him to explain why he was applying for asylum, was unsupported. *Felobous v. Gonzales*, C.A.9 2005, 123 Fed.Appx. 816, 2005 WL 434492, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against asylum applicant; IJ offered specific, cogent reasons for her findings based on inconsistency between applicant's testimony that Muslim militants kidnapped her husband in India in a certain year and that she never saw or communicated with him again and documents submitted by government at hearing which showed that her husband entered United States three times after that year and listed applicant's address in United States as his intended address. *Kaur v. Gonzales*, C.A.9 2005, 121 Fed.Appx. 746, 2005 WL 319099, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; in addition to material inconsistencies between alien's testimony and certain supporting materials, IJ identified numerous inconsistent, implausible, or vague aspects of alien's testimony, such as his inability to state with any specificity the goals of the organization he was allegedly persecuted for supporting and lack of any explanation of why he, a self-admitted low-level member of political party, would be singled out for persecution when other similarly situated individuals were not. *Dhillon v. Ashcroft*, C.A.9 2005, 121 Fed.Appx. 255, 2005 WL 293682, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; in addition to IJ's determination that numerous submitted documents were fraudulent, there were various inconsistencies between alien's testimony and application regarding when police showed him a file that they had on his family, how long he was detained by police after he was fired from his government job, and fact that alien made no mention in application of having suffered reprisals as result of participating in demonstrations, and alien failed to corroborate his claims of political persecution with medical evidence or statements from members of his family. *Gjinaj v. Ashcroft*, C.A.6 2005, 119 Fed.Appx. 764, 2005 WL 221522, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported decision, in asylum proceeding, that alien was not credible with regard to his purported Sierra Leone citizenship and as to his claims of persecution; alien's testimony contained significant inconsistencies, he submitted documents of questionable authenticity, he failed to provide originals of the documents, and his Guinean passport, which he alleged was false, appeared valid. *Barry v. Ashcroft*, C.A.8 2005, 121 Fed.Appx. 670, 2005 WL 170850, Unreported. Aliens ↻ 54.1(4.1)

Inconsistencies between alien's asylum interview and testimony regarding number of times police visited his shop and the years during which visits took place went to heart of alien's asylum claim and provided substantial evidence to support IJ's adverse credibility finding. *Singh v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 172, 2005 WL 90723, Unreported. Aliens ↻ 54.1(4.1)

Alien's testimony regarding her practice of particular religion in the United States was not necessarily inconsistent with a letter stating that alien was a member of a "practice site" of that religion and that she was an experienced practitioner of religion, so as to provide basis for adverse credibility finding at asylum proceeding. *Li v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 127, 2005 WL 79026, Unreported. Aliens ↻ 54.1(4.1)

Asylum applicant's various descriptions of her political involvement in organization as a member of youth wing, a member of women's wing, and treasurer were not inconsistent, as would support Immigration Judge's (IJ) adverse credibility finding; applicant could have been involved in these three ways either at same time or sequentially, and any inconsistencies were minor discrepancies. *Afolabi v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 32, 2005 WL 19535, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Asylum applicant's failure to include in her declaration attached to her asylum application any written description of the rape she testified that she endured one night during her third, six-week detention was not an inconsistency supporting Immigration Judge's (IJ) adverse credibility finding; applicant was afraid to tell her parents about the rape, and she did not report it or visit a hospital because she felt ashamed, and the rape was not inconsistent with her general description of mistreatment that she gave in her declaration. *Afolabi v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 32, 2005 WL 19535, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against asylum applicant; applicant testified inconsistently regarding crucial elements of her claim of persecution on account of political opinion, and specifically regarding her support of political candidate which allegedly led to her persecution, the alleged invasions of her family home in retribution for her support of candidate, and the fire set at her home, and documentary evidence raised questions about applicant's identity. *Bacourt v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 594, 2004 WL 2912809, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility determination; there were unexplained inconsistencies between alien's testimony, his application and his wife's testimony regarding whether alien and his wife had a fifth child. *Singh v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 191, 2004 WL 2857142, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility determination against applicant for asylum and withholding of removal; applicant's testimony was rife with inconsistencies, including how many police were present at rally that precipitated his second arrest and length of his second detention, applicant submitted falsified birth certificate, and, although applicant explained his inconsistent testimony as being result of head injury he suffered which caused memory loss, he did not testify about head injury until confronted with his inconsistent testimony, and he never provided any documentary proof of head injury. *Parmar v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 565, 2004 WL 2852550, Unreported. Aliens ↩ 54.1(4.1)

Immigration Judge's (IJ) determination that Pakistani asylum applicant was not credible was supported by substantial evidence, where IJ identified inconsistencies in his testimony regarding place of his arrest, extent of his political activities after detention, date of shooting at his garage, and identity of shooters, and corroboration letters from his attorney and district president of Pakistan People's Party (PPP) lacked specific information. *Ul Hassan v. Ashcroft*, C.A.3 2004, 116 Fed.Appx. 348, 2004 WL 2663118, Unreported. Aliens ↩ 54.1(4.1)

Inconsistency in alien's asylum application with respect to identification of his persecutors did not provide basis for adverse credibility finding at asylum proceeding, where alien credibly explained that preparer of application did not read contents of application to him and that he could not read English at time. *Aldana v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 817, 2004 WL 2603594, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there were inconsistencies between alien's airport statement and testimony with respect to explanation of why she left her native country, and alien failed to mention in her asylum application that her sister had been kidnapped, despite fact that application included a question that directed her to identify mistreatment of family members. *Ocampo-Montes v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 248, 2004 WL 2580816, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien testified inconsistently about matters crucial to his claim, including whether he was a member of particular organization, whether he was injured so badly during interrogations as to require medical treatment, and whether his arrest was before or after an election for which he alleged he was campaigning. *Singh v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 985, 2004 WL 2203941, Unreported. Aliens ↩ 54.1(4.1)

Inconsistency relating to whether alien reported to police that militants visited him was a minor discrepancy that

8 U.S.C.A. § 1101

could not support adverse credibility finding at asylum proceeding, since police knew about the visit and questioned alien about it. *Kamal v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 898, 2004 WL 2163191, Unreported. Aliens ↪ 54.1(4.1)

Series of minor inconsistencies in dates did not provide basis for IJ's adverse credibility finding at asylum proceeding, particularly when discrepancies most likely arose from confusion between differing calendars. *Mohammed v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 803, 2004 WL 1894985, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ based finding on fact that alien began crying when he was confronted with an inconsistency in his testimony, which the IJ deemed to be an inappropriate reaction. *Singh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 799, 2004 WL 1894979, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien testified that he had inherited animals, yet indicated that he engaged in farming of sorghum and potatoes, and there was a discrepancy between alien's testimony and his application as to whether he had been arrested once or twice, as well as inconsistencies as to his release from prison and about his family members and their apparent deaths. *Niang v. I.N.S.*, C.A.6 2004, 106 Fed.Appx. 970, 2004 WL 1870441, Unreported. Aliens ↪ 54.1(4.1)

Significant internal inconsistencies in alien's testimony, discrepancies between her testimony and her written application, lack of specificity regarding most of her claims, failure to provide any identifying documents, lack of knowledge regarding the political goals of her alleged oppressors, and unexplained lack of involvement by alien's husband in protecting his family supported IJ's adverse credibility determination at asylum proceeding. *Kaur v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 74, 2004 WL 1870368, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien offered inconsistent statements concerning her age and grade level at time her family was abducted, when she met a particular individual, how long she delivered packages for him, and whether packages contained political documents, and alien claimed to attend numerous political meetings but could not say what was discussed at those meetings, and was unable to provide any specific information about her father's activities. *Abraham v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 96, 2004 WL 1869295, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there was a glaring inconsistency between alien's declaration concerning those responsible for her father's death and her testimony regarding whether particular group was in fact responsible, leading IJ to question plausibility of alien having thrown away a letter detailing the cause and circumstances of her father's death, which related directly to her claim of future persecution. *Ferreras v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 157, 2004 WL 1859910, Unreported. Aliens ↪ 54.1(4.1)

Inconsistency between alien's testimony and documentary evidence regarding alien's departure from his native country went to heart of alien's claim that he fled persecution by police, and thus constituted substantial evidence required to support adverse credibility finding at asylum proceeding. *Singh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 140, 2004 WL 1859831, Unreported. Aliens ↪ 54.1(4.1)

Inconsistencies between alien's written application and hearing testimony regarding the date on which his house was allegedly destroyed, the amount of time that he was hospitalized, and whether he was asked to steal a ballot box or merely change some votes, constituted substantial evidence required to support IJ's adverse credibility finding at asylum proceeding. *Milloja v. Ashcroft*, C.A.6 2004, 106 Fed.Appx. 984, 2004 WL 1859591, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; among other things, alien's

8 U.S.C.A. § 1101

application and testimony contained material inconsistencies with regard to her assertion that she was arrested for divulging state secrets while she was a teacher in her country. *Reid v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 610, 2004 WL 1826339, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; in addition to minor inconsistencies in alien's testimony, evidence suggested that alien's identification documents, including his driver's license and marriage certificate, were not authentic, it appeared that alien's birth certificate was altered, and alien was unable to demonstrate significant knowledge about political party he claimed to be member of or to testify in detail about his political involvement. *Singh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 30, 2004 WL 1763905, Unreported. Aliens ↪ 54.1(4.1)

In asylum proceedings, immigration judge's adverse credibility determination was supported by substantial evidence; inconsistencies existed between alien's asylum petition and testimony before immigration judge, including inconsistencies relating to an alleged beating by police, and inconsistencies in alien's wife's testimony, relating that following a second beating alien was taken by an ambulance to the hospital "for a day or so" but later testifying that alien had not gone to the hospital until hours later, was released the same day, and that he had been initially treated by an emergency ambulance crew. *Beganovic v. Ashcroft*, C.A.5 2004, 106 Fed.Appx. 279, 2004 WL 1759252, Unreported. Aliens ↪ 54.1(4.1)

Inconsistencies and evidentiary gaps in alien's application provided substantial evidence to support IJ's adverse credibility finding at asylum proceeding in which alien alleged persecution on account of political articles he had written; alien claimed that articles caused him to be targeted for arrest, but also testified that there was free press at that time and could not produce copies of his articles, despite wide circulation of newspaper in which articles were published, alien did not explain how government knew he was author of articles, which he allegedly wrote under pseudonym, and although alien claimed officials came to his home with purpose of arresting him, alien maintained routine work schedule and officials could presumably have arrested him at his place of business. *Berhe v. Ashcroft*, C.A.3 2004, 105 Fed.Appx. 393, 2004 WL 1688203, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; there were numerous inconsistencies in alien's testimony that undermined her credibility, and un rebutted forensic report suggesting falsification, combined with inconsistencies in the dates for critical events, suggested that documents alien submitted were not authentic. *Chand v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 124, 2004 WL 1687953, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony was both internally inconsistent and inconsistent with his prior statements to an asylum officer regarding his arrest, given that alien first said he shouted political slogans on stage at a political rally and that his father was not arrested due to illness, then testified that both he and his father were on stage, but that his father shouted the political slogans, and that his father was not arrested simply because alien was the one shouting political slogans on stage. *Singh v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 121, 2004 WL 1686939, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) adverse credibility finding was supported by many inconsistencies between asylum applications and applicants' hearing testimony, as well as internal inconsistencies within their testimony regarding threats of imprisonment in China and property takings, which went to the heart of their claim. *He v. I.N.S.*, C.A.6 2004, 105 Fed.Appx. 54, 2004 WL 1664023, Unreported. Aliens ↪ 54.1(4.1)

Alien's inconsistent testimony regarding his political involvement, as well as evidence of tampering and possible fabrication in letters alien offered to establish his involvement with several political organizations, provided basis for IJ's adverse credibility finding at asylum proceeding. *Singh v. Ashcroft*, C.A.9 2004, 105 Fed.Appx. 909, 2004 WL 1663521, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Alleged discrepancies or inconsistencies in alien's written and oral statements about his political activities in his country and the circumstances of his five arrests did not provide basis for IJ's adverse credibility finding at asylum proceeding; to extent that such inconsistencies existed, alien explained them, and IJ offered no reason for rejecting those explanations. *Singh v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 111, 2004 WL 1663394, Unreported. Aliens ↻ 54.1(4.1)

Alleged inconsistencies between alien's representations to an asylum officer and declaration alien presented at her removal hearing and testimony at that hearing did not constitute substantial evidence supporting IJ's adverse credibility finding; record did not contain any notes of the asylum interview, asylum officer did not testify, and IJ discounted alien's plausible explanation for why application she presented to asylum officer was incomplete, which was that the application was prepared by a friend who did not translate it for her. *Movsisyan v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 94, 2004 WL 1663256, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony on cross-examination was inconsistent with his previous testimony on direct examination regarding details of his alleged arrests and his leadership position in political group, which went to heart of his claim. *Dham v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 93, 2004 WL 1663252, Unreported. Aliens ↻ 54.1(4.1)

Inconsistency between alien's asylum application, in which alien stated that he did not know what happened to his family and worried that they might have starved to death, and his testimony at hearing that he heard from neighbors that his family had been killed by members of particular clan, constituted substantial evidence supporting IJ's adverse credibility finding. *Nur v. Ashcroft*, C.A.7 2004, 105 Fed.Appx. 93, 2004 WL 1662269, Unreported. Aliens ↻ 54.1(4.1)

Implausibilities and inconsistencies in alien's testimony and declarations provided substantial evidence to support adverse credibility finding at asylum proceeding; alien claimed she feared returning to her native country because she identified police officers involved in a killing, but she did not witness the killing or have sufficient information to identify the officers, and she gave inconsistent information regarding the number of officers she identified. *Kaur v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 281, 2004 WL 1595070, Unreported. Aliens ↻ 54.1(4.1)

Inconsistencies in alien's testimony provided substantial evidence to support IJ's adverse credibility finding at asylum proceeding; alien did not describe a police detention in his application during a six-year period, but testified that he was questioned and detained by police between 50 to 60 times during that period, that he was questioned and detained after that period, and later, that he was on the run after that time and was not detained. *Singh v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 267, 2004 WL 1594866, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ noted several inconsistencies in alien's testimony relating to alleged instances of persecution and supported her determination with specific findings. *Andre v. Ashcroft*, C.A.1 2004, 102 Fed.Appx. 180, 2004 WL 1563203, Unreported. Aliens ↻ 54.1(4.1)

In light of the inconsistencies, in asylum proceeding, between alien's testimony and his supporting documents, and between his testimony and his statements in his credible fear interview, and the lack of medical information as to all but one of his alleged beatings, alien was not credible as to his alleged persecution in Lebanon; there was no clear link between alien's past activities with an opposition group and the alleged incidents, and alien's parents were never persecuted, detained or beaten. *Ohannessian v. Ashcroft*, C.A.3 2004, 105 Fed.Appx. 331, 2004 WL 1491654, Unreported. Aliens ↻ 54.1(4.1)

Inconsistencies in testimony of family of Russian aliens about whether wife visited friends or relatives in a hospital and whether husband was a volunteer or elected board member of Armenian group were matters of little or no consequence in relation to incidents of violence to which aliens testified and therefore did not undermine the

8 U.S.C.A. § 1101

veracity of their testimony as a whole in asylum proceeding. *Tatulyan v. Ashcroft*, C.A.10 2004, 103 Fed.Appx. 338, 2004 WL 1447979, Unreported. Aliens 54.1(4.1)

Inconsistencies in alien's testimony, coupled with forensics report questioning the authenticity of alien's documentary evidence, constituted substantial evidence which supported IJ's adverse credibility finding at asylum proceeding. *Singh v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 212, 2004 WL 1447780, Unreported. Aliens 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) determination that citizen of People's Republic of China was not credible and not entitled to asylum on ground of political persecution; IJ identified several inconsistencies among alien's testimony at hearing, his testimony at an earlier asylum hearing, and his amended asylum application, which led IJ to conclude that alien made up his events as he went along. *You In Shen v. I.N.S.*, C.A.2 2004, 103 Fed.Appx. 432, 2004 WL 1434841, Unreported. Aliens 54.1(4.1)

Substantial evidence supported immigration judge's finding that alien lacked credibility, defeating asylum claim; the immigration judge found that alien was inconsistent when he provided details of his political activities, and alien stated that he was attacked and severely injured because of his political activities but neither went to the hospital nor changed his everyday routines. *Bogdan v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 698, 2004 WL 1379912, Unreported. Aliens 54.1(4.1)

Immigration judge's finding that alien, who was native and citizen of Albania, was not credible was supported by inconsistencies in alien's statements and his testimony, including alien's failure to mention being beaten in his initial statements, but later stating in his application that he was beaten "very badly" and that the secret police tried to kill him, and then testifying at hearing that he was struck twice in the face; thus, alien's application for asylum was properly denied. *Thermija v. I.N.S.*, C.A.6 2004, 102 Fed.Appx. 920, 2004 WL 1367469, Unreported. Aliens 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien seeking asylum; although alien testified that his participation in student demonstration in province in his native country of China precipitated his departure from China, timeline of events was implausible, facts regarding his participation were not contained in statement attached to his asylum application, there were inconsistencies in his testimony regarding his actions on day of demonstration and police actions following demonstration, and identification card in support of his application was issued approximately eleven months after he claimed he left province. *Yang v. Ashcroft*, C.A.2 2004, 100 Fed.Appx. 59, 2004 WL 1303652, Unreported. Aliens 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that alien was not credible and thus, absent any other evidence, not entitled to refugee status; when testifying, alien was unresponsive, his story was riddled with inconsistencies and varied from his detailed asylum application, at times he contradicted himself, he failed to corroborate his testimony, and he claimed to have come to the United States to seek asylum, yet he entered on a B-2 visa and only applied for asylum after he was found overstaying his visa. *Hebishy v. Ashcroft*, C.A.3 2004, 99 Fed.Appx. 431, 2004 WL 1234068, Unreported. Aliens 54.1(4.1)

Immigration judge's (IJ) finding that alien's testimony, that he would be punished if returned to China because he tried to stop Chinese officials from performing abortion on his wife, was not credible was well-supported by the multiple inconsistencies in alien's testimony and provided substantial evidence for administrative decision to deny alien asylum. *Zheng v. Ashcroft*, C.A.7 2004, 104 Fed.Appx. 564, 2004 WL 1218599, Unreported. Aliens 54.1(4.1)

Evidence supported denial of asylum claim by Bangladesh citizens; citizen's testimony at the hearing that he left Bangladesh a few days after his arrest differed drastically from the eight months he related two years earlier to an asylum officer, this was a material difference on an important date, and citizen failed to establish the objective

8 U.S.C.A. § 1101

component for past persecution in connection with arrests for crimes. *Khan v. Ashcroft*, C.A.3 2004, 98 Fed.Appx. 183, 2004 WL 1194655, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ's) adverse credibility determination, on which IJ based his denial of alien's applications for asylum and withholding of deportation, was supported by substantial evidence, including that alien gave inconsistent testimony with respect to whether he had ever been denied a promotion or advancement as a result of performing his official duties, which went to heart of his asylum claim that he was denied promotion because mayor was seeking to retaliate against alien for having arrested his son. *Caraig v. I.N.S.*, C.A.9 2004, 98 Fed.Appx. 610, 2004 WL 1041681, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination that alien was not credible, as required in her application for asylum; alien was inconsistent as to whether she feared mistreatment if returned to Somalia, what position her father held under a previous government and whether he was dead, where her brother was killed, and the frequency with which her family was harassed, and she failed to produce documentation for any part of her story despite having allegedly been in Kenya and been able to obtain help from an uncle in Saudi Arabia. *Ali v. Ashcroft*, C.A.9 2004, 97 Fed.Appx. 705, 2004 WL 954374, Unreported. Aliens ↪ 54.1(4.1)

Evidence supported the Immigration Judge's (IJ) conclusion that aliens had not shown that they had been persecuted or had a well-founded fear of being persecuted on account of their political opinion, based primarily on a lack of credibility on the part of one of the aliens who had allegedly been raped because of her and her family's political opinion; IJ's adverse credibility determination as to her testimony concerning the political motives of her alleged assailants and the political persuasion of her family and herself was squarely and expressly predicated on the inconsistency between her testimony and her asylum application, and the few documents submitted by the aliens did not support her testimony, but rather, diverged from it in many respects. *Tahiraj-Datui v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 115, 2004 WL 817400, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility judgment in denying alien's application for asylum, where alien stated in his asylum interview that he was not harmed during attack, declaration attached to asylum application indicated that alien was beaten during attack, and alien indicated after hearing that attackers had slashed his thigh while attempting to castrate him. *Omar v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 615, 2004 WL 764905, Unreported. Aliens ↪ 54.1(4.1)

Albanian citizen failed to establish well-founded fear of future persecution for political beliefs and was not entitled to asylum; his claims were inconsistent regarding detentions by police, police brutality, and disposition of his brother's body after political demonstration, and the inconsistencies related to whether citizen was persecuted in Albania before his departure and whether he had a well-founded fear of future persecution. *Kumi v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 888, 2004 WL 742289, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported finding of immigration judge (IJ) that alien, who was citizen of India, was not credible, such that denial of alien's applications for asylum and restriction on removal was warranted; alien's testimony was inconsistent, affidavits purportedly from alien's father and village sarpanch were suspiciously similar to each other and to alien's own declaration, and alien failed to present any documentation regarding his identity. *Wahga v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 555, 2004 WL 720146, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) negative credibility determination in asylum proceedings, in light of numerous inconsistencies in alien's testimony and inconsistencies between his written application for asylum and his testimony regarding reason for his alleged persecution, alleged beating by Iranian police, and evidence regarding injuries incurred during beating. *Mousavi v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 505, 2004 WL 614738, Unreported. Aliens ↪ 54.1(4.1)

Numerous inconsistencies provided substantial evidence supporting adverse credibility finding in asylum

8 U.S.C.A. § 1101

proceeding, including that alien falsely told immigration officers she had no family in the U.S. and her father was alive, that her statement in her first asylum application, that her parents were practicing Christians and her father had been beaten and killed, was contradicted by her second application and her in-court testimony, and that she gave different middle school graduation dates and misstated her date of birth and date she left China. *Zheng v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 370, 2004 WL 447230, Unreported. Aliens 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible regarding his alleged persecution in Burma; alien's testimony contradicted statements he made to asylum officer, his testimony on cross-examination was inconsistent with his direct examination testimony, and the Immigration Judge (IJ) found his demeanor to be evasive and non-responsive. *Min v. Ashcroft*, C.A.9 2004, 92 Fed.Appx. 480, 2004 WL 435447, Unreported. Aliens 54.1(4.1)

Substantial evidence supported decision of immigration judge (IJ) that alien was not credible during hearings to determine whether alien was subject to deportation; document presented to IJ by alien stated that his wife was sterilized on certain date, during first hearing alien testified that wife was sterilized two years earlier than date in document, during third hearing alien testified that wife was sterilized ten months after date stated in first hearing, alien's testimony was inconsistent as to whether he paid fine for violating one-child rule, and whether he suffered consequences for failure to pay. *Mei v. Ashcroft*, C.A.3 2004, 89 Fed.Appx. 340, 2004 WL 377352, Unreported. Aliens 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; alien was inconsistent as to his treatment following his arrests and implausible in the date for his first arrest and his statement that police believed he and his family were responsible for a bombing that damaged their own property, a document submitted by alien was of dubious authenticity, and Immigration Judge (IJ) found alien's demeanor suspicious based on his nervousness when asked questions not in his written asylum claim. *Neela v. Ashcroft*, C.A.9 2004, 90 Fed.Appx. 244, 2004 WL 376769, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding with respect to alien's claims of ignorance to involvement of military group, of which he was a member, in killings, kidnappings, and other criminal activity; alien offered conflicting testimony about his knowledge of the group's killings when he joined the group and implausibly contended that, throughout his three years with group, he had neither knowledge nor suspicion of killings despite his admission that he read newspaper stories about the killings. *Calimlim v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 103, 2004 WL 363436, Unreported. Aliens 54.1(4.1)

Immigration judge's (IJ) adverse credibility determination against alien was not supported by substantial evidence, in asylum proceeding, arising from alien's claim that he was arrested and beaten by police in native country; although alien's testimony contained inconsistencies as to whether alien identified suspect from a photo array, number of photos in array, whether he was beaten with sticks or straps or both, whether he was beaten four to six or four to five times, and whether his father was released alive from his second arrest, most inconsistencies concerned either minor details, and any inconsistency regarding the timing of his father's death was due to another person's claim that he saw father alive following the date he was released. *Singh v. Ashcroft*, C.A.9 2004, 91 Fed.Appx. 558, 2004 WL 363369, Unreported. Aliens 54.1(4.1)

Substantial evidence did not support determination, in asylum proceeding, that alien's account of his subjection to a pattern of beatings, death threats, and conscription, was not credible; omissions and inconsistencies cited by Immigration Judge (IJ) were minor and did not go to heart of alien's claim, IJ failed to consider reasonable explanations for the discrepancies, alien's testimony and asylum application were not fundamentally incompatible, and any failure to elaborate during his oral testimony being reprimanded for giving long-winded answers. *Zagaryan v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 25, 2004 WL 300449, Unreported. Aliens 54.1(4.1)

Alien's testimony was unclear and, at times, inconsistent, and therefore was not sufficient to support a claim of

8 U.S.C.A. § 1101

persecution necessary to sustain a claim for asylum and withholding of removal; he testified that he began working on a ship in 1985 and then left this job in 1986, but then subsequently testified that he did not leave his job on the ship until 1992 when he entered the United States, and likewise, he testified that six of his friends had been killed as a result of their political associations, yet he was not able to name any of those friends by name. *Cagas v. Ashcroft*, C.A.3 2004, 88 Fed.Appx. 515, 2004 WL 287156, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not fully credible as to his alleged persecution; alien's testimony was inconsistent as to whether and how often his wife visited him during his alleged imprisonment, alien continued to work and live in same neighborhood despite having received threats, alien obtained a stamp for his passport despite his alleged fear of reprisal for his refusal to submit to a court summons, and his testimony as to his political activities was ambiguous. *Marku v. Ashcroft*, C.A.6 2004, 89 Fed.Appx. 500, 2004 WL 232727, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not fully credible as to his allegations of past persecution; there were inconsistencies between alien's asylum application and his testimony, as to whether his wife was with him when he was beaten and as to whether he was involved with political activities, and the inconsistencies were central to the merits of alien's claim. *Sylla v. I.N.S.*, C.A.6 2004, 89 Fed.Appx. 502, 2004 WL 232367, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that alien and his sister-in-law were not credible; alien was inconsistent in his answers as to whether he had only worked as a farmer, in his description of an alleged nighttime assault on his house, and in how he was treated at a police station, and alien's sister-in-law, when asked for details, was vague or stated that she could not remember, and her testimony evinced an unfamiliarity with farming. *Deo v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 8, 2004 WL 197940, Unreported. Aliens ↻ 54.1(4.1)

Inconsistencies between testimony of alien and her aunt provided IJ with substantial evidence to support adverse credibility finding at immigration proceeding; alien had specifically testified that she was sent to the United States because her mother's house was bombed, but when responding to repeated questions about alien's departure and the political problems of alien's mother, alien's aunt did not mention a bombing, despite fact that she claimed to have spoken regularly with alien's mother, and, in fact, stated that she had been to the mother's house after the alleged bombing. *Yang v. Ashcroft*, C.A.9 2004, 86 Fed.Appx. 349, 2004 WL 103020, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible as to her allegations of spousal persecution; testimony of alien's son and sister discredited her assertions, and information in alien's asylum application and psycho-social summary was inconsistent with her hearing testimony. *Quinones-Perez v. Ashcroft*, C.A.5 2004, 87 Fed.Appx. 335, 2004 WL 98001, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible; alien gave inconsistent testimony as to her stance on war, her level of activity with a political party, and when she began to support that party, those inconsistencies went to the heart of her asylum claim inasmuch as they concerned her fears of future persecution based on her anti-war stance and her claims of past persecution based on her political involvement, and Immigration Judge (IJ) found alien's demeanor to be evasive and non-responsive. *Vatcharian v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 634, 2004 WL 94090, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; there were many contradictions between alien's testimony and his sworn affidavit, and alien was not able to give dates when certain very important things happened or the distance between two citizens between which he claimed to have traveled three times monthly, and some of the discrepancies were both a major element of alien's case and material to his asylum claim. *Olubi v. Ashcroft*, C.A.3 2004, 86 Fed.Appx. 500, 2004 WL 65250, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Board of Immigration Appeals's (BIA's) adverse credibility finding at asylum proceeding was not supported by substantial evidence; BIA based finding primarily on alien's testimony and applications as to the dates and duration of his detentions in his native country, which were minor inconsistencies for which alien provided reasonable explanation, and remaining inconsistencies were either minor or not actual discrepancies. *Anganu v. Ashcroft*, C.A.9 2004, 85 Fed.Appx. 590, 2004 WL 61240, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's three applications were inconsistent as to her reasons for seeking asylum, and she failed to provide a believable explanation for the inconsistencies. *Cuche-Ortega v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 33, 2004 WL 42388, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported the Immigration Judge's (IJ) findings that alien's claims of persecution were not credible, supporting denial of alien's application for asylum and withholding of removal; alien told widely divergent stories of his treatment by government officials in his native country on different occasions, alien admitted that some of the stories were fabrications, three of his asylum applications each differed in their recitation of the facts, and there were unexplained and illogical inconsistencies in alien's testimony and wife's testimony. *Zhu v. U.S. Department of Justice*, C.A.3 2004, 84 Fed.Appx. 247, 2004 WL 36222, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's finding alien was not credible was supported by substantial evidence; inconsistencies in alien's testimony went to the heart of his claims of past persecution, and although alien testified that he attended at least two meetings of a political organization a month for 16 months, he lacked an in-depth knowledge of the goals or plans of the political organization. *Singh v. Ashcroft*, C.A.9 2004, 84 Fed.Appx. 971, 2004 WL 26723, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not wholly credible; alien's asylum application and hearing testimony were inconsistent with regard to issues critical to question of whether he had a well-founded fear of persecution, including whether all of his arrests involved his own political activities and those of his brother, or whether some arrests involved his refusal to be drafted into the army. *Marasevic v. I.N.S.*, C.A.6 2003, 86 Fed.Appx. 817, 2003 WL 23140077, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien testified inconsistently about where he was persecuted by police. *Markarian v. Ashcroft*, C.A.9 2003, 87 Fed.Appx. 28, 2003 WL 23098056, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence, in asylum proceeding, supported finding that alien was not credible as to alleged persecution; alien's testimony was inconsistent as to whether he was burned with a hot iron rod or struck with a bamboo stick, and that inconsistency went to the heart of his claims for asylum and withholding of deportation. *Singh v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 845, 2003 WL 23097845, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination in alien's claim for withholding of removal; alien's inconsistent accounts about whether he was physically harmed in Mexico went to the heart of his claim. *Romero v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 251, 2003 WL 23097731, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; alien requested asylum on inconsistent grounds in his original asylum application, asylum interview, amended asylum application, and hearing testimony, and the discrepancies went to the heart of his asylum claim. *Navarijo v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 835, 2003 WL 23097614, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence, in asylum proceeding, did not support Immigration Judge's (IJ) adverse credibility finding; IJ found alien generally credible, alien's account of twice being arrested and beaten because of his membership in a student group was detailed and consistent, several inconsistencies identified by IJ were not inconsistencies at all,

8 U.S.C.A. § 1101

and any inconsistencies or omissions in alien's testimony were minor and did not go to the heart of his asylum claim. *Singh v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 765, 2003 WL 23096009, Unreported. Aliens ↪ 54.1(4.1)

Evidence did not compel conclusion that alien was credible as to her asylum claim, even though some of the inconsistencies relied on by Immigration Judge (IJ) were not sufficient to support an adverse credibility determination; alien's inconsistencies as to who had harassed her, and why, and her admission that she lied on her asylum application, were sufficient to support adverse credibility determination. *Zatikian v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 266, 2003 WL 23018889, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible regarding her claim that Indian police arrested her husband for his involvement with Sikh militants, and raped her; there were internal inconsistencies in alien's testimony, those inconsistencies went to the heart of her claim, and alien failed to explain why a corroborating affidavit from her husband was not easily available. *Kaur v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 240, 2003 WL 22977109, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) determination that testimony of Jewish citizen of Russia regarding her past persecution was not credible, and thus that she was not entitled to asylum on basis of past persecution, was supported by substantial evidence, where applicant's testimony regarding many of central aspects of her asylum claim was markedly inconsistent. *Onoufrienko v. Ashcroft*, C.A.9 2003, 82 Fed.Appx. 604, 2003 WL 22883661, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility determination on alien's testimony, on which denial of alien's request for asylum and withholding of removal to his native India was based; the IJ pointed to a number of specific inconsistencies in alien's testimony concerning the alleged motivations for, and circumstances surrounding, alien's arrests. *Mundi v. Ashcroft*, C.A.9 2003, 82 Fed.Appx. 548, 2003 WL 22804075, Unreported. Aliens ↪ 54.1(4.1)


Board of Immigration Appeals (BIA) did not err in its adverse credibility determination against alien from Philippines who sought asylum and withholding of deportation based on alleged fear of persecution by the Moro National Liberation Front (MNLF), which was anti-government movement active in the southern Philippines, where BIA cited several discrepancies between his asylum application and his testimony and concluded the testimony lacked detail and was inconsistent, and although he had access to an interpreter and received multiple opportunities to clarify his testimony, he still failed to provide a coherent narrative. *Samin v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 698, 2003 WL 22782682, Unreported. Aliens ↪ 54.1(4.1)


Any inconsistency in alien's testimony, in asylum proceeding, regarding his attendance at the Sikh temple following his first arrest by Indian police, was at most a minor error on which an adverse credibility determination could not stand; alien's testimony on direct examination, that after arrest he started going to the temple less often, was not inconsistent with later testimony that he eventually felt he could not attend at all. *Singh v. I.N.S.*, C.A.9 2003, 81 Fed.Appx. 649, 2003 WL 22736590, Unreported. Aliens ↪ 54.1(4.1)


Inconsistencies between alien's testimony and his application for asylum, including alien's testimony that he was not beaten by police although his application stated that he had been beaten by police, and alien's inability to name factions of political group of which he was a member, provided specific, cogent reasons supporting Immigration Judge's (IJ) finding that alien was not credible; inconsistencies went to heart of alien's asylum claim. *Mahein v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 154, 2003 WL 22682535, Unreported. Aliens ↪ 54.1(4.1)


Substantial evidence supported adverse credibility determination, in deportation proceeding; Immigration Judge (IJ) identified material inconsistencies between alien's testimony, his asylum application, and his written declaration regarding his purported membership in a political group and his participation in student protests, and inconsistencies went to the heart of his asylum claim. *Tun v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 145, 2003 WL


8 U.S.C.A. § 1101


22682490, Unreported. Aliens  54.1(4.1)


Substantial evidence supported IJ's adverse credibility finding in immigration proceeding; finding was based on numerous, substantial inconsistencies between alien's testimony and asylum applications that went to the heart of asylum claim, and IJ offered 12 specific, cogent reasons for disbelieving alien. *Garcia v. Ashcroft*, C.A.9 2003, 80 Fed.Appx. 23, 2003 WL 22417134, Unreported. Aliens  54.1(4.1)


Substantial evidence supported the determination of the Board of Immigration Appeals (BIA) that alien applying for asylum and withholding of removal was not credible; alien's testimony was inconsistent regarding the death of a third person, his involvement in the Muslim league, and the frequency of his contact with the police at the police station, and the testimony of a document analyst raised serious questions about the authenticity of alien's character letters. *Kadri v. I.N.S.*, C.A.9 2003, 80 Fed.Appx. 14, 2003 WL 22417079, Unreported. Aliens  54.1(4.1)


Minor discrepancies in alien's testimony regarding the date of his arrest, and if or why alien was not wearing a turban at his initial appearance, did not relate to alien's alleged fear of persecution, and thus could not form basis for adverse credibility determination in proceeding for asylum and withholding of deportation. *Singh v. Ashcroft*, C.A.9 2003, 75 Fed.Appx. 645, 2003 WL 22137305, Unreported. Aliens  54.1(4.1)

Substantial evidence supported conclusion that alien's testimony was not credible, and therefore alien failed to meet his burden of demonstrating past persecution or a well-founded fear of future persecution, as required for grant of asylum; there were numerous inconsistencies between alien's testimony at his removal hearing, the information he provided in his asylum application, and his testimony to immigration officers at the airport, and inconsistencies went to the heart of his asylum claim. *Lu v. Ashcroft*, C.A.3 2003, 74 Fed.Appx. 237, 2003 WL 22113977, Unreported. Aliens  54.1(4.1)

Substantial evidence did not support Board of Immigration Appeals' (BIA) determination that alien was not credible, even though his asylum application did not mention prior arrests and his hearing testimony omitted three body searches described in application; heart of alien's claim of persecution lay in the severe beatings and disablement of his brother and the search of both brothers' houses, which were described consistently in application and testimony, and inconsistencies were not substantial and did not go to heart of asylum claim. *Shergill v. I.N.S.*, C.A.9 2003, 74 Fed.Appx. 786, 2003 WL 22097803, Unreported. Aliens  54.1(4.1)

Inconsistencies in alien's testimony regarding number of men who beat her husband, her husband's clothing and positioning during his torture, and precise sequence of occurrences relating to rapes and number and identity of perpetrators, were minor discrepancies in relation to alien's otherwise consistent and detailed descriptions of material aspects of her rape and torture, stemming in large part from apparent mistranslations, and thus could not form basis of IJ's adverse credibility determination during proceeding for asylum and withholding of deportation. *Kaur v. I.N.S.*, C.A.9 2003, 73 Fed.Appx. 977, 2003 WL 22005996, Unreported. Aliens  54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding as to alien's credibility finding, and thus the denial of asylum; alien provided information in his asylum application that was inconsistent with his hearing testimony, and failed to adequately explain discrepancies as to his identity, his marital status, his city of residence, and documents offered in support of his claims. *Dhamrat v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 288, 2003 WL 21995197, Unreported. Aliens  54.1(4.1)

Immigration Judge's (IJ's) finding that alien seeking asylum for himself and his dependent son was not credible was supported by substantial evidence; the IJ identified discrepancies between the father's asylum applications and his testimony, and inconsistencies within his testimony. *Soanca v. Ashcroft*, C.A.6 2003, 72 Fed.Appx. 376, 2003 WL 21920028, Unreported. Aliens  54.1(4.1)

Finding that alien applying for asylum was not credible was supported by evidence that alien affirmatively

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

represented under oath that he was married, swore under penalty of perjury on application that he was single, and made his marital status essential to claim by testifying that officers in his home country had asked his wife and children about his whereabouts. *Singh v. Ashcroft*, C.A.7 2003, 72 Fed.Appx. 480, 2003 WL 21892583, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported decision of immigration judge (IJ) and Board of Immigration Appeals (BIA), to not credit testimony of alien that she had been raped and that alien had not suffered past persecution, since there were inconsistencies, discrepancies, and contradictions between alien's testimony about rape at hearing and her asylum interview, and rape was material fact that went to heart of her claim of past persecution, but it was not mentioned in her asylum application and was brought up for first time in proceeding before IJ. *Sonko v. Ashcroft*, C.A.9 2003, 65 Fed.Appx. 644, 2003 WL 21318327, Unreported. Aliens ↻ 54.1(4.1)

Discrepancy in dates when alien worked for national police, and inconsistency regarding the details of alien's brother's death, as opposed to who actually killed him, were "minor" inconsistencies not going to the heart of the asylum claim; thus, adverse credibility determination could not be based on those "minor" inconsistencies in resolving applications for asylum and withholding of deportation under the Immigration and Nationality Act (INA) and relief under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT). *Taboada-Rodriguez v. Ashcroft*, C.A.9 2003, 60 Fed.Appx. 703, 2003 WL 1793296, Unreported. Aliens ↻ 54.1(4.1); Treaties ↻ 8

198. ---- Speculation, credibility, refugee

Immigration Judge's (IJ) determination that x-ray certificate indicating wife was sterilized was not authentic was speculative, and thus did not support IJ's determination that asylum applicant, who was native of China, was not credible; IJ found certificate to not be authentic because it contained the same picture of applicant's wife as her notarial birth certificate, there was no basis for thinking that authentic documents would contain unique photos, and both certificates were issued within two weeks of each other and there was nothing suspicious about idea that wife brought duplicate photos to notarial office and hospital in collecting documents for case. *Li v. I.N.S.*, C.A.2 2006, 453 F.3d 129. Aliens, Immigration, And Citizenship ↻ 643

Remand was required, in alien's claim for withholding of removal, where Immigration Judge (IJ) engaged in improper speculation when finding that alien was not credible in her testimony that she suffered intense pain when she was forcibly sterilized in China while under partial anesthesia and with only her hands and feet tied down; IJ stated that finding was the most critical element of his credibility determination, and Board of Immigration Appeals (BIA) did not modify the IJ's findings at all. *Lin v. U.S. Dept. of Justice*, C.A.2 2006, 453 F.3d 99. Aliens, Immigration, And Citizenship ↻ 575

Adverse credibility determination on asylum application could not be based upon finding of Immigration Judge (IJ) that it was "unusual" that alien, Indian citizen and native of northern Indian state of Jammu and Kashmir, did not know as of date of hearing exact location of his brother, who also applied for asylum, since determination was impermissibly based upon personal conjecture rather than supportable, cogent reasoning. *Kumar v. Gonzales*, C.A.9 2006, 444 F.3d 1043. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration Judge (IJ) erred, in credibility determination in asylum proceeding, in finding implausible alien's reason for waiting nearly a year, after coming to the United States from Russia, before applying for asylum; IJ engaged in improper speculation by assuming that the murder of a fourth member of alien's religious group would not create a sufficient increase in fear to overcome alien's initial reservations about permanently leaving her friends and family. *Pavlova v. I.N.S.*, C.A.2 2006, 441 F.3d 82. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration judge's (IJ) speculation that Indian officials would not ask alien to confess to "whatever was done," and that he had connections with terrorists, as alien testified, did not support adverse credibility finding, in asylum

8 U.S.C.A. § 1101

proceeding. *Singh v. Gonzales*, C.A.9 2006, 439 F.3d 1100. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Adverse credibility determination on asylum application could not be based upon IJ's finding that it was "unusual" that alien, Indian citizen and native of northern Indian state of Jammu and Kashmir, did not know as of date of hearing exact location of his brother, who also applied for asylum, since determination was impermissibly based upon personal conjecture rather than supportable, cogent reasoning. *Kumar v. Gonzales*, C.A.9 2006, 435 F.3d 1019. Aliens ↻ 54.1(4.1)

Immigration Judge (IJ) failed to properly support her adverse credibility determination, given evidence, contrary to IJ's conclusions, that Chinese asylum applicant's mother had problems with authorities, and that police were looking for applicant despite fact that his mother, not he, was licensed owner of bookstore where Falun Gong books were sold, and given IJ's mistaken conclusion that applicant was alleging that authorities wished to eradicate Falun Gong movement. *Gao v. Gonzales*, C.A.2 2005, 424 F.3d 122. Aliens ↻ 54.1(4.1)

Immigration judge's determination that, despite her "perfect" demeanor, Chinese national was not credible in testifying to her shock on discovering that hospital where she worked as pediatrician, as means of implementing China's population control policies, was allegedly engaged in practice of killing newborn babies by injecting them with alcohol if their parents did not have necessary permits, based on fact that Chinese national already knew of forced, late-term abortions at hospital and could not rationally have drawn moral distinction between the two procedures, was not supported by substantial evidence, but based entirely on speculation, conjecture and otherwise unsupported personal opinion, as was immigration judge's finding, in rejecting Chinese national's asylum claim, that it was incredible to think that Chinese government would persecute her for attempting to expose this practice to media when incidents of forced abortions and sterilizations in Mainland China were already well known. *Cao v. Attorney General of U.S.*, C.A.3 2005, 407 F.3d 146. Aliens ↻ 54.1(4.1)

Immigration judge's conclusion that, contrary to Chinese national's testimony, she had not been forced to undergo abortion but had done so voluntarily, based on her admission that she was not physically restrained during procedure, was based on nothing more than speculation about what occurs during forced abortion, and did not provide basis for adverse credibility finding upon Chinese national's application for asylum. *Ding v. Ashcroft*, C.A.9 2004, 387 F.3d 1131. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) adverse finding on credibility of asylum applicant, to extent based upon discrepancy between manner in which applicant spelled her name and spelling of name on Indian passport or upon manner in which signature sheet was embossed onto passport, was not supported by substantial evidence, where the IJ's statement that Indian government would not have embossed signature sheet on passport in such manner as to cover up other writing thereon was pure speculation, and where the IJ failed to address applicant's explanation for discrepancy in spelling based on fact that her first name was Punjabi word. *Kaur v. Ashcroft*, C.A.9 2004, 379 F.3d 876. Aliens ↻ 54.1(4.1)

Immigration judge's adverse credibility finding was supported by substantial evidence and would not be disturbed; while some inconsistencies noted by immigration judge were not in fact inconsistencies or were based on speculative assumptions, alien's false statement that she had no children and as to timing of her miscarriage, as allegedly occurring during latest imprisonment in home country, were substantial and not merely incidental to her application for asylum and for withholding of removal and supported determination that alien was not credible. *Camara v. Ashcroft*, C.A.4 2004, 378 F.3d 361. Aliens ↻ 54.1(4.1)

Immigration Judge's (IJ) determination that asylum applicant, who was ethnic Albanian from Montenegro, was not credible, was not supported by substantial evidence, inasmuch as it was based on speculation and conjecture, and IJ was incorrect in stating that applicant's testimony about his experience in Serbian military was not supported by evidence, that it was implausible that Serbians would have killed him had he not obeyed their orders to shoot civilians, and that it was ludicrous that he could learn enough Serbian to understand instructions on operating tank.

8 U.S.C.A. § 1101

Berishaj v. Ashcroft, C.A.3 2004, 378 F.3d 314. Aliens ↻ 54.1(4.1)

In asylum case, immigration judge's (IJ) adverse credibility determination was unsupported by substantial evidence; IJ based her adverse credibility determination on several findings that rested on impermissible speculation and conjecture, such as what she imagined Chinese authorities would or would not do under certain circumstances, security practices and effectiveness of the local officials who guarded applicant in detention, and about what applicant, his wife, and other people would or would not have done in certain situations. *Ge v. Ashcroft*, C.A.9 2004, 367 F.3d 1121. Aliens ↻ 54(3.1)

Speculation by immigration judge that, if alien's husband had in fact been involved in religious activity in Mainland China as indicated on alien's application for asylum, he would have done his best to convert her as well, such that she would have been able to provide more information about extent of these religious activity, did not provide basis for adverse credibility finding, especially where alien's application was not based on husband's religious activity, but was based entirely upon fact that alien was pregnant with what was allegedly her second child and would purportedly face forced abortion and sterilization if returned to Mainland China. *Zi Lin Chen v. Ashcroft*, C.A.9 2004, 362 F.3d 611. Aliens ↻ 54.1(4.1)

Determination by Immigration Judge (IJ) that Sri Lankan asylum applicant was not credible was not supported by substantial evidence, where IJ did not specifically refer to applicant's demeanor, IJ's impugning of manner in which testimony was delivered could not displace substantial evidence of its detailed content, IJ repeatedly interrupted and browbeat applicant, and IJ's belief that it was improbable that applicant could bypass checkpoints was speculative. *Arulampalam v. Ashcroft*, C.A.9 2003, 353 F.3d 679. Aliens ↻ 54.1(4.1)

Determination of Immigration Judge (IJ), that asylum applicant from the Republic of Guinea was not credible, was not supported by substantial evidence, in that it was based on combination of misstatements of applicant's testimony, unreasonably speculative or arbitrary conclusions, inaccurate or insufficiently explained findings of contradictions, and arbitrary rejection of probative testimony. *Dia v. Ashcroft*, C.A.3 2003, 353 F.3d 228. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) reasons for discounting testimony of asylum applicant regarding his organization of workers' strike in his native country were too speculative to constitute substantial evidence supporting an adverse credibility determination; IJ stated that event in question was confined to a small group of intellectuals and students, and that it was very unlikely that applicant, as a worker, would have been subjected to treatment he claimed. *Wang v. I.N.S.*, C.A.9 2003, 352 F.3d 1250. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) evaluation of alien's testimony as implausible was based only on speculation and conjecture, and could not form basis for adverse credibility finding at asylum proceeding; IJ based finding on fact that he did not believe that alien would go to governmental hospital for pregnancy test if she knew that out-of-wedlock pregnancy was illegal, that alien would register her parents' address as her own at hospital if she lived with her boyfriend at another location, and that family planning officers coincidentally came to home of alien's parents to take her for abortion on day she happened to be visiting, but alien provided explanations for such facts, which IJ failed to address. *Quiao Ying Zheng v. Gonzales*, C.A.2 2006, 2006 WL 1193337, Unreported. Aliens, Immigration, And Citizenship ↻ 575

Substantial evidence did not support determination of immigration judge (IJ) that alien's testimony in support of asylum application was not credible; IJ's rejection of alien's claim that he obtained travel document allegedly issued by Sierra Leone government on same day he entered Guinea was impermissibly speculative, since alien conceded document was not genuine, and neither that conclusion nor IJ's finding that alien's testimony was inconsistent with that of man alien allegedly met coincidentally at airport upon arrival in United States was directly material to persecution claim that was at heart of alien's application. *Sesay v. Gonzales*, C.A.2 2006, 173 Fed.Appx. 83, 2006 WL 851244, Unreported. Aliens, Immigration, And Citizenship ↻ 643

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

On application for asylum and withholding of removal, substantial evidence did not support adverse credibility determination made by immigration judge, which was made on basis that alien, citizen of Armenia, could not have renewed his Armenian passport while he was residing in Russia, since such determination was based purely on speculation. *Karapetyan v. Gonzales*, C.A.9 2006, 171 Fed.Appx. 94, 2006 WL 620832, Unreported. Aliens, Immigration, And Citizenship ↩ 643

Substantial evidence supported determination, in asylum proceeding, that alien was not credible with regard to his claims of persecution for violating China's family planning policies, despite possible improper speculation by Immigration Judge (IJ) with regard to certain testimony; other evidence, including implausibilities as to why officials sought alien's wife for sterilization at time when she was not yet required to appear, why alien needed his birth certificate, and why alien was allowed to keep his wallet when detained, and then to walk out of detention center, overwhelmingly supported decision. *Jiang v. Gonzales*, C.A.2 2006, 166 Fed.Appx. 527, 2006 WL 328113, Unreported. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Immigration judge's (IJ's) conclusion that it was implausible that alien was able to direct his son to hide a videotape during the course of his arrest was speculation and could not support adverse credibility finding at asylum proceeding. *Zhou v. Gonzales*, C.A.9 2005, 148 Fed.Appx. 643, 2005 WL 2812839, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence did not support immigration judge's order denying alien's application for asylum, withholding of removal and relief under the Convention Against Torture (CAT); judge's adverse credibility findings were based upon impermissible speculation, and minor inconsistencies that did not go to the heart of alien's claim, and judge's demeanor finding that alien was "very quiet" and had "little or no fervor" and thus would not give Indian police a reason to believe that he was involved with terrorists was not relevant to alien's claim. *Singh v. Gonzales*, C.A.9 2005, 151 Fed.Appx. 555, 2005 WL 2705846, Unreported. Aliens ↩ 54.1(4.1)

Immigration judge's (IJ's) belief that it was inherently implausible, as alien claimed, that someone would return to India after spending six months in the United States if he had previously been tortured by Indian police officers was speculative, and thus could not form basis for adverse credibility finding at asylum proceeding. *Singh v. Gonzales*, C.A.9 2005, 144 Fed.Appx. 690, 2005 WL 2330420, Unreported. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Adverse credibility determination made by immigration judge (IJ) in deciding alien's asylum request was not supported by substantial evidence, warranting reversal of denial of asylum, given that IJ's finding that alien fabricated his whereabouts during alleged political activities in Albania rested on unfounded cultural-based assumption that border guards would not act sporadically in stamping passports, as alien contended, and IJ employed flawed reasoning in determining that numerous passport stamps necessarily disproved alien's contention, and given that IJ mischaracterized alien's testimony in finding that he had indicated that he had no real status in Greece. *Mushka v. I.N.S.*, C.A.2 2005, 149 Fed.Appx. 28, 2005 WL 2277624, Unreported. Aliens ↩ 54.1(4.1)

Immigration judge's (IJ's) rejection of numerous documents offered in support of alien's asylum application was not supported by specific, cogent reasons bearing a legitimate nexus to adverse credibility finding; IJ expressed reservations about presence of California notary stamp on original Chinese documents, when it was apparent that stamp was placed on them to verify that translations offered were for actual original documents submitted, and IJ also stated that documents were not properly authenticated, which was not required. *Ji v. Gonzales*, C.A.9 2005, 138 Fed.Appx. 996, 2005 WL 1635346, Unreported. Aliens ↩ 54.1(3)

Immigration Judge's (IJ) adverse credibility determination, regarding asylum applicant's testimony that he was member of All India Sikh Student Federation (AISSF), was not supported by substantial evidence; IJ engaged in impermissible speculation that there was no local chapter of AISSF in applicant's village in India, that it was "difficult to believe" applicant had collected funds for AISSF in the manner that he testified, and that it was her

8 U.S.C.A. § 1101

"understanding" that becoming an AISSF member required paying at least a nominal fee. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 937, 2005 WL 823857, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) conclusion that it made no sense that alien obtained a visa and was able to obtain a passport when she was being watched by police amounted to speculation and conjecture which could not form basis of adverse credibility finding at asylum proceeding; alien explained why and how she obtained visa and passport and no evidence in the record contradicted her explanations. *Lin v. Ashcroft*, C.A.9 2005, 119 Fed.Appx. 136, 2005 WL 14942, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) disbelief as to why alien waited until particular year to become politically involved amounted to impermissible speculation and conjecture which did not provide basis for adverse credibility finding at asylum proceeding; alien explained at length why he waited, stating he elected to concentrate on his education rather than politics and that after college, he returned home to care for his sick father and to work on the family farm. *Singh v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 381, 2004 WL 2862158, Unreported. Aliens ↻ 54.1(4.1)

Evidence did not support adverse credibility finding in asylum proceeding; Immigration Judge (IJ) improperly faulted alien for not mentioning in her application that other family members were in a guerilla organization, and IJ engaged in improper speculation by questioning why the Eritrean government would have issued alien a passport if they knew she was an opposition member, questioning whether anyone knew alien was ever a member of the opposition group, and suggesting that alien could not have been at risk if she was able to come back to the country to stay with her sick mother for sixteen days. *Tesfahunegn v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 126, 2004 WL 2370571, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) speculation about alien's reasons for joining political organization, his ability to survive his alleged injuries, whether doctors would have permitted him to refuse stitches, and why he was targeted by police did not provide basis for adverse credibility finding at asylum proceeding. *Iqbal v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 498, 2004 WL 1923600, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) speculation that alien had no remorse in leaving her children in her native country could not form basis for adverse credibility finding at asylum proceeding. *Xu v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 482, 2004 WL 1923582, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) adverse credibility finding at asylum proceeding was not supported by substantial evidence; IJ overstated and improperly relied on inconsistencies between alien's written application and his hearing testimony which did not go to heart of alien's claim, emphasized that he could not believe that alien would not have tried to leave the country sooner had he been persecuted, which amounted to conjecture and speculation, and noted that alien was not able to substantiate his persecution with hospital reports or reports of his arrests and injuries, which corroborating evidence was not required. *Bah v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 810, 2004 WL 1922153, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) reasons for questioning alien's credibility were based upon impermissible speculation and conjecture, and thus could not support adverse credibility finding at asylum proceeding. *Mebratu v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 51, 2004 WL 1869648, Unreported. Aliens ↻ 54(3.1)

Speculation of applicant, an ethnic Albanian, that his pro-Serbian attackers were supported by a small minority of the Albanian government was insufficient to tie his beating to an official source or to demonstrate that government could not or would not protect him, as was required to be eligible for asylum as a refugee, based on a well-founded fear of persecution. *Shengherghi v. Ashcroft*, C.A.7 2004, 106 Fed.Appx. 490, 2004 WL 1719307, Unreported. Aliens ↻ 53.10(3)

Nothing in the record supported Immigration Judge's (IJ) speculation, in credibility determination in asylum

8 U.S.C.A. § 1101

proceeding, as to the effects of sustained blood loss on someone of alien's physique, and therefore alien's testimony with regard to his kidnaping and torture by rebels would be taken as true on appeal. *Mudalige v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 663, 2004 WL 1171355, Unreported. Aliens ↻ 54.3(4)

Substantial evidence did not support adverse credibility finding in asylum proceeding; Immigration Judge's (IJ) conclusion that alien's speech at college was a separate event from his speech at social gatherings and religious events was conjecture, fact that alien had an identification card identifying him as a student did not support suspicion that alien was somebody else, and photo of alien with short hair did not, without more, support speculation that he was not a Sikh as he claimed. *Singh v. Ashcroft*, C.A.9 2004, 91 Fed.Appx. 560, 2004 WL 376712, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) adverse credibility finding at proceeding for asylum and withholding of deportation was not supported by substantial evidence; IJ's concerns were premised on alien's evasiveness, minor inconsistencies in alien's testimony regarding various dates which were unrelated to alien's fear of persecution, and improper speculation and conjecture about the likely conduct of militant rebel groups and local police. *Kaur v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 52, 2004 WL 187459, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support Immigration Judge's (IJ) adverse finding, in asylum proceeding, as to alien's credibility; contradictions which IJ identified in alien's testimony were either nonexistent or trivial, and IJ's stated grounds for disbelief were based on speculation and conjecture. *Singh v. Ashcroft*, C.A.9 2003, 80 Fed.Appx. 601, 2003 WL 22598348, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support Immigration Judge's (IJ) decision that alien, who requested asylum on basis of her torture and rape at the hands of Indian police, was not credible; IJ based his finding on an alleged lack of specificity even though alien testified to having been beaten and raped, and IJ's skepticism as to other aspects of alien's testimony was erroneously based on speculation and conjecture. *Kaur v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 964, 2003 WL 22474596, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) surprise regarding alien's testimony concerning membership in student group to support certain rights was conjecture that could not replace substantial evidence for making adverse credibility finding in immigration proceeding. *Gupta v. Ashcroft*, C.A.9 2003, 80 Fed.Appx. 20, 2003 WL 22417115, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support adverse determination as to credibility of dissident Chinese citizens seeking asylum and withholding of deportation; Immigration Judge's (IJ) conclusions, that aliens lacked a well-grounded fear of future persecution, were based on speculations that company for which alien worked in U.S. was owned by or associated with the Chinese government, that company officials were aware of and not interested in alien's application for asylum, that alien's job title in China meant he held an important position there, and that alien's possession of a passport meant he was not treated as a dissident. *Tang v. Ashcroft*, C.A.3 2003, 66 Fed.Appx. 306, 2003 WL 1860549, Unreported. Aliens ↻ 54.1(4.1)

199. ---- Fraudulent evidence, credibility, refugee

Immigration Judge's determination that photograph appearing in two certificates of marriage was a composite was based on flawed reasoning, and thus did not support the determination that asylum applicant, who was native of China, was not credible; expert report did not state that photograph was fraudulent, fact that same photo appeared in both certificates did not mean that both photos were fake, and other evidence established that applicant was married and had children. *Li v. I.N.S.*, C.A.2 2006, 453 F.3d 129. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence did not support finding of the Board of Immigration Appeals (BIA) that alien, a native of Mauritania, committed fraud by applying for asylum under an alias, as would support termination of alien's asylum

8 U.S.C.A. § 1101

status; alien testified that he never applied for asylum under the alias, and there was no fingerprint evidence showing that the prior asylum application under a different name was made by alien. *Diallo v. Gonzales*, C.A.10 2006, 447 F.3d 1274. Aliens, Immigration, And Citizenship ↻ 642

Immigration Judge's (IJ) finding, that testimony of ethnic Albanian asylum applicant concerning persecution in Kosovo was not credible, lacked reasoned basis, in that IJ made no finding that applicant knew that birth certificate he had presented was forged, IJ used forged birth certificate to discredit not only applicant's testimony but testimony of all his corroborating witnesses as well, and IJ relied on trivial inconsistencies in record. *Hanaj v. Gonzales*, C.A.7 2006, 446 F.3d 694. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Asylum applicant, who was native of the People's Republic of China, who feared she would be harmed in China by her former accomplices in scheme to obtain Social Security cards using fraudulent documents in retribution for her cooperation with authorities failed to establish that her feared persecution was on account of one of the statutorily protected grounds of race, religion, nationality, membership in particular social group, or political opinion, as required to support her asylum application; former accomplices' wish to harm applicant was based on her decision to cooperate with the government in attempt to reduce her own sentence, not on account of her membership in a particular group or for any political opinion. *Jun Ying Wang v. Gonzales*, C.A.7 2006, 445 F.3d 993. Aliens, Immigration, And Citizenship ↻ 53.10(3)

Immigration Judge (IJ) erred, in credibility determination in asylum proceeding, by rejecting as fraudulent corroborating evidence in the form of a letter from alien's co-religionist in Russia; fact that letter was submitted after initial hearing, in which the IJ noted alien's lack of corroboration, did not provide sufficient reason to discredit it. *Pavlova v. I.N.S.*, C.A.2 2006, 441 F.3d 82. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence did not support adverse credibility determination made by IJ, that death certificate submitted in support of asylum application of alien, Indian citizen and native of northern Indian state of Jammu and Kashmir, likely was forgery because handwritten number four on date line of brother's asylum application was "precisely the same peculiar and uniquely styled" number four that was written on other brother's death certificate, where IJ's visual comparative handwriting analysis was uninformed and inaccurate and IJ did not substantiate his opinion by submitting documents to handwriting expert or forensic laboratory for review or testing. *Kumar v. Gonzales*, C.A.9 2006, 435 F.3d 1019. Aliens ↻ 54.1(4.1)

Denial of asylum on factual finding that application of alien, native and citizen of Ukraine, was not credible, based upon impeachment of her general credibility through alien's submission of birth certificate that likely was fraudulent, was supported by substantial evidence, where sworn report from United States Embassy in Moscow concluded that submitted document was forgery; although rebuttal evidence proffered by alien was such that reasonable IJ arguably could have accepted its validity and set conclusion of Embassy report aside, evidence by no means was sufficiently persuasive to compel any reasonable IJ to reject Embassy report. *Borovikova v. U.S. Dept. of Justice*, C.A.2 2006, 435 F.3d 151. Aliens ↻ 54.1(4.1)

Inconsistency in two documents as to birth date of asylum applicant's wife was minor and could not form basis for adverse credibility determination by Immigration Judge (IJ), where applicant adequately explained that Marriage Certificate contained inaccurate date because wife was below legal age of marriage and certificate thus needed to reflect earlier date of birth, and IJ did not explain how inconsistency could bear negatively on crux of asylum claim, namely forced sterilization. *Lin v. Gonzales*, C.A.9 2006, 434 F.3d 1158. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's determination that asylum applicant, who was native and citizen of Somalia, was not credible; as a child applicant had filed two asylum applications in Canada based on false information, at age 23 applicant fabricated a story on his first application for asylum filed in United States, at age 26 applicant was trying to use a false identity for driver's license purposes, and applicant's witnesses presented no evidence to support his story regarding family's persecution. *Ibrahim v. Gonzales*, C.A.8 2006, 434 F.3d 1074.

8 U.S.C.A. § 1101

Aliens ↪ 54.1(4.1)

Immigration judge improperly relied on alien's alleged use of false documents to gain entry into United States as a basis for finding that alien's asylum claim was not credible. *Zhang v. Gonzales*, C.A.7 2006, 434 F.3d 993. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility determination, in Liberian alien's application for asylum based on political persecution; alien submitted a document purporting to be from the Liberian Ministry of Foreign Affairs naming him as a person wanted for treason, the document was a key piece of evidence submitted by alien, but document was dated prior to date that the president alien allegedly opposed came into power, document would not have fit inside envelope alien submitted as original envelope without being folded and document was not folded, and alien submitted fraudulent passport. *Bropleh v. Gonzales*, C.A.8 2005, 428 F.3d 772. Aliens ↪ 54.1(4.1)

Obvious nature of forgery precluded any finding that Albanian citizen had no reason to know that Albanian newspaper article he submitted in support of asylum application was fraudulent, so as to avoid application of adverse credibility determination based on his decision to submit article, which purported to report that he had fled country to avoid further persecution by neo-communists; forgery of article, which was sent to alien by his father, was readily apparent from a comparison of forged article with other article appearing on page submitted, given obvious differences in articles' typeface, spacing, and capitalization. *Selami v. Gonzales*, C.A.6 2005, 423 F.3d 621. Aliens ↪ 54.1(4.1)

Substantial evidence supported denial of alien's request for asylum; alien submitted fraudulent documents relating to core asylum issue of whether supporters of the former president killed alien's brother, alien failed to provide a satisfactory explanation for having done so, and alien failed to present other credible documentary evidence to support his allegations of political persecution. *Ambroise v. Gonzales*, C.A.8 2005, 411 F.3d 932. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's statements about his passports indicated he was presenting falsehoods, his claim he was in danger because his persecutors were looking for him during the year he remained in Albania was dubious, and alien did not challenge Immigration Judge's (IJ) findings with regard to the ease with which alien's family obtained his military records and alien's nonresponsiveness. *Cami v. Gonzales*, C.A.9 2006, 2006 WL 984913, Unreported. Aliens, Immigration, And Citizenship ↪ 643

Adverse credibility determination in asylum proceeding was supported by forensic examiner's findings that alien's birth certificate could not be authenticated and that his work ID was probably not what it purported to be, as well as alien's failure to provide a corroborating statement from his father. *Aleksi v. Gonzales*, C.A.2 2006, 2006 WL 851756, Unreported. Aliens, Immigration, And Citizenship ↪ 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien lied on two previous occasions about her husband being killed by members of particular group, gave inconsistent testimony, and embellished her claims of threats to her and her family, all of which went to heart of her claim of persecution. *Mangra v. U.S. Atty. Gen.*, C.A.11 2005, 153 Fed.Appx. 615, 2005 WL 2815844, Unreported, petition for certiorari filed 2006 WL 1178753. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA's) conclusion that the documentation corroborating alien's medical treatment was reasonably available was not supported by substantial evidence, and thus, case would be remanded to BIA to consider merits of alien's claims for asylum, withholding of removal, and relief under Convention Against Torture (CAT), where there was no evidence that the two original receipts from alien's visit to doctor still existed, or that alien could have obtained copies, and there was also no evidence that alien reasonably could have obtained corroborating affidavit from family member or other witness regarding his medical treatment. *Sivakumar v.*

8 U.S.C.A. § 1101

Gonzales, C.A.9 2005, 130 Fed.Appx. 905, 2005 WL 1127043, Unreported. Aliens ↻ 54.3(6)

Aliens' submission of forged documents supported the Board of Immigration Appeals' (BIA) determination that their claims for asylum and withholding of removal were not credible. *Shtopaku v. Gonzales*, C.A.2 2005, 129 Fed.Appx. 668, 2005 WL 1056342, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported the Immigration Judge's (IJ) conclusion that an alien seeking to obtain status as a permanent resident willfully misrepresented a material fact when he stated that he lived with his wife when he did not, despite his claim that because a friend filled out his adjustment-of-status application, he never knew its contents, and thus, did not willfully misrepresent any fact; he signed the application under oath, and any failure to apprise himself of the contents of that document constituted deliberate avoidance. *Hanna v. Gonzales*, C.A.6 2005, 128 Fed.Appx. 478, 2005 WL 873434, Unreported, rehearing en banc denied, certiorari denied 126 S.Ct. 1068, 163 L.Ed.2d 862. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's finding that identification card alien submitted in support of his asylum claim was false, thus providing basis for adverse credibility finding; IJ closely examined the card, noting that, despite three-year span between times alien received card and passport, there were troubling similarities between the two, witness testified that identification cards usually had issuance dates, which alien's did not, and report from American Embassy in alien's country concluded that card was false based on investigation that included a review of internal records of government and conversations with supervisors. *Kasa v. Gonzales*, C.A.6 2005, 128 Fed.Appx. 435, 2005 WL 486766, Unreported. Aliens ↻ 54.1(4.1)

200. ---- Coercive population control, credibility, refugee

Substantial evidence supported determination of Immigration Judge (IJ) that asylum applicant, who was native of China, was not credible; State Department asylum profile for China stated that abortion certificates, like one produced by applicant, were only issued for voluntary abortions, IJ relied on this profile in finding that applicant's testimony and characterization of abortion certificate were inconsistent with the report, and nothing else corroborated applicant's claim. *Huang v. Gonzales*, C.A.7 2006, 453 F.3d 942. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence did not support immigration judge's adverse credibility finding with respect to alien's asylum application; no evidence supported immigration judge's determination that a letter from village officials admitting to have forced an abortion on alien's wife was fraudulent, nothing in the record supported the immigration judge's inexpert medical opinion that sterilization could have been promptly performed after the abortion, and, in part based his decision on the fact that alien gave up their first child for adoption because she was a girl. *Huang v. Gonzales*, C.A.2 2006, 453 F.3d 142. Aliens, Immigration, And Citizenship ↻ 643

It was not reasonable for Immigration Judge (IJ) to expect that asylum applicant, who was native of China, would have contemporaneous documentation of his son's birth or early childhood, given that applicant was in hiding for nearly a year and took great pains to conceal the birth, and thus the lack of contemporaneous documentation did not support the IJ's adverse credibility determination. *Li v. I.N.S.*, C.A.2 2006, 453 F.3d 129. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported Bureau of Immigration Appeals's (BIA) adverse credibility determination as to alien, native of China, who had applied for asylum and withholding of removal on grounds of persecution for his failure to comply with China's family planning program, but had omitted from application any mention of his wife's forced sterilization three years earlier; although adverse determination was made before change to statutory definition of refugee to include those subject to forced sterilization, alien's wife's sterilization was material to asylum claim irrespective of its predating definition change. *Cheng Tong Wang v. Gonzales*, C.A.2 2006, 449 F.3d 451. Aliens, Immigration, And Citizenship ↻ 643

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Adverse credibility determination made by immigration judge (IJ), in denying asylum applications of Chinese couple who claimed that wife was forced to undergo sterilization procedure following birth of their second child, was not supported by substantial evidence; determination was not supported by wife's failure to obtain verification from United States physician of her sterilization, by minor inconsistencies in applicants' stories, by use of "notarial certificates" that had been fabricated in past by other applicants, or by similarities with frequently fabricated elements in other asylum claims. *Chen v. Gonzales*, C.A.6 2006, 447 F.3d 468. Aliens, Immigration, And Citizenship ↻ 643

Inconsistent statements by Chinese asylum applicant, consisting of his written application claiming only that family planning officials took him to government office to "teach [him] a lesson," told him to stop speaking out against abortion, and fined him, and his subsequent testimony that he was detained for three days and severely beaten, constituted substantial evidence supporting adverse credibility determination, in that such material inconsistencies reached to heart of his claim of persecution. *Ye v. Department of Homeland Security*, C.A.2 2006, 446 F.3d 289. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence did not support immigration judge's (IJ) determination that Chinese alien gave inconsistent testimony that she was fined for having a second child, but that she had been granted permission by Chinese authorities to have a second child, and thus, such finding could not provide basis for adverse credibility determination, in asylum proceeding; alien testified that the fine was imposed because she and her husband avoided sterilization after giving birth to their second child, and that testimony was consistent with family planning regulations in alien's province, which stated that rural families could be granted permission to have a second child, but that one spouse had to be sterilized after the second child. *Lin v. Gonzales*, C.A.2 2006, 445 F.3d 127. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported determination of Immigration Judge (IJ) that asylum applicant, who was native and citizen of China, was not credible; applicant's affidavit did not mention that wife underwent forced abortion and sterilization, which was central to asylum claim, asylum profile for applicant's province in China did not report any forced sterilizations or abortions in region, and report also stated that abortion certificates, like one produced by applicant, were only issued for voluntary abortions. *Hong Zhang Cao v. Gonzales*, C.A.8 2006, 442 F.3d 657. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence did not support finding of Immigration Judge (IJ) that Family Planning Operation Certification, purportedly documenting forced sterilization of asylum applicant's wife in People's Republic of China, was not credible, in that finding rested on IJ's speculation as to what official document should look like, and State Department warning as to forged documents from South China was not sufficient basis to discredit Certification. *Lin v. Gonzales*, C.A.9 2006, 434 F.3d 1158. Aliens ↻ 54.1(4.1)

Substantial evidence did not support finding of Immigration Judge (IJ) that Marriage Certificate and Notice of Fine were not credible, offered in support of asylum applicant's claim that his wife was forcibly sterilized in People's Republic of China, were not credible, in that IJ's concerns that Certificate did not list couple's identity numbers, that Notice did not give their address or registration numbers, and that Notice was not on pre-printed form, were based upon conjecture as to what official Chinese forms should look like. *Lin v. Gonzales*, C.A.9 2006, 434 F.3d 1158. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Under law-of-the-case doctrine, immigration judge acting pursuant to remand order directing judge to reconsider alien's asylum claim under law as changed by statutory amendment providing that a person who had been forced to abort a pregnancy or had been persecuted for refusal to undergo such a procedure or for other resistance to a coercive population control program would be deemed to have been persecuted on account of political opinion was not permitted to hear case de novo and reject determination of immigration judge who had previously heard case that alien's testimony was credible. *Zhang v. Gonzales*, C.A.7 2006, 434 F.3d 993. Aliens ↻ 54(3.1)

8 U.S.C.A. § 1101

Immigration judge (IJ) hearing asylum application by native of People's Republic of China, arising from purported persecution due to his wife's under-legal-age pregnancy, should not have discounted alien's credibility on fact of child's birth without explaining why she had discredited alien's explanations for lack of contemporaneous and authenticated birth certificate, without asking alien why he had not produced hospital certificate he alleged existed, and absent evidence of implausibility of alien's account of midwife's obtaining hospital certificate. *Cao He Lin v. U.S. Dept. of Justice*, C.A.2 2005, 428 F.3d 391. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility determination of asylum applicant, a native and citizen of China; evidence demonstrated that applicant did not mention his wife's forced contraception or abortion in his initial interview with immigration officials. *Tai v. Gonzales*, C.A.1 2005, 423 F.3d 1. Aliens ↪ 54.1(4.1)

Substantial evidence did not support finding that alien was not plausible when she testified to being forced to have an abortion in China, despite her alleged inconsistent statements in arrival interview and failure to timely apply for asylum; Immigration Judge's (IJ) skepticism that officials would have behaved as alien described was unsupported, portions of Country Profile on which IJ relied did not contradict alien's testimony, and whether alien lived in China for four years after her abortion, and her use of false documents for entry purposes, had no bearing on whether she was forced to terminate her pregnancy. *Dong v. Gonzales*, C.A.7 2005, 421 F.3d 573. Aliens ↪ 54.1(4.1)

In asylum proceedings, immigration judge's (IJ) adverse credibility determination, concerning alien alleging that if returned to China she would be forced to undergo involuntary sterilization, was not supported by substantial evidence; alien's testimony was consistent with the State Department Profile, and alien provided ample detail to explain why and how she was detained during her second and third pregnancies, which ended in forced abortions, and she was also resolute in explaining that she left China because of the one-child policy. *Lin v. Ashcroft*, C.A.7 2004, 385 F.3d 748. Aliens ↪ 54.1(4.1)

Cogent and factually supported reasons cited by immigration judge (IJ) for adverse credibility determination regarding alien who claimed that his wife had been victim of forced sterilization under Chinese population control policy supported denial of asylum and withholding of deportation on ground of persecution; alien stated at time of his airport interview that neither he nor his family had ever been arrested, and explained that he left China for financial reasons, alien did not mention forced sterilization in earlier applications for asylum, which mentioned only fines for procreation, and his wife's ability to travel in China without any trouble was inconsistent with claim that his family was so afraid of being arrested that it was forced to go deep into hiding. *Li v. Ashcroft*, C.A.9 2004, 378 F.3d 959, rehearing en banc denied 396 F.3d 1073. Aliens ↪ 54(3.1)

Substantial evidence in record supported immigration judge's (IJ) adverse credibility determination, and thus denial of asylum and withholding of deportation to Chinese alien, based on inconsistencies in his testimony and his airport interview, regarding his wife's forced abortions and ultimate sterilization under family planning policies and alleged closing of his bookstore because he sold Falun Gong materials. *He Chun Chen v. Ashcroft*, C.A.3 2004, 376 F.3d 215. Aliens ↪ 54.1(4.1)

Purported inconsistencies in alien's testimony, concerning gender of aborted child, date of alien's baptism, and length of pregnancy before abortion, were insufficient to support immigration judge's (IJ) decision that alien was not credible, upon review of denial of application for asylum and withholding of deportation, where inconsistencies were ill-founded, trivial, or nonexistent. *Gui Cun Liu v. Ashcroft*, C.A.3 2004, 372 F.3d 529. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien wrote in her application, with respect to incident when family planning officials allegedly dragged her from her home and attempted to sterilize her, that government officials came to her home while her husband was with her on particular day, whereas alien's husband's statement indicated that event took place several days later when he was not home, alien vacillated when confronted with discrepancy and indicated that husband was home and then, changing her

8 U.S.C.A. § 1101

testimony, stated that he was not home, and there were similar discrepancies with respect to alien's claim regarding second incident with family planning officials. *Xiu Feng Liu v. Gonzales*, C.A.2 2006, 2006 WL 1582722, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien, a citizen of China, alleged fear of persecution based on her country's family planning policies; alien testified that her mother was forcibly sterilized, but did not mention such sterilization in her application, alien's testimony was inconsistent with government reports concerning China's forced abortion policies, issuance of abortion certificates, and age requirements for marriage, and alien was unable to provide corroboration, other than abortion certificate, for her claim that her abortion was not voluntary. *Mei Rong Zheng v. Gonzales*, C.A.3 2006, 2006 WL 1438746, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported determination of immigration judge (IJ) that alien's testimony in support of asylum application was not credible; IJ found numerous inconsistencies and implausibilities in alien's account of her sister's alleged pregnancy and encounter with Chinese family planning officials, alien's own treatment when purportedly detained by such officials, and circumstances of alien's departure from China, and identical language of facts reported and material omissions in alien's corroborative documentary evidence supported conclusion that the evidence was fabricated. *Zhang v. Gonzales*, C.A.2 2006, 2006 WL 1318810, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's claim that as a driver for a family planning official in China he had been able to warn several women who were targeted for forced abortion or sterilization was implausible, particularly given alien's lack of documentation corroborating his employment or his arrest, and there were other inconsistencies in alien's documentary evidence. *Xin Dong v. Gonzales*, C.A.2 2006, 2006 WL 1228589, Unreported. Aliens, Immigration, And Citizenship 643

Record supported adverse credibility finding of immigration judge (IJ) regarding Chinese alien's family planning claim, which had not been advanced at initial hearing on asylum and Convention Against Torture (CAT) applications, given inconsistency in advancing claim after having specifically denied at initial hearing any additional basis for asylum besides asserted anti-Communism. *Hong Sheng Huang v. Bureau of Citizenship and Immigration Services*, C.A.2 2006, 2006 WL 1193285, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported determination, in asylum proceeding, that alien was not credible in his claim that his wife was sterilized in China after the birth of their second child; alien was inconsistent about where and with whom he was living when his first child was born and where his wife worked, his testimony about why his name was not on his second child's birth certificate was questionable, and those inconsistencies went to the heart of his claim since they directly related to whether he had two children with her. *Wen Qing Sun v. Gonzales*, C.A.2 2006, 2006 WL 1082842, Unreported. Aliens, Immigration, And Citizenship 643

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony that he no longer had a scar from his alleged vasectomy contradicted report of examining physician, alien was unable to remember correctly the doctor's name or location of office he visited four months prior to hearings, alien's testimony concerning his family relationships was contradicted by his wife's household registration booklet, and alien's testimony contradicted statements found in his application regarding his residences and other key information. *Xiao v. U.S. Department of Justice*, C.A.2 2006, 2006 WL 897856, Unreported. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility determination in Chinese citizens' asylum proceedings, where aliens failed to mention alleged forcible abortions in their asylum applications, medical records indicated that efforts were made to save child's life in second incident, and husband returned to China twice to visit his wife. *Chen v. Gonzales*, C.A.3 2006, 173 Fed.Appx. 959, 2006 WL 887326, Unreported. Aliens, Immigration,

8 U.S.C.A. § 1101

And Citizenship ↻ 643

Substantial evidence supported determination of immigration judge that alien's testimony in support of asylum application was not credible; alien testified that he decided to leave China after his wife was forced to undergo an abortion, but he acknowledged on cross-examination that, two months prior to wife's abortion, he had contacted a smuggler who assisted him in securing a passport, and the inconsistency went to the heart of alien's asylum claim. *Guo Lin Chen v. Gonzales*, C.A.2 2006, 2006 WL 851702, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Inconsistency in airport interview in which Chinese asylum applicant stated that his wife had one abortion, and testimony that she had two, immigration judge (IJ)'s reasonable doubt about testimony that Chinese authorities would confer household registration and national identity card to sterilize him, and doubtful testimony that Chinese authorities refrained from sterilizing alien's wife, simply because he was in the United States, coupled with IJ's negative assessment of applicant's demeanor and evasiveness of some of his answers, provided a substantial basis for IJ to conclude that applicant was not credible. *Jiang v. U.S. Dept. of Justice*, C.A.2 2006, 169 Fed.Appx. 69, 2006 WL 461484, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration judge's (IJ) adverse credibility determination against Chinese asylum applicant was supported by substantial evidence; IJ was free to question why alien could not explain why he chose to abandon his wife and flee from four family planning officials after he had punched one of them to protect her, and family planning receipt stated that alien and his wife had paid the fine imposed because of the pregnancy, whereas alien maintained that his parents had done so. *Zeng v. Gonzales*, C.A.2 2006, 169 Fed.Appx. 64, 2006 WL 461477, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's testimony did not include the details of her alleged forced abortion in China, she provided no corroboration from her parents, her proffered explanation for that lack of corroboration-that her parents were illiterate-was implausible in light of fact that parents had previously responded to requests for documents, and there were discrepancies involving her abortion certificate and IUD notice. *Xie v. Gonzales*, C.A.2 2006, 170 Fed.Appx. 150, 2006 WL 452013, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence did not support immigration judge's (IJ)'s adverse credibility finding, upon application for asylum and withholding of removal, based on purported implausibility that wife of alien, a native and citizen of China, would be "solicited for sterilization" after her abortion, when she was apparently ineligible for the procedure for health reasons, but not still targeted for sterilization, where alien's testimony would only be implausible if his wife's health had improved to point where she could now be sterilized, and there was nothing in the record to suggest that to be the case. *Huang v. B.I.A.*, C.A.2 2006, 167 Fed.Appx. 881, 2006 WL 392098, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible in his allegations that he was arrested and tortured in India due to his refusal to join a political party so that the party could gain reflected prestige based on the position of alien's father; father suffered no consequences for his failure to join the party, which his affidavit suggested was the result of a simple lack of interest, alien provided no documentation that he had been tortured and beaten, and his father's affidavit omitted any mention of such mistreatment. *Shantlal-Patel v. Gonzales*, C.A.2 2006, 167 Fed.Appx. 241, 2006 WL 328102, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ based finding on inconsistency in statements and testimony regarding two abortions of alien's wife, in that alien maintained that his wife was detained for 12 days prior to initial abortion until almost three years later, when he stated that she was detained prior to second abortion, not the first abortion, and only evidence on which IJ could evaluate veracity of

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

alien's claim was alien's own testimony and statement. *Gao v. B.I.A.*, C.A.2 2005, 156 Fed.Appx. 419, 2005 WL 3275610, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; upon entering the United States, alien indicated that he had left his country in an effort to earn money to support his family, yet he later alleged that he had left the country based on fear of persecution, alien testified that his country's policy of fining couples with more than one child had not been enforced in his village until particular year, yet he claimed that he and his family had been threatened with fines and forced to flee the village prior to that time, and alien asserted that he and his family were under threat of sterilization and punishment by officials, yet he stated that his wife had given birth to third child while in government dormitory. *Yang v. Attorney General of U.S.*, C.A.3 2005, 153 Fed.Appx. 122, 2005 WL 2850971, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien, who was found not to be credible, failed to present reliable corroboration of her allegedly forced abortion in China; abortion certification presented by alien was inadmissible inasmuch as it was not properly certified, State Department Country Profile stated that documentation from alien's home area was subject to widespread fabrication and fraud, and in any case alien herself admitted that such certificates were only provided after voluntary abortions. *Lin v. Gonzales*, C.A.3 2005, 151 Fed.Appx. 195, 2005 WL 2811784, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ relied on inconsistencies and omissions in alien's testimony and evidence, including fact that alien testified that authorities sought to arrest him while he was in hiding, while neither his application, nor his wife's statement, mentioned that authorities were seeking him, as well as vagueness of alien's testimony, failure to authenticate documents, and failure to present evidence of intrauterine device (IUD) insertion into his wife. *Lin v. Gonzales*, C.A.2 2005, 152 Fed.Appx. 77, 2005 WL 2722916, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding with respect to alien's application for asylum, alleging he was persecuted not as the partner of a woman forced to have an abortion, but instead as a person who himself resisted China's coercive family planning policies. *Chen v. Gonzales*, C.A.7 2005, 152 Fed.Appx. 528, 2005 WL 2709346, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported immigration judge's finding that alien's testimony in support of her asylum application was not credible; alien's testimony that she was married, became pregnant, suffered a forced abortion at hands of Chinese government, became pregnant again, and was told by authorities that they would sterilize her after the birth, and that when her husband protested, a government official beat him and threatened arrest, contradicted purported husband's asylum application stating that he fled China due to persecution suffered solely on account of his opposition to Tiananmen Square massacre, and his claim in his initial interview that he was unmarried. *Chen v. Gonzales*, C.A.3 2005, 152 Fed.Appx. 143, 2005 WL 2652051, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported adverse credibility determination, in Chinese alien's application for asylum based on forced sterilization of his wife; alien was evasive and nonresponsive when asked about his wife's birth control, alien was unable to provide specific information about his wife's sterilization, even though he claimed to be in frequent contact with her after it occurred, and he gave inconsistent statements about the circumstances surrounding the sterilization. *Jiang v. I.N.S.*, C.A.2 2005, 148 Fed.Appx. 42, 2005 WL 2173678, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence, in form of multiple discrepancies in aliens' testimony and between their testimony and their asylum applications, supported immigration judge's determination that husband and wife aliens' testimony in support of their applications for asylum and withholding of removal was not credible; aliens' testimony that wife was forced to undergo two abortions in China and that husband was not sterilized contradicted wife's application

8 U.S.C.A. § 1101

stating that husband had been sterilized and failing to mention abortions, and wife testified that husband had been directly involved in the preparation of her asylum application, while husband claimed he had never seen it before. *Lin v. U.S. Dept. of Justice*, C.A.2 2005, 148 Fed.Appx. 40, 2005 WL 2173674, Unreported. Aliens ↪ 54.1(4.1)

Denial of a marriage certificate did not go to heart of alien's asylum claim, which was premised on opposition to China's family planning policies, and thus inconsistency regarding denial of such a certificate could not form basis for adverse credibility finding at asylum proceeding; although alien's purported attempt to obtain certificate was trigger for alleged forced abortion, alien was issued certificate the following month, did not leave the country until more than three years later, and sought asylum because, after birth of first child, his wife was forced to use intrauterine device (IUD) and was restricted from having another child for 10 years. *Ling v. Attorney General of U.S.*, C.A.3 2005, 142 Fed.Appx. 639, 2005 WL 2042974, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge's (IJ) adverse credibility finding against alien, seeking asylum based on fear of forced sterilization in China, was not supported by substantial evidence; IJ's discrediting of alien's specific testimony, regarding detention of his mother, destruction of his property, and his fear of sterilization after his wife's refusal to report for IUD insertion, with generalized statements from country report on China, was improper, and furthermore, country report regarding coercive measures taken by local authorities to enforce birth quotas was consistent with alien's testimony. *Chen v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 805, 2004 WL 2538165, Unreported. Aliens ↪ 54.1(4.1)

Alien's omission of the length of time that she was in the hospital, and the number of people who helped security guard put her in a car to go to the hospital to get a forced abortion, did not support adverse credibility finding at asylum proceeding premised on enforcement of country's one-child policy; alien's testimony and application consistently described how authorities approached her, how a security guard put her in a car to go to the hospital, and how she was forced to have an abortion. *Ju v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 937, 2004 WL 2203857, Unreported. Aliens ↪ 54.1(4.1)

Alleged inconsistencies in alien's asylum application and her testimony regarding whether her forced abortion was performed by two doctors, or a nurse and a doctor, and whether family planning unit members were in the operating room or outside, did not go to heart of alien's asylum claim, which was that she had been subjected to forced medical procedures, and thus could not form basis for adverse credibility finding. *Xu v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 482, 2004 WL 1923582, Unreported. Aliens ↪ 54.1(4.1)

Inconsistent dates provided by alien and his brother-in-law were sufficient to support adverse credibility finding, as dates went to heart of alien's claim that he fled family planning authorities. *Pan v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 136, 2004 WL 1859829, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding in which alien alleged persecution premised on her country's one-child policy; there were inconsistencies in alien's documents, such as fact that her marriage certificate bore a different state-issued identification number than her household registration document, deficiencies in alien's testimony with respect to the timing of her alleged forced abortion and her child's household registration, and alien's assertion that she had paid \$50,000 to a smuggler, despite her professed inability to afford a fine of roughly \$600, supported inference that alien had tremendous incentive to lie in order to remain in United States. *Weng v. Ashcroft*, C.A.1 2004, 104 Fed.Appx. 194, 2004 WL 1775154, Unreported. Aliens ↪ 54.1(4.1)

In light of the major inconsistencies in alien's testimony in asylum proceeding, Immigration Judge's (IJ) adverse credibility finding was not so unreasonable as to compel reversal, even if IJ misstated the record on some immaterial facts; alien's testimony that he was released from detention after his wife submitted to an abortion was inconsistent with documentary evidence, and alien made no mention, during his initial interview, of his problems with Chinese birth control officials, which included beatings, detentions, and operations, and failed later to

8 U.S.C.A. § 1101

satisfactorily explain that omission. *Fa Dai Yang v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 259, 2004 WL 1588179, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) adverse credibility determination in asylum proceedings was not supported by substantial evidence, even though aliens could not recall their daughter's birth date, stated that they received no notice from Chinese family planning commission before wife was ordered to receive intrauterine device (IUD), and did not affirmatively authenticate documents, where IJ's determination was based on speculation and conjecture. *Yue Ng Wong v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 234, 2004 WL 1462274, Unreported. Aliens ↪ 54.1(4.1)

Given alien's unfamiliarity with English and his terse answers to many question, it was unreasonable for immigration judge (IJ) to doubt alien's credibility based on his failure to be more articulate or detailed in his description of persecution, including how his wife came to be sterilized, where, in his asylum application and testimony, alien explained that his wife was forcibly sterilized, leaving little to the imagination. *Wang v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 620, 2004 WL 1435190, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) finding that alien's testimony, that she feared she would be arrested if she returned to China because she had fought with family planning officials after her older sister became pregnant for a second time and that she had pushed an official down a flight of stairs during the struggle, was not credible was supported by inconsistencies between her testimony and her asylum application and airport interview and supported denial of her application for asylum. *Zheng v. Ashcroft*, C.A.7 2004, 104 Fed.Appx. 564, 2004 WL 1218599, Unreported. Aliens ↪ 54.1(4.1)

Failure by alien, seeking withholding of removal with respect to his claim of persecution based on his violation of China's one-child policy, to authenticate documents, including marriage certificate and birth certificates by consular certification, was not proper basis for Immigration Judge (IJ) to refuse to admit documents and to find alien not credible; alien explained that he was not given birth certificate for his second child at time of her birth, and neither IJ nor government identified what type of non-duplicative, material, easily available corroborating evidence alien failed to produce, nor did IJ or government ask alien to explain why he was unable to produce pictures or any evidence regarding existence of second child. *Xue v. Ashcroft*, C.A.9 2004, 98 Fed.Appx. 652, 2004 WL 1166522, Unreported. Aliens ↪ 54.1(3)

Substantial evidence supported adverse credibility determination in asylum proceeding; there were several inconsistencies between alien's written application and his oral testimony, including whether his wife was forced to undergo forced sterilization after the birth of their first child and whether he fought with government authorities over family planning policies, and Immigration Judge (IJ) found alien to be extremely unresponsive regarding certain matters going to the heart of his claim, including details of his wife's sterilization. *Zou v. B.I.A.*, C.A.2 2004, 99 Fed.Appx. 322, 2004 WL 1157738, Unreported. Aliens ↪ 54.1(4.1)

Evidence supported Immigration Judge's (IJ) determination that the testimony of an alien, that her sterilization procedure was involuntary, was not credible, thus defeating her claim for asylum; the only evidence indicating that the sterilization was forced was the alien's own testimony, and that testimony was inconsistent and implausible. *Xiu Ying Zhao v. Ashcroft*, C.A.3 2004, 98 Fed.Appx. 90, 2004 WL 1088365, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility determination in denying alien's asylum application, despite alien's contention that she left China to escape persecution under China's family planning policy, where alien testified that she had two abortions in China, but failed to mention them in her asylum applications, alien's testimony that she was not pressured to undergo forced sterilization contradicted statement in her asylum application, and alien testified that she had voluntarily had intrauterine device (IUD) implanted. *Lin v. I.N.S.*, C.A.2 2004, 96 Fed.Appx. 27, 2004 WL 848259, Unreported. Aliens ↪ 54.1(4.1)

Material inconsistencies supported finding, in asylum proceeding, that alien, a native of China, lacked credibility as

8 U.S.C.A. § 1101

to his claim of persecution on account of opposition to family planning policies; there were discrepancies between alien's testimony and his written statement and discrepancies within his testimony as to his family's history and income and the fine for having over-quota children, and Immigration Judge (IJ) believed alien had tried to memorize what he should say to the Court rather than recall specific facts. *Ou v. Ashcroft*, C.A.3 2004, 95 Fed.Appx. 404, 2004 WL 835844, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals's (BIA) adverse credibility determination against alien upon his application for asylum and withholding of removal, based on alleged fear of persecution pursuant to China's population control and forced sterilization policy; alien did not remember when his wife became pregnant with their second child, he did not remember exact date that he returned home after birth of second child, he was unclear about whether he went into hiding with rest of his family, and he changed his testimony regarding when, or if at all, "village cadres" broke up furniture in his house. *Ou v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 108, 2004 WL 817352, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) determination that alien's documentary evidence and credibility was insufficient to show his eligibility for asylum; IJ's findings included that alien, who claimed that Chinese Government sterilized his wife, with whom he had three children, and destroyed their home in order to further its population control policies, failed to provide clear and convincing documentary evidence attesting to his identity, his marriage, his children's existence, or his home's existence and destruction, was hesitant in answering questions going to merits of his allegations, and insufficiently explained inconsistencies in his affidavits. *Zou v. U.S. Attorney General*, C.A.2 2004, 94 Fed.Appx. 861, 2004 WL 816379, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support immigration judge's adverse credibility determination in proceedings on alien's application for asylum and withholding of removal and thus did not sustain finding that alleged persecution did not happen, necessitating remand for further proceedings, inasmuch as conflicting evidence concerning birthplace of alien's second son and differing accounts of alien's whereabouts when his wife's forced abortion allegedly occurred did not go to heart of asylum claim, that alien's wife was forced to undergo abortion and subsequent sterilization, and immigration judge's reliance on State Department report concerning clinical checks of women of young marital age was not requisite individualized analysis of alien's credibility. *Cai v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 536, 2004 WL 626706, Unreported. Aliens ↻ 54.1(4.1); Aliens ↻ 54.3(6)

Evidence supported immigration judge's determination that Chinese citizen was not credible in seeking asylum and withholding of removal based on forced abortion performed on wife and forced contraception; the discrepancies concerning date of marriage reasonably raised concern as to whether citizen was trying to report facts accurately, citizen did not explain how his neighbor would have known that Chinese authorities took wife for intra-uterine device (IUD) insertion, he omitted from asylum application one act of forced IUD insertion, and inconsistency existed concerning end of wife's contact with birth control authorities. *Yu Sheng Zhang v. U.S. Dept. of Justice*, C.A.2 2004, 93 Fed.Appx. 277, 2004 WL 602619, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) adverse credibility determination against alien, who was from China and who sought asylum on ground of past persecution and well-founded fear of future persecution because Chinese government destroyed his home after his wife failed to abort his child, was supported by substantial evidence, including that alien was unsure of the sex of his child, and that alien testified in a contradictory fashion about whether he was present when authorities were alleged to have destroyed his home. *Jiang v. McElroy*, C.A.2 2004, 93 Fed.Appx. 266, 2004 WL 505142, Unreported. Aliens ↻ 54.1(4.1)

Discrepancies between alien's testimony and the statements in his asylum application provided substantial evidence supporting finding that his claims of persecution, on basis of his opposition to China's population control program, were not credible; there were variations as to dates for key events, such as his son's birthday, his wife's involuntary IUD insertion, her IUD removal, and her involuntary abortion. *Liu v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 366, 2004 WL 448087, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported finding that alien was not credible as to claim he was persecuted for his opposition to China's birth control policy, even though Immigration Judge (IJ) made several misstatements of fact in his decision; alien presented a false passport when he arrived in the U.S., he failed to mention two alleged altercations with Chinese officials until he testified before the IJ, he had no interest in population control policies either before or after his mother's sterilization, and he remained in China for nine months after his arrest without further encounters with officials. *Gao v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 362, 2004 WL 447564, Unreported. Aliens ↻ 54.1(4.1)

Single discrepancy in alien's testimony regarding date on which his wife was sent to prison was not substantial evidence which could support IJ's adverse credibility finding at asylum proceeding; alien's claim of persecution was premised upon his devout practice of certain religion and his wife's imprisonment, which was not contingent upon actual date of imprisonment. *Liu v. Ashcroft*, C.A.9 2004, 88 Fed.Appx. 170, 2004 WL 260341, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge (IJ) properly based an adverse credibility finding on alien's omission, until the alien submitted a brief affidavit supplementing his third asylum application, of extraordinarily crucial fact that he was forced, while in his native country, to undergo surgical sterilization without an anesthetic; the omission was not incidental or ancillary, but rather, went to the heart of the alien's asylum claim. *Dong v. Ashcroft*, C.A.2 2005, 406 F.3d 110. Aliens ↻ 54.1(4.1)

Alien's testimony that his wife, to whom he was not legally wed, was forced to have an abortion was not inconsistent with State Department's Country Report and Profile regarding family planning policies in China, and thus did not support adverse credibility finding on alien's application for asylum; section of report stating that couples in China were allowed to have one child did not necessarily apply to couples who were not legally married, report stated that unmarried women could not get permission to have a child, and also indicated that local officials occasionally abused family planning policies. *Zheng v. Ashcroft*, C.A.9 2005, 397 F.3d 1139. Aliens ↻ 54.1(4.1)

Alien's description of his wife's forced abortion was sufficiently detailed to preclude adverse credibility finding on alien's application for asylum; alien recalled dates of all relevant events and time of day for major events and identified specific locations and addresses where he and his wife hid to elude birth control officials. *Zheng v. Ashcroft*, C.A.9 2005, 397 F.3d 1139. Aliens ↻ 54.1(4.1)

Finding of Board of Immigration Appeals (BIA), in affirming decision of immigration judge (IJ), denying application for asylum and withholding of deportation, that alien, a male from China claiming that he and his wife were persecuted for not adhering to birth control laws, was not credible, was supported by substantial evidence; alien failed to mention in written asylum application that his wife had been sterilized, there were inconsistencies regarding alien's claimed detention in China, alien's testimony was not consistent with China's implementation of one-child policy, and there were various other inconsistencies in alien's testimony. *Xie v. Ashcroft*, C.A.3 2004, 359 F.3d 239. Aliens ↻ 54.1(4.1)

Neither alien's presentation of hospital-issued birth certificates for his two children, despite his claim that his wife gave birth to the children at home, nor fact that wife's sterilization record lacked dates and other details, provided basis for making adverse credibility finding at asylum proceeding. *Wang v. I.N.S.*, C.A.9 2003, 352 F.3d 1250. Aliens ↻ 54(3.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding which was premised on forced sterilization of alien's wife; there were several inconsistencies in alien's testimony and documentary evidence, including fact that sterilization certificate listed alien's wife's name one way, while all other documents listed it another way, inconsistencies in alien's daughter's notarial birth certificate, and conflicting testimony as to whether or not alien's wife's parents were alive. *Lin v. U.S. Dept. of Justice*, C.A.2 2005, 131 Fed.Appx. 771, 2005 WL

8 U.S.C.A. § 1101

1182066, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's finding that alien's claim that she had been subjected to a forced abortion and past persecution, and had a well-founded fear of future persecution was not credible; there were inconsistencies between alien's hearing testimony and statements in her asylum application and her husband's asylum application, unauthenticated abortion certificate was of limited value due to its origin, and alien offered no explanation for why neither she nor husband were in household registration booklet she submitted. *Dong v. U.S. Dept. of Justice*, C.A.2 2005, 126 Fed.Appx. 512, 2005 WL 678190, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien submitted two differently-dated abortion certificates during her proceedings while claiming that she had only seen one of documents and had only received one abortion, repeatedly claimed that a notarial certificate for her son was issued before certain year, while document was dated after that year, and became increasingly vague and unresponsive when confronted regarding the veracity of a household register that she submitted and other discrepancies. *Mei Qin Xing v. I.N.S.*, C.A.2 2005, 124 Fed.Appx. 699, 2005 WL 670636, Unreported. Aliens ↻ 54.1(4.1)

Alien's failure to include in her asylum application, in which she alleged that she was forced to undergo an abortion to comply with her country's one-child policy, that she received a medical exam days after her abortion, was a minor omission which could not support IJ's adverse credibility finding, given that purpose of such exam was for alien to get approval to leave her country. *Ju v. Ashcroft*, C.A.9 2004, 109 Fed.Appx. 937, 2004 WL 2203857, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported an adverse credibility finding concerning whether the sterilization in China of the wife of an alien seeking asylum was coerced; Immigration Judge (IJ) found that the alien had already given unbelievable testimony regarding whether he personally was threatened with involuntary sterilization and regarding whether his wife had been subjected to an involuntary abortion, and moreover, the alien's and his wife's evidence that her sterilization was involuntary was implausible in light of the fact that the alien was out of the country at the time, so that his wife would not have presented an imminent risk of further births. *Jie Sheng Lin v. Ashcroft*, C.A.3 2004, 110 Fed.Appx. 213, 2004 WL 2165881, Unreported. Aliens ↻ 54.1(4.1)

Asylum applicant's failure to specify in his airport interview that his wife had been forcibly sterilized while in China was not grounds for immigration judge (IJ) to discredit him. *Wang v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 620, 2004 WL 1435190, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support adverse credibility determination in asylum proceeding, even though alien failed, during credible fear interview, to disclose information about his wife's forced sterilization, failed to mention in his asylum application the threat of sterilization to himself, and told both stories at hearing; there were plausible explanations for the omissions, and stories were not contradictory and were consistent with reports of conditions in China. *Yang v. Ashcroft*, C.A.9 2004, 99 Fed.Appx. 124, 2004 WL 1157675, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien sought relief from his country's one-child policy; alien claimed that his country's government wanted to forcibly sterilize him and that his wife was forced to abort during her second pregnancy, but his testimony on the subject appeared rehearsed and State Department's Country Report indicated that one-child policy was not enforced uniformly throughout country and that in rural area where alien and his family lived, average number of children per family was slightly over two. *Fang v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 125, 2004 WL 376817, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that alien was not credible as to his allegations of persecution for alleged opposition to Chinese family planning policies; two documents alien submitted in support of his application made no mention of his alleged second child, and there were inconsistencies

8 U.S.C.A. § 1101

in alien's statements regarding the circumstances in which his wife was fitted with an IUD, as well as in his testimony regarding his religious affiliation and fear of persecution. *Liang Wu v. I.N.S.*, C.A.2 2003, 83 Fed.Appx. 365, 2003 WL 22922364, Unreported. Aliens 54.1(4.1)

Adverse credibility findings by immigration judge (IJ) regarding alien's alleged period of incarceration for not paying fine imposed by government following birth of child as punishment for violation of native country's one-child policy, that alien provided no testimony regarding that period and that he did not explain any instances of abuse or torture, were not supported by substantial evidence, in proceeding for asylum and withholding of deportation; alien's ability to explain himself fully was hampered as result of mistranslation or miscommunication, and neither the IJ nor the government posed any questions about alien's detention. *Lin v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 681, 2003 WL 22804390, Unreported. Aliens 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding alleging persecution by Chinese government based on noncompliance with family planning requirements, that alien was not credible regarding his wife's third pregnancy; there were significant discrepancies between alien's asylum application and his in-court testimony, as well as within the testimony itself, regarding whether the pregnancy was accidental and the circumstances surrounding the insertion and removal of an intrauterine device (IUD). *Zhu v. U.S. Attorney General*, C.A.3 2003, 79 Fed.Appx. 532, 2003 WL 22475830, Unreported. Aliens 54.1(4.1)

201. ---- Political opinion, credibility, refugee

Board of Immigration Appeals (BIA) did not err in finding Albanian asylum applicant not credible, where he gave no hint of politically motivated persecution when he was first interviewed upon entering United States, his testimony concerning his procurement of falsified passport was inconsistent, and BIA was not compelled to accept his explanations that he had never said he had procured passport himself and that he had not slept for two days before first interview. *Simo v. Gonzales*, C.A.1 2006, 445 F.3d 7. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence did not support adverse credibility determination, in Indian alien's claim for asylum based on persecution for political opinion; although alien's account of his arrest and beating by police contained some inconsistencies and contradictions, the alien was able to sufficiently explain some of the inconsistencies, some of the inconsistencies did not go to the heart of the persecution claimed or were otherwise insignificant, and alien submitted affidavits supporting his testimony, including a doctor's affidavit confirming alien's postdetention medical treatment. *Singh v. Gonzales*, C.A.9 2006, 439 F.3d 1100. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence supported Immigration Judge's determination that asylum applicant, who was Albanian citizen, was not credible; it was implausible that police detained and attacked applicant for merely supporting political party as opposed to being a member, state department profile for Albania indicated no post-communist tradition of retribution against opposition party members and that individuals were rarely targeted on political grounds, documents submitted by applicant purporting to show that applicant was wanted by Albanian government were fraudulent, and applicant did not attempt to verify documents legitimacy or explain fraud. *Sterkaj v. Gonzales*, C.A.6 2006, 439 F.3d 273. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) finding that alien's testimony in support of his asylum application was not credible; alien presented no corroborating evidence of occurrence of five political demonstrations he claimed to have attended in Albania, while alien testified demonstrations were aimed at promoting elections, there were no direct presidential elections in Albania, and no possibility of holding other elections at relevant times, and IJ found implausible alien's testimony that Albanian police forced him to sign agreement not to engage in more demonstrations or he would be killed, since alien's political party was a mass movement, and he was not a leader. *Hoxha v. Gonzales*, C.A.8 2006, 432 F.3d 919. Aliens 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported adverse credibility determination in asylum proceeding by alien claiming to have been persecuted in Pakistan for his religious and political beliefs; alien's story that he was located in a distant city by people with machine guns who had attacked him before, and that he escaped after being cornered by them, was unlikely, he could not substantiate claim that he was shot in both legs on another occasion, he attempted to distance himself from political group of which he had claimed to be a member, after evidence was produced that the group was an extremist group, and he failed to produce any corroborating documentation. *Hussain v. Gonzales*, C.A.7 2005, 424 F.3d 622. Aliens ↪ 54.1(4.1)

Asylum applicant's testimony that he was incarcerated during boycott conducted in his native India by political party to which he belonged was not inconsistent with statement in his father's supporting affidavit, that applicant actively supported "the boycott movement," so that any perceived inconsistency was not substantial record evidence supporting immigration judge's adverse credibility finding, where applicant testified that he had given money to support boycott and characterized his activities, for which he was arrested, as "participating" in boycott movement. *Singh v. Gonzales*, C.A.9 2005, 403 F.3d 1081. Aliens ↪ 54.1(4.1)

Conclusion of Immigration Judge (IJ), that asylum applicant was not credible when he claimed he had suffered persecution in Haiti due to his political activities, was supported by substantial evidence, including fact that, prior to hearing before IJ, applicant never mentioned that he had been monitor in certain election, that he had prevented members of Fanmi Lavalas political party from committing election fraud, that he had been attacked with acid, or that his son had been severely beaten by members of such party. *Forgue v. U.S. Atty. Gen.*, C.A.11 2005, 401 F.3d 1282. Aliens ↪ 54.1(4.1)

Immigration judge's adverse credibility finding concerning past persecution, for purposes of alien's asylum claim, was supported by substantial evidence; alien did not mention that she had been raped by a representative of the Ethiopian government to female asylum officer at political asylum interview, alien continued to work for the Ethiopian government before and after the alleged rape, and alien received exit visas and was allowed to travel out of the country on several occasions. *Ali v. Gonzales*, C.A.1 2005, 401 F.3d 11. Aliens ↪ 54.1(4.1)

Immigration Judge's (IJ) finding that alien seeking asylum was not credible was supported by the evidence; she gave inconsistent and contradictory testimony regarding a political group and her father's death, and evidence of her false testimony given under oath in connection with her husband's case was relevant to her credibility in her own case, and when she was asked to explain her prior testimony in her husband's case during cross examination in her own case, her answers were inconsistent and non-responsive. *Toure v. Ashcroft*, C.A.1 2005, 400 F.3d 44. Aliens ↪ 54.1(4.1)

Immigration judge's decision that alien was not credible in testifying to past persecution that she and her family members had allegedly experienced in Cameroon based on their political associations was based upon specific, cogent reasons, and would not be disturbed by Court of Appeals on petition for review of denial of alien's application for asylum and withholding of removal, given unexplained inconsistencies in alien's testimony and fact that death certificates used to support her family persecution claims were determined to be fake. *Esaka v. Ashcroft*, C.A.8 2005, 397 F.3d 1105. Aliens ↪ 54.1(4.1)

Court of Appeals would defer to Immigration Judge's (IJ) determination that alien seeking withholding of removal was not credible, where alien lied several times in connection with his application for adjustment of status, and, although he sought relief based on his membership in political party, he had answered "none" when asked if he had belonged to political party. *Hassanein v. Ashcroft*, C.A.8 2004, 380 F.3d 324. Aliens ↪ 54.3(4)

Substantial evidence supported Immigration Judge's (IJ's) adverse credibility determination and consequent denial of Ethiopian's asylum application claim based on claimed persecution for his political views; evidence suggested that alien may have forged card showing his membership in rival political organization, and there were material inconsistencies in his testimony concerning extent of his injuries from torture as well as his wife's testimony

8 U.S.C.A. § 1101

concerning her rape by government officials. *Desta v. Ashcroft*, C.A.9 2004, 365 F.3d 741. Aliens ↻ 54.1(4.1)

Immigration judge's finding that asylum applicant was not credible was supported by substantial evidence, where applicant who claimed she was being persecuted and would be subject to future persecution based on her strong political views did not know what initials of her father's political party represented, her own political organization did not have formal name, and she did not adequately explain how her father's friend managed to arrange her release from prison. *Nsukami v. I.N.S.*, E.D.N.Y.1995, 890 F.Supp. 170. Aliens ↻ 54.1(4.1)

Fax from Haitian embassy containing claims that alien was "not well known" as reporter and "did not have any political problems" did not seriously undermine alien with respect to claim that he was attacked after reporting on opposition party press conference and threatened because he worked for radio station that was perceived as affiliated with opposition, and thus fax could not form basis for adverse credibility finding at asylum proceeding; fax confirmed that alien worked at radio station and was reporter during time he claimed to have been attacked, and human rights watch report confirmed that members of press were frequently targeted, without suggesting that attacks were limited to most prominent journalists. *Baptiste v. U.S. Citizenship & Immigration Services*, C.A.2 2006, 2006 WL 1668068, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported determination of immigration judge that alien's testimony in support of asylum application was not credible; alien testified inconsistently with his previous statements to immigration officials concerning why he came to United States and why he feared being returned to Albania, and record contained no evidence supporting alien's conclusory assertions that members of Socialist Party were responsible for detonating explosive device in front of his family's home and that bomb was intended for him because of his Democratic Party membership. *Allko v. Gonzales*, C.A.2 2006, 2006 WL 1236645, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence did not support adverse credibility determination in asylum proceeding, where inconsistencies and implausibilities relied on by Immigration Judge (IJ) either were not central to alien's claims or were based on speculation; on issues central to alien's claims, IJ found that alien was credible as to his familiarity with an Albanian political party and that he "most likely" experienced problems based on his political activity, "probably" was harassed, and may have been physically attacked. *Piroli v. Gonzales*, C.A.2 2006, 177 Fed.Appx. 192, 2006 WL 1115458, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Evidence supported Immigration Judge's (IJ) adverse credibility determination against an alien, a citizen of India seeking asylum, who claimed that Indian police took notice of him after he became a member of a political party, and twice came to his home looking for him; in an earlier application, the alien had indicated that it was his membership in a different political party, and his position in a commando force that triggered the Indian government's interest in him, and while his asylum application indicated that no one was home when the police came looking for him on one occasion, he testified at the hearing that his mother was home at the time. *Singh v. Attorney General of U.S.*, C.A.3 2006, 173 Fed.Appx. 966, 2006 WL 887338, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported adverse credibility finding, and thus alien was not eligible for asylum or withholding of removal; inconsistency between alien's testimony that she spoke at many political demonstrations in India, and her application, which stated that she never spoke at demonstrations, implicated the extent and visibility of her political role and thus went to the heart of her persecution claim. *Kaur v. Gonzales*, C.A.9 2006, 173 Fed.Appx. 625, 2006 WL 680074, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported the immigration judge's (IJ's) adverse credibility determination, and denial of Albanian alien's asylum application on grounds of political persecution based on his membership in minority political organization; alien testified that he received threatening phone calls at home, but he told the Immigration and Naturalization Service (INS) inspector on his entry into the United States that he had no phone at home in

8 U.S.C.A. § 1101

Albania, alien testified that phone calls involved threats to his family, but he also testified that his family had left Albania before the phone calls, alien testified that he worked in a brick factory, but he told the inspector that he was a private driver, alien failed to provide corroborating evidence for his assertions, and based on the State Department's country profile, there was no evidence that individuals were targeted for mistreatment on political grounds. *Rama v. U.S. Atty. Gen.*, C.A.11 2005, 147 Fed.Appx. 905, 2005 WL 2173765, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; in addition to material inconsistencies between alien's testimony and certain supporting materials, IJ identified numerous inconsistent, implausible, or vague aspects of alien's testimony, such as his inability to state with any specificity the goals of the organization he was allegedly persecuted for supporting and lack of any explanation of why he, a self-admitted low-level member of political party, would be singled out for persecution when other similarly situated individuals were not. *Dhillon v. Ashcroft*, C.A.9 2005, 121 Fed.Appx. 255, 2005 WL 293682, Unreported. Aliens 54.1(4.1)

Substantial evidence supported finding that alien seeking asylum failed to establish that government agents detained and beat him on account of any political opinion, real or imputed; although alien testified that his father fled the country for political reasons, he offered no evidence that government agents who detained him were aware of his father's political beliefs, and government agents were unaware that alien himself was politically active when they detained him. *Sargsyan v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 132, 2005 WL 79037, Unreported. Aliens 53.10(3)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; on cross-examination, alien first testified that she was a member of particular religious sect, then quickly changed her testimony to claim she was a member of different sect, and alien was unable to remember details concerning elections, even though one of incidents upon which she based her claim began during a political gathering at which she spoke about those very elections. *Kaur v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 129, 2005 WL 79029, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien failed to properly identify himself, and alien's testimony demonstrated lack of knowledge regarding political beliefs of his party, lacked specificity regarding doctrine, and conflicted with his documentary evidence regarding what party he belonged to, where and when he was taken into custody, and how he was released. *Singh v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 125, 2005 WL 79024, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ gave specific, cogent reasons for why he found alien's testimony incredible, explaining that alien was most likely jailed for shirking his civil responsibility to report for guard duty and that, once that premise was established, alien's alternative explanation that he was imprisoned for being member of political organization could not be reliable or believable, particularly in light of fact that alien received preferential treatment after imprisonment in form of permission to travel out of country and ability to hold position in employment of diplomat. *Bitew v. Ashcroft*, C.A.10 2004, 113 Fed.Appx. 890, 2004 WL 2668800, Unreported. Aliens 54.1(4.1)

Alien's explanation for why police arrested only younger brother, when all three brothers were co-owners of automobile workshop which local police claimed was connected to car bombing, that local politician was attempting to implicate his entire family in car bombing, one brother was arrested, and two brothers eventually sought and secured asylum in the United States, was not implausible, and thus did not provide basis for IJ's adverse credibility finding at asylum proceeding. *Grewal v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 820, 2004 WL 2603617, Unreported. Aliens 54.1(4.1)

Minor discrepancies between alien's application and testimony regarding whether he called an ambulance to help injured employees and date on which his employer terminated him did not go to heart of alien's claim of political

8 U.S.C.A. § 1101

persecution, and thus did not provide basis for adverse credibility finding at asylum proceeding. *Janazyan v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 269, 2004 WL 2580916, Unreported. Aliens ↪ 54.1(4.1)

No reasonable factfinder could fail to find asylum applicant credible on grounds cited by Immigration Judge (IJ), warranting reversal of IJ's adverse credibility finding; it was entirely plausible that police beat applicant to intimidate her and not to extract information from her, it was plausible that applicant would consider herself member of student political organization if she attended its rallies and meetings but never formally joined, and applicant consistently testified that she had been kidnapped in certain specified year. *Kaur v. Ashcroft*, C.A.9 2004, 113 Fed.Appx. 236, 2004 WL 2453303, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien seeking asylum and withholding of removal; discrepancies between alien's testimony, his asylum application, affidavits, and other supporting documents, which went to heart of alien's claim of whether, as a Sikh, he suffered political prosecution in India, included, alien's failure to produce document to corroborate testimony that he was member of political organization in India for almost five years, or explain why he lacked such corroborating evidence, contradiction between testimony that he had been arrested six times during those five years for political activities and affidavits which mentioned only one arrest, and contradiction between his testimony that he was beaten during arrest and his own passport, dated prior to his date of arrest, which already identified scar alien claimed was evidence of abuse that occurred years later. *Singh v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 222, 2004 WL 2404556, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge's adverse credibility finding against alien, seeking political asylum as Sikh, was supported by substantial evidence; although not all reasons cited by IJ supported credibility finding, alien's lack of knowledge about Sikh politics, as well as inconsistencies and omission in his testimony regarding his mistreatment by police in India, were sufficient to support adverse credibility determination. *Singh v. Ashcroft*, C.A.9 2004, 112 Fed.Appx. 600, 2004 WL 2383250, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence in proceeding on application for asylum supported Immigration Judge's determination that alien's testimony in support of his claim of political persecution in Albania was not credible; newspaper article alien submitted appeared to be fraudulent, and State Department profile of Albania contradicted article and stated that Albania was making progress toward meeting democratic standards and that political mistreatment was rare. *Besnik v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 180, 2004 WL 2320745, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien seeking asylum; alien's testimony was internally inconsistent regarding where he was taken, number of times he was beaten, and when he saw his friend during first incident with police, alien also omitted key testimony on cross examination regarding his speech at a protest, and gave insufficient testimony about political party and his participation in critical campaigns and elections. *Sandhu v. Ashcroft*, C.A.9 2004, 111 Fed.Appx. 478, 2004 WL 2203858, Unreported. Aliens ↪ 54.1(4.1)

Inconsistencies in alien's testimony, asylum application, and documentary evidence with respect to alien's identity, his dismissal from the military, his family's whereabouts, and the treatment of members of political organization in his country, as well as lack of corroborating evidence, substantially supported IJ's adverse credibility finding at asylum proceeding. *Kalidou v. Ashcroft*, C.A.6 2004, 108 Fed.Appx. 381, 2004 WL 1941303, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien testified that police officers came to his home and demanded he stop his political activities, that he was beaten, and that his entire family was arrested and detained by police for 24 hours, but alien did not mention the incident in either his asylum application or during his asylum interview. *Charan v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 459, 2004 WL 1931768, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Minor discrepancy between a letter and alien's testimony concerning date on which he joined political organization, alien's inability to accurately state how many parliamentary seats were necessary to win presidential election, and alien's failure to mention in his declaration that he was cut with a blade during his first arrest did not provide basis for adverse credibility finding at asylum proceeding at which alien alleged persecution on account of his political opinion. *Iqbal v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 498, 2004 WL 1923600, Unreported. Aliens 54.1(4.1)

Conflicting testimony regarding political affiliation of alien's family provided sufficient basis for IJ's adverse credibility determination at asylum proceeding in which alien alleged political persecution; alien testified that his family belonged to one political party, and that they did not support former president of their country and leader of opposing political party, which testimony was in direct conflict with that of alien's sister-in-law, who testified that the family was affiliated with president's political party and that they supported former president. *Rojba v. Ashcroft*, C.A.7 2004, 107 Fed.Appx. 656, 2004 WL 1873208, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien claimed on her asylum application that she was beaten and abused, but testified that she was only threatened, claimed on her application that her son joined political party in particular year, but testified that her son was not a party member, provided no documents to corroborate her testimony, and provided limited and sometimes conflicting details about her political activities. *Mitichyan v. Ashcroft*, C.A.9 2004, 105 Fed.Appx. 943, 2004 WL 1831252, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien was evasive during questioning, testified inconsistently concerning the purpose of a political rally he claimed to have attended, the length of his detention during his fourth alleged arrest, when a physician provided him with medical treatment, and his age at the time of particular election, and knew little about political process or elections, despite claiming he was an activist and president of circle in political organization. *Singh v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 644, 2004 WL 1770632, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding at which alien claimed to fear future persecution on the basis of her membership in political organization; alien was unable to accurately testify regarding the details of organization's operations in the United States, including whether it maintained a website, published a newsletter, or even required its members to pay dues. *Wolde v. Ashcroft*, C.A.8 2004, 107 Fed.Appx. 13, 2004 WL 1759141, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien was unable to adequately explain the origins of and alterations to a letter from his doctor regarding his injuries following his arrest and a letter articulating his political party membership, both of which related to the basis for alien's claim of past persecution and fear of future persecution. *Singh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 26, 2004 WL 1663524, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ offered several specific cogent reasons to support finding, including discrepancies in alien's hearing testimony about various encounters with members of rival fundamentalist organization, between alien's hearing testimony and her initial asylum application, and between hearing testimony and alien's second asylum application, as well as fact that alien lacked knowledge about recent political history, which undermined her claims of political involvement, and fact that alien fidgeted and picked at her fingers during government's cross-examination. *Begum v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 805, 2004 WL 1631613, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding based on implausibility of alien's story at asylum proceeding; alien testified that his arrests by police occurred because of police's interest in his brother, a leader of political group, but alien also testified that his brother still resided in the country, was married, and had two children. *Singh v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 630, 2004 WL 1613557, Unreported. Aliens

8 U.S.C.A. § 1101

54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding in which alien alleged persecution on account of political opinion; IJ pointed to set of specific discrepancies including unexplained conflict in dates, inconsistent statements by alien himself as to whether he was handcuffed on his arrest during rallies, and a discrepancy as to whether alien was arrested inside building or out. *Kumah v. Ashcroft*, C.A.1 2004, 102 Fed.Appx. 185, 2004 WL 1563236, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien who sought asylum; discrepancies between alien's testimony, that she feared persecution in her native country of the Philippines due to her father's work as policeman and assistant to mayor, and her father's visa application, in which he listed his employment as warehouse inspector and supply technician, undermined key element of alien's asylum claim, that she was persecuted on account of imputed political opinion and membership in particular social group. *Peregrino v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 602, 2004 WL 1404576, Unreported. Aliens ↩ 54.1(4.1)

Evidence supported conclusion that alien did not have well-founded fear of persecution and that he did not likely face torture upon his return to Guatemala, and thus alien was not entitled to asylum, withholding of removal, or relief under Convention Against Torture; alien repeatedly testified that protest at which he was arrested was held on date after president he claimed to have been protesting left office, and his testimony contradicted his prior asylum application regarding nature of his political views. *Moscoso v. Ashcroft*, C.A.9 2004, 95 Fed.Appx. 884, 2004 WL 856763, Unreported. Aliens ↩ 54.1(4.1); Treaties ↩ 8

Substantial evidence supported immigration judge's determination that alien did not establish past persecution based on claims that alien was involved in three attacks by members of rival political party in native country of Bangladesh, given that alien made concessions upon cross-examination which undermined his position as to attacks, including an inability to identify persons who allegedly bombed party meeting at which alien was in attendance, that there was no evidence, beyond one attacker's ostensive membership in rival political party, that attack made on alien in his pharmacy was politically motivated, that alien merely guessed that assailants in third attack were political rivals, and that alien did not provide reasonable explanation for absence of corroborating documents. *Mowla v. Ashcroft*, C.A.3 2004, 94 Fed.Appx. 69, 2004 WL 784099, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported immigration judge's conclusion that alien seeking political asylum did not prove past persecution, given discrepancies between alien's account and newspaper accounts of political demonstration in Cambodia, which, though not overwhelming, concerned facts central to alien's claims and thus sustained immigration judge's determination that discrepancies were material to alien's credibility, and given alien's international travel during time when she allegedly was target of persecution, her continued work at marketplace after she allegedly was assaulted by chief of marketplace security, and fact that alien suffered no physical harm. *Chan v. Ashcroft*, C.A.1 2004, 93 Fed.Appx. 247, 2004 WL 626795, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) finding, in asylum proceeding, that alien was not credible; IJ observed alien's demeanor while testifying and gave specific, cogent reasons for disbelieving that testimony, including alien's unusual level of hesitance and agitation when being cross-examined, and there were numerous incongruities and implausibilities in her testimony about her knowledge of politics in India, which went to the heart of her claim that she was arrested and beaten on account of her political affiliation. *Kaur v. I.N.S.*, C.A.9 2004, 93 Fed.Appx. 121, 2004 WL 434042, Unreported. Aliens ↩ 54.1(4.1)

Evidence, including alien's inability at hearing to supply names of prominent figures in political organization of which she claimed to be a member or information about student demonstrations in which she claimed to have taken part, and her failure to timely produce supporting documentation, supported finding that alien was not entitled to asylum. *Habib v. Ashcroft*, C.A.10 2004, 92 Fed.Appx. 741, 2004 WL 424835, Unreported. Aliens ↩ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported immigration judge's adverse credibility finding, supporting denial of asylum; alien claimed that he was an active member of a political party but lived two hours from where he purportedly was active, alien could not describe the party's main goals, and alien claimed that he was persecuted by the police for having information regarding Sikh terrorists, yet alien was Hindu and did not credibly explain why he would be so suspected. *Kumar v. Ashcroft*, C.A.9 2004, 90 Fed.Appx. 237, 2004 WL 363361, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported finding of immigration judge that alien, a native and citizen of India, was not credible on his application for asylum; alien contradicted himself about duration and dates of his fourth arrest which played a crucial role in asylum claim, there were discrepancies in alien's account of an election, alien was unaware that a leader of the political party which he claimed to be active in ran a candidate in election, alien became increasingly uncomfortable and nervous when confronted with discrepancies, alien evaded issues, and alien could not explain inconsistencies. *Baidwan v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 31, 2004 WL 326380, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported adverse credibility determination in asylum proceeding, and thus no evidence supported alien's claim of past persecution or fear of future persecution in either Kuwait or Jordan; there were omissions and exaggerations in alien's claims of persecution in Jordan due to his alleged association with a student political group and his uncle's political activities, those omissions and exaggerations went to the heart of his asylum claim, and alien's testimony was the sole basis for his claims. *El-Himri v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 30, 2004 WL 42387, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported determination, in asylum proceeding, that alien was not credible; alien provided contradictory accounts about which political organizations she supported in India, the location of her third arrest, and nature of the torture that followed that arrest. *Kaur v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 840, 2003 WL 23097702, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported adverse credibility finding, in asylum proceeding, despite fact that several of bases on which Immigration Judge (IJ) relied to reject alien's testimony were not legitimate; alien's testimony regarding material aspects of his claim, such as his understanding of the beliefs of political group, and his medical treatment, were unclear. *Singh v. I.N.S.*, C.A.9 2003, 84 Fed.Appx. 767, 2003 WL 23096014, Unreported. Aliens ↩ 54.1(4.1)

Immigration judge's (IJ's) reasons for finding alien's testimony incredible were insufficient to support adverse credibility finding in proceeding for asylum and withholding of removal; IJ did not discredit alien's testimony that he was beaten for refusing to join a certain political party and assaulted on the street by police officers after they learned of his religion, and minor inconsistencies cited by IJ did not contradict alien's testimony that he was wrongfully accused of attempting to kill a political party member in a car accident, and incarcerated and beaten as a result of that accusation. *Istifan v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 952, 2003 WL 23095964, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility determination in proceeding for asylum; although alien stated he was under investigation by security forces and left his country to avoid political persecution, he was able to travel freely, obtained passports for his family, and neither he nor his family was ever detained, and although alien sold his house before leaving his country, he claimed his wife did not know they were leaving permanently. *Al-Ayoubi v. Ashcroft*, C.A.6 2003, 79 Fed.Appx. 752, 2003 WL 22416910, Unreported. Aliens ↩ 54.1(4.1)

Substantial evidence did not support conclusion, in asylum proceeding, that alien was not credible in regards to his political status; Board of Immigration Appeals' (BIA) conclusion that alien lacked knowledge about political group's goals was based on speculation, BIA did not address alien's explanation that he did not know about 1997 election because he was already in the U.S. at that time, and alien's lack of knowledge about a militant group did

8 U.S.C.A. § 1101

not go to heart of his claim because he did not claim to be a member of that group. *Singh v. Ashcroft*, C.A.9 2003, 72 Fed.Appx. 594, 2003 WL 21774129, Unreported. Aliens 54.1(4.1)

Substantial evidence supported decision to deny asylum application; alien was not credible as to his past persecution and fear of future persecution inasmuch as he clearly changed his statements in support of his request between his written applications, his statements before the asylum officer, and his testimony during the asylum hearing, and he did not provide any credible examples of persecution based on his ethnicity, political beliefs, or homosexuality. *Iancu v. I.N.S.*, C.A.6 2003, 69 Fed.Appx. 661, 2003 WL 21421639, Unreported. Aliens 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) finding that Albanian national was not, as he claimed, journalist who had been subjected to repeated persecution as result of his criticisms of Albanian president, and thus was not entitled to asylum; applicant was unable to testify in clear and cogent manner regarding his alleged political and journalistic activities in Albania, and newspaper articles he submitted in support of his application did not bear his name. *Mekshi v. Ashcroft*, C.A.3 2003, 65 Fed.Appx. 796, 2003 WL 1904547, Unreported. Aliens 54.1(4.1)

202. ---- Miscellaneous cases, credibility, refugee

Immigration Judge (IJ) did not provide specific and cogent reasons for rejecting alien's testimony, in asylum proceeding, about her departure from Ethiopia, and thus adverse credibility determination was not supported by substantial evidence; alien's testimony that she spoke out against the government at a meeting, that she suddenly decided to leave the country after the meeting and could make departure arrangements quickly, and that she decided to apply for asylum after only a few days in the United States, was not inherently implausible. *Tewabe v. Gonzales*, C.A.4 2006, 446 F.3d 533. Aliens, Immigration, And Citizenship 54.1(4.1)

Immigration Judge's (IJ) conclusions, that Pakistani asylum applicant's father was not dead, and that applicant thus was not credible, were not supported by substantial evidence; witness's statement that applicant's father remained in Pakistan was reasonably explained by witness as reference to applicant's father-in-law, IJ's conclusion that death certificates were "questionable" was based on his selective perusal of documents that he had excluded, and IJ ignored corroborating evidence such as newspaper photograph of father lying in pool of blood where he had been shot. *Shah v. Attorney General of U.S.*, C.A.3 2006, 446 F.3d 429. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence supported determination that asylum applicant, who was native of China, was not credible, even though Immigration Judge (IJ) erroneously characterized certain portions of applicant's testimony as inconsistent; applicant failed to mention incident when father was slapped and mother was detained in application, there was conflicting testimony regarding whether oldest son ever left home village because of his medical condition, state department report indicated that abortion certificate likely was for voluntary abortion and not forced one, and IJ found applicant's demeanor to be evasive. *Lin v. Gonzales*, C.A.2 2006, 446 F.3d 395. Aliens, Immigration, And Citizenship 54.1(4.1)

Substantial evidence did not support adverse credibility determination made by Immigration Judge (IJ), that death certificate submitted in support of asylum application of alien, an Indian citizen and native of northern Indian state of Jammu and Kashmir, likely was forgery because handwritten number four on date line of brother's asylum application was "precisely the same peculiar and uniquely styled" number four that was written on other brother's death certificate, where IJ's visual comparative handwriting analysis was uninformed and inaccurate and IJ did not substantiate his opinion by submitting documents to handwriting expert or forensic laboratory for review or testing. *Kumar v. Gonzales*, C.A.9 2006, 444 F.3d 1043. Aliens, Immigration, And Citizenship 54.1(4.1)

Immigration Judge (IJ) erred, in credibility determination in asylum proceeding, by characterizing alien's reason for

8 U.S.C.A. § 1101

coming to the United States as tourism and finding it implausible that she would suffer the type of religious persecution she described and then leave Russia solely for tourism; alien never categorically stated that she left Russia solely for tourism, but testified that at least one reason was to flee persecution. *Pavlova v. I.N.S.*, C.A.2 2006, 441 F.3d 82. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Alleged inconsistencies in testimony regarding which of Indian alien's family members paid the bribe to secure alien's release from police custody, why paid agent brought him to America, how long alien's driver's license was valid and how the license arrived from India, and how many times alien transported demonstrators to political rallies did not support adverse credibility finding in asylum proceeding, as any purported inconsistencies were either unrelated to the asylum claim, or did not go to heart of the claim. *Singh v. Gonzales*, C.A.9 2006, 439 F.3d 1100. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Determination by Immigration Judge (IJ) that asylum applicant, who was native of Albania, was not credible, was entitled to deference, even though alien produced affidavit by graduate student in psychology who treated him which outlined applicant's post-traumatic stress disorder; IJ was entitled to weigh psychological opinion along with other evidence, including IJ's direct observations of applicant at the hearing. *Feto v. Gonzales*, C.A.7 2006, 433 F.3d 907. Aliens ↩ 54.3(4)

Determination by Immigration Judge (IJ) that asylum applicant, who was citizen of Chad, was not credible was not supported by the evidence; credibility determination was based in large part on Canadian immigration judge's finding that story about uncle's arrest was incredible, applicant provided reasons for discrepancies between his version of uncle's arrest and cousin's version of arrest, only garbled transcript of Canadian immigration hearing was provided, IJ provided no reason for thinking that applicant's belief that Cameroon turned down all asylum applications was misrepresented, and nothing supported IJ's determination that uncle would be in hiding in Benin. *Djouma v. Gonzales*, C.A.7 2005, 429 F.3d 685. Aliens ↩ 54.1(4.1)

Evidence was insufficient to support immigration judge's adverse credibility determination with respect to aliens, citizen from Albania; alien's wife, though she failed to testify, was sitting outside the hearing room and was functionally available to be called at any time, letter from church supporting aliens' claim, though vague, was explained by the church's desire to keep its work with helping women escape from the sex-slave trade a secret, judge's belief that alien's father and brother were not in hiding in Albania was entirely speculative, and, even though newspaper articles concerning the death of alien's cousin were inconsistent, the articles were offered merely to corroborate the fact of his cousin's murder, not the exact circumstances surrounding the killing. *Tabaku v. Gonzales*, C.A.7 2005, 425 F.3d 417. Aliens, Immigration, And Citizenship ↩ 54.1(4.1)

Confusion in asylum applicant's testimony that appeared to be due to translation problems and that did not rise to level of an inconsistency, or that, at most, was inconsistent with respect to trivial or minor facts not going to heart of his asylum claim, could not support immigration judge's adverse credibility finding, at least not under current law. *Jibril v. Gonzales*, C.A.9 2005, 423 F.3d 1129. Aliens ↩ 54.1(4.1)

Immigration Judge (IJ) did not err in finding Kenyan asylum applicant's story of alleged persecution not credible, where story was very general in crucial places, IJ did not err in disbelieving applicant's explanation for his bigamy, IJ did not err in finding applicant's alleged inability to contact his family implausible, and applicant was unable to provide any corroborating evidence. *Ombongi v. Gonzales*, C.A.8 2005, 417 F.3d 823. Aliens ↩ 54.1(4.1)

Substantial evidence did not support determination, in asylum proceeding, that alien lacked credibility with regard to whether he filed a police report following an incident in which he was allegedly kidnapped and beaten; alien may have been confused, at the hearing, as to what he was being asked, and in any case issue of whether he actually filed a report was irrelevant to question of whether he was actually kidnapped and beaten, particularly in light of fact that Immigration and Naturalization Service (INS) did not dispute that alien was in fact abducted and abused. *Pergega v. Gonzales*, C.A.6 2005, 417 F.3d 623. Aliens ↩ 54.1(4.1)

8 U.S.C.A. § 1101

Evidence supported adverse credibility determination in asylum proceeding, where Immigration Judge (IJ) found that alien tended to return to a recitation of the story contained in his application for asylum, had trouble answering specific questions which did not come directly from facts contained in the application, corrected himself on several occasions, and gave internally inconsistent and implausible testimony, and the documentary evidence reconfirmed that conclusion. *Singh v. Gonzales*, C.A.1 2005, 413 F.3d 156. Aliens ↩ 54.1(4.1)

Immigration Judge's (IJ) decision, that Nigerian asylum applicant failed to show that she was persecuted or had well-founded fear of persecution because she converted from Islam to Christianity, was supported by substantial evidence, in that IJ's specific findings, regarding applicant's use of false documentation to enter United States and her presentation of bogus birth certificate to court, and inconsistencies in her testimony, strongly corroborated IJ's global finding that applicant's testimony lacked credibility. *Olujoke v. Gonzales*, C.A.1 2005, 411 F.3d 16. Aliens ↩ 54.1(4.1)

Neither Philippine national's failure to disclose, on his visa application, that his American brother-in-law had died nor his failure to present documentary evidence corroborating that he worked for the Red Cross constituted substantial evidence supporting immigration judge's adverse credibility finding; alien's failure to disclose his brother-in-law's death had no bearing on whether he experienced persecution in the Philippines, of kind supporting his asylum claim, regardless of whether omission was result of innocent mistake or of attempt to fraudulently obtain admission to the United States, and alien did not have to provide corroboration for testimony that immigration judge had proffered no legitimate reason for doubting. *Marcos v. Gonzales*, C.A.9 2005, 410 F.3d 1112. Aliens ↩ 54.1(4.1)

Immigration judge's adverse determination on credibility of asylum applicant had requisite evidentiary support, and would not be disturbed on petition for judicial review, given the numerous discrepancies in applicant's testimony and false documents that he submitted in support of his application. *Turay v. Ashcroft*, C.A.8 2005, 405 F.3d 663. Aliens ↩ 54.1(4.1)

Asylum applicant's failure to repeat in his testimony peripheral details that he had already provided to agency and that his father included in supporting affidavit provided no basis for immigration judge's adverse credibility finding, especially where applicant was never questioned about these details. *Singh v. Gonzales*, C.A.9 2005, 403 F.3d 1081. Aliens ↩ 54.1(4.1)

Finding of Immigration Judge (IJ), that asylum applicant's testimony about her alleged fear of persecution in China based on her membership in illegal Catholic church, was not credible, was not supported by substantial evidence, even though she failed to mention fear of religious persecution in airport interview, where IJ actively interjected himself into proceedings, at times assumed inquisitorial role, relied heavily on his own understanding of Catholic religion, and mischaracterized applicant's testimony. *Huang v. Gonzales*, C.A.7 2005, 403 F.3d 945. Aliens ↩ 54.1(4.1)

Immigration Judge's (IJ) conclusions, that Ethiopian asylum applicant from Oromo ethnic group was not credible and failed to establish past persecution, were supported by substantial evidence, inasmuch as applicant failed to produce corroborating evidence from human rights organizations, and her testimony about alleged rape by her boss in government agency was inconsistent. *Alemu v. Gonzales*, C.A.8 2005, 403 F.3d 572. Aliens ↩ 54.1(4.1)

Determination by Immigration Judge (IJ) that asylum applicant's claim that he was going to be persecuted as being suspected of aiding armed insurgent organization was not credible and was not supported by evidence; IJ's finding was based on conclusion that claims were implausible, finding made several unsupported assumptions and demonstrated view of home country's form of due process which was inconsistent with that described in state department report regarding inability home country's government to control organization. *Chaib v. Ashcroft*, C.A.10 2005, 397 F.3d 1273. Aliens ↩ 54.1(4.1)

8 U.S.C.A. § 1101

Immigration judge's (IJ) finding that alien participated in criminal activities, which was a direct product of his finding that alien's overall testimony was not credible, was not supported by substantial evidence; IJ's adverse credibility finding did not logically flow from the facts he considered. *Korytnyuk v. Ashcroft*, C.A.3 2005, 396 F.3d 272. Aliens ↪ 54.1(4.1)

Decision of Board of Immigration Appeals (BIA) that asylum applicant, who was native of India, failed to establish that Research and Analysis Wing (RAW) of the Prime Minister of India existed, which was offered to support the BIA's finding that applicant was not credible, was not supported by substantial evidence, and thus remand was required; applicant claimed persecution based on his status as agent of RAW, there were numerous reputable international media sources which had published articles about RAW, and RAW's existence as an office of the Prime Minister was matter of common knowledge. *Singh v. Ashcroft*, C.A.9 2004, 393 F.3d 903. Aliens ↪ 54.1(4.1); Aliens ↪ 54.3(6)

Adverse credibility determination by Board of Immigration Appeals (BIA) was not supported by substantial evidence, and thus remand was required of denial of application for asylum; although alien's testimony provided more detail than his asylum application, there was nothing inconsistent about the two accounts and the alien's testimony concerning torture he suffered by government in native country was specific. *Taha v. Ashcroft*, C.A.9 2004, 389 F.3d 800. Aliens ↪ 54.1(4.1); Aliens ↪ 54.3(6)

Immigration Judge's (IJ) decision to discount Somali asylum applicant's claim that he was member of Midgan clan, which according to applicant was persecuted by other clans, was supported by substantial evidence, where witness testified that he recognized applicant as Midgan because they both lived in area of refugee camp that Midgans populated, but witness admitted that one could not determine clan membership by physical appearance, dialect, or area in which a person lived in Mogadishu. *Hassan v. Ashcroft*, C.A.8 2004, 388 F.3d 661. Aliens ↪ 54.1(4.1)


Board of Immigration Appeals (BIA) did not err in basing its adverse credibility determination in part on applicant's failure to mention during asylum hearing her alleged kidnapping by skinheads in Poland; alleged kidnapping, which she described in affidavit, was significant in that she contended it was her most recent personal encounter with those threatening her, it was only time she was held overnight, and it contributed to her decision to leave for United States. *Korniejew v. Ashcroft*, C.A.7 2004, 371 F.3d 377. Aliens ↪ 54.1(4.1)


Sufficient evidence supported Immigration Judge's finding that alien failed to support asylum claim with credible evidence; it was doubtful that alien could have escaped guerilla camp by himself on foot and then supported himself in Mexico from ages 10 to 16, alien's account did not provide plausible basis for fearing threat of former guerillas, there were changed country conditions and guerillas had disbanded, and alien's testimony was exaggerated, embellished, and not particularly believable. *Reynoso-Lopez v. Ashcroft*, C.A.3 2004, 369 F.3d 275. Aliens ↪ 54.1(4.1)


Substantial evidence supported determination of Immigration Judge to reject, based on lack of credibility, asylum applicant's claim that she feared future persecution at hands of abusive boyfriend in her native country; no objectively reasonable basis existed for fear, where applicant had maintained continuous relationship with boyfriend, allowed him to visit her, and had child with him after coming to United States. *Laurent v. Ashcroft*, C.A.1 2004, 359 F.3d 59. Aliens ↪ 53.10(3)


Substantial evidence supported Immigration judge's (IJ's) decision that asylum applicant was not victim of past persecution; alien filed admittedly fraudulent original asylum application, gave false testimony on that claim at initial asylum interview, and had no corroboration for her final, inconsistent testimony that she had been victimized by abusive boyfriend in her country, but that she had maintained relationship with him, allowed him to visit her, and had child with him after coming to United States. *Laurent v. Ashcroft*, C.A.1 2004, 359 F.3d 59. Aliens ↪ 54.1(4.1)


8 U.S.C.A. § 1101


Immigration Judge (IJ) did not err in determining that asylum applicant was not credible, where IJ was presented with four very similar applications for asylum, all of which claimed same father, but applicant testified he had no siblings in United States, and, even after six months, applicant could not explain existence of the other applications. *Nyama v. Ashcroft*, C.A.8 2004, 357 F.3d 812. Aliens  54.1(4.1)


Differences in alien's testimony and dates provided in marriage and birth certificates offered by alien were minor discrepancies which could not justify an adverse credibility finding at asylum proceeding. *Wang v. I.N.S.*, C.A.9 2003, 352 F.3d 1250. Aliens  54(3.1)


Alien, an ethnic Macedonian from Bulgaria, failed to establish that he qualified as a refugee entitled to asylum; immigration judge (IJ) found alien's testimony to be incredible, and alien's documentary evidence was insufficient to overturn IJ's adverse credibility determination. *Krouchevski v. Ashcroft*, C.A.7 2003, 344 F.3d 670. Aliens  54.1(4.1)

Immigration Judge's credibility finding was entitled to deference in asylum proceedings based on articulation of valid reasons for discrediting alien's testimony, including her inability to remember dates, her inconsistent testimony, and her submission of questionable documents purportedly listing her as government protestor. *Daiga v. U.S. I.N.S.*, C.A.8 1999, 183 F.3d 797. Aliens  54.3(4)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; if alien genuinely received credible threats of rape, mutilation, and death, it seemed unlikely, as she claimed, that she would return to her home, where she was receiving the threats, and alien did not produce even one of threatening letters, even though she claimed that she continued to receive them even after applying for asylum, relying instead on her own testimony and testimony from her family. *Some v. Gonzales*, C.A.1 2006, 2006 WL 1313995, Unreported. Aliens, Immigration, And Citizenship  643

Substantial evidence did not support adverse credibility determination in asylum proceeding; Immigration Judge's (IJ) finding regarding a visit by Chinese officials to alien's home was not supported by the record, IJ found that alien failed to provide sufficient detail about events but failed to probe for additional such details, faulting alien for failing to provide medical evidence of his beating was improper, faulting him for not answering why a legal notice omitted certain information was unreasonable, and alien's failure to mention his struggle with officials was not relevant to the crux of his claim. *Zheng Xi Liu v. Board of Immigration Appeals*, C.A.2 2006, 2006 WL 1225457, Unreported. Aliens, Immigration, And Citizenship  643

In light of fact that alien's statements were consistent throughout her airport interview, asylum application, and testimony, substantial evidence did not support finding that she was not credible; Immigration Judge (IJ) failed to ask alien questions that would alleviate the alleged sparseness of her testimony and failed to indicate what reasonably available corroboration was missing, and fact that background materials did not support alien's claim that relatives of Falun Gong supporters were being arrested was insufficient to support adverse credibility finding. *Qing Chen v. U.S. Dept. of Justice*, C.A.2 2006, 179 Fed.Appx. 72, 2006 WL 1115466, Unreported. Aliens, Immigration, And Citizenship  643

Substantial evidence supported reasons given by immigration judge (IJ) for adverse credibility determination in asylum case, where IJ based finding on alien's demeanor, a lack of responsiveness on part of alien regarding central aspect of claim, and alien's failure to corroborate her case with key witness who lived near hearing site. *Kaur v. Gonzales*, C.A.9 2006, 2006 WL 991889, Unreported. Aliens, Immigration, And Citizenship  643

Substantial evidence supported adverse credibility determination in asylum proceeding; alien, a native of Iran and a citizen of Armenia, testified she was detained and beaten because of her ethnicity and that her husband lost his eye in the same incident, but alien's son-in-law testified that husband lost his eye at least seven years later, alien stated in her application that she lost consciousness in the beating but failed to mention that in her testimony, and she

8 U.S.C.A. § 1101

testified that her shed was burned but failed to include that in her application. *Saidov v. Gonzales*, C.A.9 2006, 175 Fed.Appx. 896, 2006 WL 988876, Unreported. Aliens, Immigration, And Citizenship ↻ 643

Substantial evidence supported immigration judge's (IJ) conclusion that Albanian aliens' testimony in support of their asylum applications was not credible; husband's testimony as to when officers of Albanian Socialist Party tore up his business records and property deeds was inconsistent with his written asylum application, wife's testimony on subject was inconsistent with both husband's testimony and written application, and her testimony that husband came home beaten "almost every, every night" and was arrested and jailed for one week during their marriage was not corroborated by husband's account. *Kolendrekaj v. Gonzales*, C.A.2 2006, 169 Fed.Appx. 85, 2006 WL 461505, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration judge's finding that applicants for asylum were not credible was not based upon issues going to heart of applicants' claim of persecution, where finding was based upon discrepancy between applications for asylum and one applicant's testimony as to identity of individual whose statue applicant had helped to tear down during a political protest, fact that one applicant left one of her two children behind when she came to United States, one applicant's failure to detail in his original application form of death threats made against him, and fact that one applicant went to police station to obtain his passport. *Vucaj v. Gonzales*, C.A.6 2005, 150 Fed.Appx. 444, 2005 WL 2445976, Unreported. Aliens ↻ 54.1(4.1)

Reliance by immigration judge (IJ) on "the argument cited by the [government] in its closing argument" that alien's responses were "simply not persuasive" did not provide basis for upholding IJ's adverse credibility finding in proceedings on applications by alien, who was native and citizen of India, for asylum, withholding of removal, and relief under Convention Against Torture (CAT) when IJ did not give specific examples or indicate to what portion of government's closing argument he was referring. *Kumar v. Gonzales*, C.A.9 2005, 150 Fed.Appx. 591, 2005 WL 2250635, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) disbelief, at asylum proceeding, that card proffered by alien to indicate membership in organization for persons formerly persecuted was not genuine could not form basis for adverse credibility finding; sole basis for IJ's conclusion was that similar card offered by alien's husband at asylum hearing more than two years earlier was found not to be genuine by IJ in that case, but review of record in earlier proceeding indicated that document there at issue was genuine membership card but that other evidence adduced at hearing indicated that alien's husband was not listed member of organization, and record did not reveal any similar evidence raising concerns about alien's own membership. *Frangaj v. Board of Immigration Appeals*, C.A.2 2005, 144 Fed.Appx. 175, 2005 WL 2243397, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible as to his claim that he was homosexual and would be persecuted on that basis if returned to Jordan; alien had engaged in a sham marriage with a U.S. citizen to extend his residency, and there were inconsistencies between his asylum application and his own testimony, as well as between his testimony and that of his purported romantic partner. *Safadi v. Gonzales*, C.A.6 2005, 148 Fed.Appx. 372, 2005 WL 2175937, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' determination that alien's testimony in support of his asylum application was not credible; alien's partial explanation for irregularities in Albanian Democratic Party identification card that alien submitted did not address all of Immigration and Naturalization Service document inspector's observations of features that made card and submitted court summons appear to be fabricated, alien remained in Albania for several years after alleged incidents in which he was imprisoned and beaten and his son was kidnapped, and alien was able to keep his government job and earn a doctorate degree during period of alleged persecution. *Loli v. Gonzales*, C.A.7 2005, 147 Fed.Appx. 598, 2005 WL 2077280, Unreported, rehearing en banc denied. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ based finding on fact that

8 U.S.C.A. § 1101

alien's explanation of how he managed to escape from family planning officials lacked details and was highly implausible, that alien's national identification card and household registration were highly suspicious because they were issued at time when alien claimed to have been in hiding, and that there was substantial discrepancy between story alien provided during airport interview and his asylum application. *Gao v. Attorney General of U.S.*, C.A.3 2005, 140 Fed.Appx. 396, 2005 WL 1793502, Unreported. Aliens ↻ 54.1(4.1)

Alien could reasonably be expected to provide testimony from his wife in order to corroborate his claim of persecution at asylum proceeding; alien was found not to be credible, and alien's attorney was offered opportunity for adjournment to obtain wife's testimony and guarantee that wife would not be arrested but, apparently for tactical reasons, declined to call wife. *Sheng v. U.S. Dept. of Justice*, C.A.2 2005, 139 Fed.Appx. 353, 2005 WL 1791724, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; finding was based on implausibility of alien's inability to pay a fine of an amount less than one tenth the cost of emigration to the United States, police pursuit of alien given the IJ's conclusion, based on alien's testimony, that police had likely not seen her at church, and that police would accuse churchgoers of attending an illegal gathering given that church was officially sanctioned. *Hua v. Gonzales*, C.A.2 2005, 139 Fed.Appx. 350, 2005 WL 1772527, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility determination in denying Indian citizen's application for asylum based on his claim that he was Sikh, where alien indicated on his asylum application that his religion was Hindu, and he did not change his religious affiliation to Sikh until day of hearing. *Malhotra v. Gonzales*, C.A.9 2005, 139 Fed.Appx. 835, 2005 WL 1653971, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) finding that alien's testimony in support of his asylum application was not credible; there were substantial discrepancies between application and alien's testimony as to nationality of his wife, as to his passport history, and as to whether he had been arrested and held for only a few days without interrogation in Mauritania, or imprisoned for more than a year and beaten and interrogated frequently, application did not mention brutal murder of his two brothers by troops, which he testified he had witnessed, and testimony was not corroborated. *Aliou v. Gonzales*, C.A.10 2005, 140 Fed.Appx. 22, 2005 WL 1649182, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) rejection of numerous documents offered in support of alien's asylum application was not supported by specific, cogent reasons bearing a legitimate nexus to adverse credibility finding; IJ expressed reservations about presence of California notary stamp on original Chinese documents, when it was apparent that stamp was placed on them to verify that translations offered were for actual original documents submitted, and IJ also stated that documents were not properly authenticated, which was not required. *Ji v. Gonzales*, C.A.9 2005, 138 Fed.Appx. 996, 2005 WL 1635346, Unreported. Aliens ↻ 54.1(3)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony lacked detail in significant parts, but was much more detailed than his application in other significant parts, as exemplified by fact that alien did not detail in his application the torture he suffered during four-week detention, yet his testimony about his treatment was very detailed, and alien did not explain to IJ's satisfaction why police came to his cousin's house following particular demonstration. *Pecaj v. Gonzales*, C.A.6 2005, 133 Fed.Appx. 987, 2005 WL 1384093, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility determination, such that alien failed to establish his eligibility for asylum or withholding of removal; alien's own forensic expert reported that the photograph on his marriage certificate appeared to be a composite, casting doubt on his testimony that he was present for the photograph, and alien contradicted himself regarding what medical procedure was allegedly forced on his wife. *Yang v. Dept. of Justice*, C.A.2 2005, 135 Fed.Appx. 462, 2005 WL 1349871, Unreported. Aliens ↻ 54.1(4.1)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Appellate court cases ruling that the Immigration and Naturalization Service (INS) could not deny asylum to a credible applicant simply because his account of persecution was lacking in detail, and observing that adverse credibility rulings could not be based solely on minor, collateral omissions in an asylum application, did not so change the standards for assessing credibility in asylum cases as to preclude a conclusion that the Board of Immigration Appeals (BIA) correctly applied the law; Immigration Judge (IJ) specifically found that the alien was not credible, and the observation in the case law stated no new legal standard. *Chen v. Board of Immigration Appeals*, C.A.2 2005, 131 Fed.Appx. 764, 2005 WL 1182250, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's determination that alien's testimony in support of his application for asylum, withholding of removal and protection under the Convention Against Torture (CAT) was not credible was based on actual inconsistencies and implausibilities in the record supported by specific, cogent reasons, and thus was supported by substantial evidence; there were many contradictions between alien's testimony and the affidavit he submitted, as to circumstances of alien's wife's alleged abortion and compulsory intrauterine device (IUD) insertion, and as to alien's participation in Falun Gong. *Yang v. Gonzales*, C.A.3 2005, 131 Fed.Appx. 384, 2005 WL 1139942, Unreported. Aliens ↪ 54.1(4.1)

Evidence supported adverse credibility determination in asylum proceeding; alien failed to produce evidence that she was a practicing Jehovah's Witness, despite her testimony that she had attended services three times a week for several months in the United States. *Patatanyan v. Gonzales*, C.A.9 2005, 132 Fed.Appx. 124, 2005 WL 1126992, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ's finding rested on, among other things, inconsistencies among alien's testimony, application, and corroborating evidence regarding his membership in political party, and his arrests and detentions, which discrepancies went to heart of alien's claim of persecution. *Singh v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 99, 2005 WL 1122076, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) statement that "credible testimony and evidence provided by the asylum officer" supported finding that alien had assisted and participated in "persecuting others on account of their political opinion" did not make adverse credibility finding with adequate specificity, even though IJ stated that he "does discount" alien's testimony. *Cardona-Rivas v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 512, 2005 WL 1027163, Unreported. Aliens ↪ 54(3.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) findings that alien's asylum hearing testimony about past persecution in Albania was not credible, and that he did not establish well-founded fear of future persecution based on his political affiliations; testimony regarding dates and events of alleged past persecution were inconsistent and conflicting in substance and chronology with documents submitted in support of asylum, alien offered no credible evidence that events were motivated by his political affiliations, and he was subsequently able to live for several years in Albania without incident. *Bregu v. Attorney General of U.S.*, C.A.3 2005, 127 Fed.Appx. 622, 2005 WL 858022, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien claimed in his application that he was mistreated all his life on account of being a Kurd and Sunni Muslim, but subsequently testified that no one knew he was a Sunni except for his wife, her mother, and neighbors. *Mohammady v. Gonzales*, C.A.9 2005, 126 Fed.Appx. 870, 2005 WL 851294, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported decision to deny alien's application for asylum; alien's testimony regarding his political associations, police contacts, and purported medical treatment for alleged beatings was either internally inconsistent, vague, or conflicted with documentation presented at the hearing, and alien failed to establish his identity, despite his own testimony indicating that corroborating evidence on issue was easily available to him. *Dhami v. Gonzales*, C.A.9 2005, 131 Fed.Appx. 504, 2005 WL 844732, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported adverse credibility determination in asylum proceeding; alien's testimony was internally inconsistent, contradictory, and inconsistent with his application and written declaration concerning, inter alia, his police contacts, political associations, and reasons for leaving India, and his documentary evidence was insufficiently compelling to overcome special deference accorded to Immigration Judge's (IJ) credibility determination. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 370, 2005 WL 844730, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ gave specific and cogent reasons for disbelieving alien's claims of fear of persecution, including fact that alien left his family members in the country, where they still resided and worked, despite claiming that his business was burned and looted during riots and that his son was pushed off a bike and injured due to ethnicity, and fact that pictures alien submitted in support of his claim that his business had been looted and burned looked like an empty warehouse. *Tandyawasesa v. Gonzales*, C.A.10 2005, 126 Fed.Appx. 454, 2005 WL 834848, Unreported. Aliens 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony conflicted with documentary evidence indicating that she entered the United States on a previous occasion, before her arrests and beating in her native country allegedly occurred. *Kaur v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 854, 2005 WL 775419, Unreported. Aliens 54.1(4.1)

Immigration judge's conclusions that alien's entire claim lacked credibility and that alien failed to demonstrate credible fear of persecution if his application for asylum was denied were supported by substantial evidence, including that testimony from forensic document examiner who testified that identification card submitted by alien was a forgery, that alien's own testimony indicated that a number of his acquaintances had returned to Mauritania safely, and that State Department and United Nations had documented improved conditions in Mauritania for former refugees. *Gueye v. U.S. I.N.S.*, C.A.2 2005, 127 Fed.Appx. 526, 2005 WL 743070, Unreported. Aliens 54.1(4.1)

Record supported an adverse credibility determination against an alien seeking asylum; Immigration Judge (IJ) noted that in an airport interview, the alien stated she entered the United States to see her family, but at the hearing she testified she feared being kidnapped and forced into prostitution, and moreover, in the airport interview, she stated she was not afraid of returning to Albania and that she had obtained a fraudulent passport from a man her relatives knew, while at the hearing she testified that her father just happened to be present and purchased the fraudulent passport. *Nikis v. Ashcroft*, C.A.6 2005, 126 Fed.Appx. 731, 2005 WL 742749, Unreported. Aliens 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding as to Chinese citizen's asylum request, where judge found citizen's testimony to be improbable as to persecution claims and internally inconsistent. *Xiao v. U.S. Dept. of Justice*, C.A.2 2005, 127 Fed.Appx. 10, 2005 WL 714440, Unreported. Aliens 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien's testimony that he had been arrested in India three times was contradicted by evidence he had never been arrested, and he provided inconsistent dates of arrest, confused dates he was in college and involved with the All India Sikh Student Federation, gave wrong birth date at hearing, and, despite opportunity to do so, failed to obtain any documentation corroborating his testimony. *Saini v. Gonzales*, C.A.9 2005, 130 Fed.Appx. 82, 2005 WL 665093, Unreported. Aliens 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) conclusion, based on an adverse credibility determination, that alien, an ethnic Albanian woman seeking asylum, had failed to establish a well-founded fear of persecution if removed; inconsistencies and omissions in the alien's asylum applications and her hearing testimony cited by the IJ related to the core allegations of her claims. *Djeljevic v. Gonzales*, C.A.6 2005, 124 Fed.Appx. 965, 2005 WL

8 U.S.C.A. § 1101

548812, Unreported, rehearing denied. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony was vague, implausible, unresponsive, and lacked sufficient detail, and testimony conflicted with alien's supporting documentation regarding whether or not her father-in-law was alive, whether she supported particular group, and whether she was raped. *Kaur v. Gonzales*, C.A.9 2005, 121 Fed.Appx. 265, 2005 WL 348431, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support adverse credibility determination in asylum proceeding; Immigration Judge (IJ) incorrectly stated that alien testified inconsistently as to how long it took him to research the political documents he authored, alien's testimony that he had never been convicted of a crime was not intended to reflect fact that he had been convicted in absentia for political crimes, and IJ engaged in speculation and conjecture by stating that it was "hard to believe" the Gambian government would wait as long as it did to file criminal charges against alien. *Jassey v. Gonzales*, C.A.9 2005, 128 Fed.Appx. 19, 2005 WL 327682, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding; alien's amended application substantially conflicted with his initial application, his claim that police would not help when he was attacked was implausible given his claim of belonging to the Hindu majority in India, which State Department Country Report indicated were supported by police, claim that alien was threatened in a distant village after being recognized as the son of a political figure was also implausible given the father's lack of importance, and there was no corroboration of father's position. *Patel v. Ashcroft*, C.A.3 2005, 125 Fed.Appx. 390, 2005 WL 256343, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against asylum applicant claiming persecution by Serbian officials in Montenegro on account of her Albanian ethnicity; although applicant testified that Serbian officials repeatedly came to her salon and harassed her within twelve-year period, her asylum application reported only single salon incident, applicant's stated reluctance, during her asylum interview, to disclose her rape during one incident, did not explain her failure to report any other occurrence during that time which supported her claim for asylum, and her testimony regarding present whereabouts of her brothers, whom Serbian officials had allegedly sought, was very vague and evasive, even though she was in regular contact with one of her brothers who resided in United States. *Camaj v. I.N.S.*, C.A.2 2005, 121 Fed.Appx. 416, 2005 WL 229867, Unreported. Aliens ↻ 54.1(4.1)

Discrepancies between alien's asylum application and testimony concerning mistreatment he suffered when he was routinely detained while entering and leaving no-fly zone as part of his business and concerning details of physical abuse alien suffered during his 45-day imprisonment provided basis for adverse credibility finding. *Jebraail v. Ashcroft*, C.A.6 2005, 119 Fed.Appx. 759, 2005 WL 106803, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien admitted to lying under oath to asylum officer and submitted an application that was false and contradictory to second application. *Grewal v. Ashcroft*, C.A.9 2005, 120 Fed.Appx. 140, 2005 WL 79098, Unreported. Aliens ↻ 54.1(4.1)

Alien's testimony that she did not bring her son to the United States and that she did not use birth control did not reveal anything about alien's fear of persecution, and thus did not provide basis for adverse credibility finding at asylum proceeding. *Lin v. Ashcroft*, C.A.9 2005, 119 Fed.Appx. 136, 2005 WL 14942, Unreported. Aliens ↻ 54.1(4.1)

Evidence of renewed hostilities between Eritrea and Ethiopia did not compel contrary determination or remand for new hearing, following Immigration Judge's (IJ) denial of withholding of removal, where IJ based adverse credibility against applicant, who testified that her social group of Eritreans of mixed parentage held sensitive

8 U.S.C.A. § 1101

positions in Eritrean military, on her failure to mention any targeting or family detentions in her application for asylum or her asylum interview, and her "extremely hazy" testimony. *Andemichael v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 114, 2004 WL 2980662, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ determined that alien's demeanor was evasive, and alien testified about spending four years in prison but made no mention of such imprisonment in her asylum application, lacked an explanation for why she was no longer questioned after particular point in time, and gave jumbled explanation for why she left her children behind. *Ven v. Ashcroft*, C.A.9 2004, 115 Fed.Appx. 355, 2004 WL 2891534, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support Immigration Judge's (IJ) adverse credibility finding against asylum applicant; applicant clarified discrepancy in testimony regarding date of first arrest, omission in parents' affidavit of incident, in which police were bribed not to arrest applicant, was not material, mother's affidavit did not give conflicting reasons for applicant's arrest, IJ's finding, that applicant's being target of police was inconsistent with his receiving passport, was improperly based upon personal conjecture, and applicant answered each question in detail in his testimony about his arrest, detention, and severe beatings. *Varaich v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 582, 2004 WL 2862172, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) and Bureau of Immigration Appeals' (BIA) adverse credibility determination; alien's explanation that he did not leave India before certain date because he did not have any problems with police was inconsistent with, and directly undercut, his testimony that he feared for his life based on events prior to that date, and alien had failed to mention his arrest and two week detention on his asylum application. *Bassi v. Ashcroft*, C.A.9 2004, 118 Fed.Appx. 192, 2004 WL 2857271, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility determination against alien applying for asylum; alien testified that he was sought by police in his native Armenia because of his interview with an Armenian radio journalist, his written testimonies about military wrongdoing, and his statement that death of a military pilot was not accidental, however, alien did not refer to any of these allegations in his asylum application. *Kirakosyan v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 564, 2004 WL 2852537, Unreported. Aliens ↻ 54.1(4.1)

Immigration Judge's (IJ) adverse credibility finding against asylum applicant was not supported by substantial evidence; contrary to the IJ's conclusion that applicant's testimony was vague and general, applicant's testimony regarding incidents when soldiers beat him, on one occasion due to his refusal, on grounds of his religion, to support referendum, and on another occasion due to his ethnicity, was very specific and detailed, IJ improperly faulted applicant for failing to provide evidence corroborating his claim without explaining what evidence applicant should have provided, and, since applicant was questioned only about specific aspects of his faith and admonished only to answer question asked, IJ should not have faulted him for failing to describe other aspects of his faith. *Mogos v. Ashcroft*, C.A.9 2004, 117 Fed.Appx. 553, 2004 WL 2823316, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against family applying for asylum; IJ discredited father's testimony because of inconsistencies between his testimony and asylum application he had previously filed, including significant omissions from application, implausibility of some of his allegations, and family's lack of candor regarding mother's ear problems, which they linked to violence inflicted on mother by government officers in Ethiopia, their country of citizenship. *Bussa v. Ashcroft*, C.A.8 2004, 117 Fed.Appx. 489, 2004 WL 2820945, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien alleged that she was raped and persecuted because of her ethnicity and her religion, in a part of town where she knew no one, and that she had no identification with her, yet claimed that her parents were notified by the hospital where she was being

8 U.S.C.A. § 1101

treated, and alien could not articulate any specific injuries, never reported alleged rape to police, and could not provide any evidence of her religious affiliation despite being given an extension to obtain testimony from a local pastor. *Kho v. Ashcroft*, C.A.3 2004, 114 Fed.Appx. 515, 2004 WL 2786316, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Board of Immigration Appeals' (BIA) adverse credibility determination against asylum applicant; series of attacks, threats, and extortion, which was crux of alien's testimony and which he did not mention in his earlier asylum application and did not add to his later application until day of his merits hearing, were at very heart of his asylum claim and he failed to adequately explain why he did not mention them earlier. *Goubanov v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 141, 2004 WL 2711752, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien, a native and citizen of China, because alien made false statements during her testimony that went to heart of her asylum claim; during her testimony, alien denied ever having told Immigration and Naturalization Service (INS) officials that she had been raped or that she wanted an abortion, but when confronted with rebuttal evidence at her second hearing, she admitted that she had told INS officials that she had been raped and that she wanted an abortion. *Li Wen Zhuo v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 139, 2004 WL 2711727, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien; alien's failure to include in her asylum application, her rebuttal letter, or declaration that she submitted in support of her asylum and withholding application at subsequent time, several events about which she testified, including that she had been beaten while four months pregnant and lost her child, and that her father had been shot and seriously injured, were not minor omissions, rather, they related to basis for alleged fear of persecution. *De Herrera v. Ashcroft*, C.A.9 2004, 116 Fed.Appx. 135, 2004 WL 2711684, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ relied primarily on state department's determination that arrest warrant submitted by alien in support of his claim was invalid because no record of it existed and because warrant's signatory had never been chief of police at issuing station and that alien's release order must be invalid because courts, not prisons, issued such orders, and fact that other documents submitted by alien lacked official markings, such as return addresses and official stationery. *Sulo v. Ashcroft*, C.A.7 2004, 114 Fed.Appx. 253, 2004 WL 2676647, Unreported. Aliens ↻ 54.1(4.1)

Court of Appeals would uphold Board of Immigration Appeals' (BIA's) determination that alien, a native and citizen of Pakistan, was not eligible for asylum based on grounds of past persecution and well-founded fear of persecution because of his membership in a particular social group, where immigration judge (IJ) had found that alien's testimony was not credible and was not corroborated by other evidence, and IJ had found discrepancies between alien's written application and his credible-fear interview. *Ali v. Ashcroft*, C.A.5 2004, 114 Fed.Appx. 612, 2004 WL 2428699, Unreported. Aliens ↻ 54.1(4.1)

Alien's written declaration did not exaggerate unwillingness of police to help her, nor was declaration inconsistent with alien's hearing testimony, so as to provide basis for adverse credibility finding at asylum proceeding; although alien's testimony revealed that police never explicitly stated that they would not aid a person of alien's religion, she consistently testified that their attitude throughout her repeated visits to police station was one of contempt, and it was undisputed that police never investigated the attacks on her or her son and limited their assistance to the observation that she should be careful after dark. *Ramazanov v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 509, 2004 WL 1941279, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's asylum application and the notes from his asylum interview stated that an unknown group attacked alien and firebombed his shop, but alien testified at his hearing that one of the men that participated in both attacks on him wore a police uniform and a badge. *Perera v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 470, 2004 WL 1931967, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported IJ's adverse credibility determination based on alien's demeanor at asylum proceeding; IJ noted specifically that during direct examination, alien appeared relaxed, answered questions forthrightly and quickly, and maintained good eye contact, but that when alien was cross-examined about a medical certificate, he was evasive, nervous, and avoided any eye contact, that alien's facial muscles tightened, that he developed a slight tic in one eye, and that alien's testimony was more consistent with a memorized recital than an honest recollection. *Singh v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 468, 2004 WL 1931866, Unreported. Aliens ⚡ 54.1(4.1)

Alien's omission from his asylum application of incident in which armed members of particular clan came to his home and fired shots at him after his brother was killed was a major discrepancy going to the heart of alien's asylum claim, supporting IJ's adverse credibility finding. *Ismael v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 445, 2004 WL 1925506, Unreported. Aliens ⚡ 54.1(4.1)

Alien's testimony concerning consul's ability to provide him with asylum was irrelevant to his asylum application and did not provide basis for adverse credibility finding. *Singh v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 486, 2004 WL 1923583, Unreported. Aliens ⚡ 54.1(4.1)

Immigration judge's (IJ's) evaluation of demeanor of alien who, according to IJ, "had to look up to the ceiling as if she was trying to remember the right words, or the right script, or right explanation, or answer to give the court" when answering certain questions, did not provide basis for adverse credibility finding at asylum proceeding. *Thangaraja v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 815, 2004 WL 1922161, Unreported. Aliens ⚡ 54.1(4.1)

Alien's mistaken dates and attempted transposition of those dates, explained by alien as resulting from use of different calendar, did not go to heart of asylum claim, and thus did not provide basis for adverse credibility finding. *Sarparast v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 481, 2004 WL 1894904, Unreported. Aliens ⚡ 54.1(4.1)

Immigration Judge's (IJ) adverse credibility finding against alien seeking asylum was supported by specific, cogent reasons for disbelief; there was complete contradiction between alien's first asylum application and her second asylum application, alien failed to provide sufficient detail relating to events that led to her flight to United States, alien allegedly was active opponent of female genital mutilation, yet left her daughter in Guinea with relative who favored practice, alien's oral testimony did not match her multiple affidavits, and her explanation for authenticity of one of her documents contradicted document itself. *Dieng v. Ashcroft*, C.A.8 2004, 107 Fed.Appx. 706, 2004 WL 1873644, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony concerning the reasons his stepfather was killed were inconsistent with his asylum application, and alien provided vague testimony regarding who authored the death threat against him and how he received it. *Cornel-Aldana v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 53, 2004 WL 1869707, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence, including alien's demeanor and failure to provide convincing documentary evidence despite his own testimony that such evidence was available and despite a continuance of almost one year to allow alien to collect pertinent evidence, supported IJ's adverse credibility finding at asylum proceeding. *Singh v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 121, 2004 WL 1869493, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility determination at asylum proceeding; several of the documents alien offered into evidence may have been fraudulent, including letters he offered to prove that he assisted national police, which went to heart of alien's claim. *Yambao v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 118, 2004 WL 1869456, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien offered vague and

8 U.S.C.A. § 1101

inconsistent testimony regarding the firearms he carried and regarding his firearms training, alien could provide little concrete testimony regarding a position he allegedly held for at least eight months, and small amount of information alien introduced regarding very public events he allegedly witnessed did not accord with his account. *Sanchez Celi v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 117, 2004 WL 1869442, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony was both internally inconsistent and inconsistent with his asylum application, alien's demeanor led IJ to believe that he was having difficulty holding together a story that was not entirely true, and alien produced insufficient proof of his identity. *Gill v. Ashcroft*, C.A.9 2004, 107 Fed.Appx. 89, 2004 WL 1869292, Unreported. Aliens ↪ 54.1(4.1)

Alien's failure to list his arrest in his first asylum application constituted substantial evidence required to support IJ's adverse credibility finding at asylum proceeding. *Ardeleanu v. Ashcroft*, C.A.6 2004, 106 Fed.Appx. 986, 2004 WL 1859593, Unreported. Aliens ↪ 54.1(4.1)

Alien's inconsistent testimony regarding the origin of his identification documents, alleged rape of his sister, his broken arm, and his initial confrontation with government authorities, all of which went to heart of alien's asylum claim, provided basis for IJ's adverse credibility finding at asylum proceeding. *Tall v. I.N.S.*, C.A.6 2004, 106 Fed.Appx. 974, 2004 WL 1858703, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) determination that alien, who filed an application for asylum, withholding of removal, and protection under the Convention Against Terrorism (CAT), claiming that she faced circumcision in The Gambia for her arranged marriage to her cousin, was not credible was supported by substantial evidence, including medical examination that revealed that alien had previously undergone female circumcision, which was consistent with State Department reports that found that the Sarahuli tribe performed circumcision within one week following birth and not upon marriage. *Sidibeh v. Elwood*, C.A.3 2004, 104 Fed.Appx. 831, 2004 WL 1683094, Unreported. Aliens ↪ 53.10(3); Treaties ↪ 8

Alien's conflicting, fragmented, and incomplete accounts about whether police continued to seek her arrest, as well as conflicting testimony and admission that she "made up" the date when her parents returned to their village, provided basis for IJ's adverse credibility finding at asylum proceeding. *Kaur v. Ashcroft*, C.A.9 2004, 105 Fed.Appx. 915, 2004 WL 1663529, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's testimony and application were inconsistent and contradictory with respect to, among other things, whether alien was an ordained priest, whether he had been arrested and beaten by police, and whether he had been a leader in a local youth group. *Eholy v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 799, 2004 WL 1627263, Unreported. Aliens ↪ 54.1(4.1)

Alien's testimony regarding receipt of his passport and his departure from his native country was neither vague nor shifting, and thus did not provide basis for adverse credibility finding at asylum proceeding. *Singh v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 59, 2004 WL 1595400, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ's) reasons for adverse credibility finding at asylum proceeding were not supported by substantial evidence; IJ stated that he did not believe alien's testimony that he was arrested and beaten on two occasions because of the lack of supporting evidence regarding one of alleged arrests, the implausibility of another arrest, and the IJ's belief that alien's true motivation for leaving his country was economic. *Lal v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 38, 2004 WL 1595373, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) adverse credibility finding in asylum proceeding was not supported by substantial evidence; alien's actions after he arrived in the United States and timing of his asylum claim were entirely consistent with his claim that he feared future persecution, based on draft notices and judgment against him from Serbian army that he received after he came to the United States, alien's testimony regarding his ability to retire

8 U.S.C.A. § 1101

from military was consistent with asylum claim, and record did not support IJ's characterizations of alien's status as a known traitor while he was still in military. *Pantovic v. Ashcroft*, C.A.9 2004, 104 Fed.Appx. 20, 2004 WL 1559505, Unreported. Aliens ↪ 54.1(4.1)

In light of the Immigration Judge's (IJ) adverse credibility finding in asylum proceeding, alien was not credible and thus did not establish his entitlement to asylum; alien's testimony was hesitant and vague, with long periods of silence and exhibitions of nervous behavior, alien was unable to provide specific facts or details regarding alleged beatings, alien tried to misrepresent entry and exit stamps in his passport as mere internal checkpoints, and it was unlikely that a person targeted for government persecution would be allowed to travel in and out of the country. *Ohanessian v. Ashcroft*, C.A.3 2004, 105 Fed.Appx. 331, 2004 WL 1491654, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility determination in asylum proceedings, where alien's prior Canadian asylum application failed to mention newspaper article he allegedly co-authored or arrests and beatings that followed, even though his United States asylum application centered around those events, and his Canadian application referenced several incidents of persecution that went unmentioned in his United States application. *Naqvi v. Attorney General of U.S.*, C.A.3 2004, 103 Fed.Appx. 455, 2004 WL 1462704, Unreported. Aliens ↪ 54.1(4.1)

Contradiction between alien's testimony and asylum application concerning whether false charges had been filed against him by federal agents in his native country went to the heart of alien's asylum claim, and thus constituted substantial evidence supporting IJ's adverse credibility finding. *Hussain v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 211, 2004 WL 1447778, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) determination that alien's testimony lacked credibility in proceeding for asylum; alien failed to mention during his direct testimony the claim in his application that he had been the victim of arson, a central basis of his requests for asylum and withholding, and changed his story on cross-examination concerning what organized crime figures in Russia had demanded of him prior to burning down his stores. *Jelkovski v. I.N.S.*, C.A.6 2004, 103 Fed.Appx. 578, 2004 WL 1447655, Unreported. Aliens ↪ 54.1(4.1)

Alien's alleged inability to explain how he traveled from Italy to England after he fled India did not go to the heart of his asylum claim and could not be viewed as an attempt to enhance the claim of persecution and, thus, had no bearing on alien's credibility. *Sahota v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 611, 2004 WL 1435143, Unreported. Aliens ↪ 54.1(4.1)

Evidence compelled conclusion that Immigration Judge's (IJ) adverse credibility finding against alien seeking asylum was not supported by substantial evidence, and thus reversal of finding was warranted; asylum application's omissions of certain details of alien's torture and subsequent medical treatment were minor omissions that did not support adverse credibility determination, and alien's testimony that he fled Punjab one month earlier than he listed on his asylum application was minor discrepancy in date, which was not sufficient to support adverse credibility determination. *Kaleka v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 604, 2004 WL 1404579, Unreported. Aliens ↪ 54.3(6)

Evidence supported Immigration Judge's (IJ) determination that alien seeking asylum was not credible; IJ found that the alien had not established his identity as a Mauritanian because of irregularities concerning his birth certificate, and noted that the alien had entered the United States fraudulently; moreover, the alien did not mention his brothers' deaths in his original asylum application. *Anne v. Ashcroft*, C.A.6 2004, 101 Fed.Appx. 620, 2004 WL 1379955, Unreported. Aliens ↪ 54.1(4.1)

Denial of Mauritania citizen's asylum application on basis of immigration judge's adverse credibility determination was supported by substantial evidence, including that alien amended his application to indicate that he had three

8 U.S.C.A. § 1101

children but gave problematic explanations about how he fathered children when he claimed to have been in prison or elsewhere, and alien did not testify clearly or consistently about dates of his incarceration, which was the heart of his asylum claim. *Mody v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 914, 2004 WL 1367458, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility determination, supporting denial of alien's application for discretionary relief from deportation; alien provided inconsistent and evasive answers regarding two-year delay in filing for wife's residency and the date upon which he told his parents that he was married. *Abanto v. I.N.S.*, C.A.9 2004, 101 Fed.Appx. 222, 2004 WL 1336691, Unreported. Aliens ↪ 54.1(4.1)

Evidence was sufficient to support immigration judge's adverse credibility finding concerning alien, a citizen of the Philippines; in spite of alien's testimony that she was kidnapped, held for two days, beaten, and raped after refusing requests by a member of a communist insurgency group who asked her to join their group and spy on her employer, the alien failed to mention anything about the abduction, beating, or rape in her written application for asylum and withholding. *Canlobo v. Ashcroft*, C.A.6 2004, 101 Fed.Appx. 111, 2004 WL 1327872, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) determination that alien's testimony in support of his asylum application was not credible; even though alien was allegedly arrested at his home and his mother, who was present at time, was allegedly pushed and struck by arresting individuals, during hearing his mother did not remember incident, alien's testimony and application for asylum were inconsistent regarding his alleged arrest and/or detentions, and alien was inconsistent as to number of friends who were allegedly killed. *Weliczko v. Ashcroft*, C.A.6 2004, 100 Fed.Appx. 511, 2004 WL 1325726, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge's (IJ) credibility findings were sufficiently clear and reasonable to support denial of asylum and withholding of removal, despite alien's claim that an adverse credibility finding was directed only to the alien's testimony regarding his criminal history and not to the merits of his application for relief; IJ made it clear that he did not believe alien's story about shoplifting convictions, but also explained that alien's lack of candor regarding his criminal history affected the believability of the rest of his testimony. *Efimov v. Ashcroft*, C.A.10 2004, 100 Fed.Appx. 731, 2004 WL 1234150, Unreported. Aliens ↪ 54(3.1)

Alien failed to show that he suffered from past persecution or had well-founded fear of future prosecution if returned to any part of his native country, barring grant of asylum; alien gave inconsistent testimony about how he was treated by security police and untrustworthy information about his father's government service, damaging the overall credibility of his claim, alien failed to provide any other evidence to corroborate his testimony, and there was no showing that alien could not move back to an area in native country where he lived for six years without suffering any persecution. *Nsue-Bisa v. Ashcroft*, C.A.6 2004, 98 Fed.Appx. 436, 2004 WL 1098756, Unreported. Aliens ↪ 53.10(3)

Substantial evidence supported conclusion, in asylum proceeding, that alien was not credible as to his allegations of past persecution in Guatemala; there were discrepancies between alien's asylum application and his testimony regarding a visit to his office by army intelligence, his application failed to mention, as he later testified, that he had been followed and watched, and alien failed to produce articles he allegedly wrote and letters he claimed to possess. *De Leon v. I.N.S.*, C.A.6 2004, 99 Fed.Appx. 597, 2004 WL 1088243, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding on alien's application for asylum; application indicated that alien was detained for two days by Indian police and alien testified that he was detained for seven days, medical documents submitted by alien contradicted his testimony that he suffered a fractured right shoulder, and other documents submitted by alien contradicted his testimony that he did not support separate state of Khalistan. *Joshi v. Ashcroft*, C.A.9 2004, 96 Fed.Appx. 500, 2004 WL 899161, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported immigration judge's adverse credibility finding on alien's application for asylum; although alien claimed that he was forcibly recruited by Guatemalan army, alien was unable to name or describe weapon he used or rank he held and Department of State report indicated that Guatemalan government ended forced recruitment policy four years before alien testified that he was recruited. *Navarijo-Cardenas v. Ashcroft*, C.A.9 2004, 96 Fed.Appx. 495, 2004 WL 899045, Unreported. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals (BIA) provided specific and sufficient reasons for affirming the Immigration Judge's (IJ) adverse credibility findings, which underlay denial of an alien's asylum application; BIA noted that the alien altered his testimony as to who had sold him books for which he was allegedly persecuted, that he altered his testimony as to how he had responded to the Chinese police asking him where the books came from, and that he did not provide a satisfactory explanation as to why he told an interviewer upon his arrival at an airport that he had never been arrested anywhere in the world, but testified at the hearing that he had been arrested by the Chinese police and was subjected to torture and sent to a camp. *Wang v. Ashcroft*, C.A.3 2004, 95 Fed.Appx. 444, 2004 WL 870868, Unreported. Aliens ↻ 54(5)

Immigration Judge (IJ) properly determined that Algerian asylum applicant's testimony at his second asylum hearing, in which he stated that he had been arrested and tortured by Algerian military police, was not credible; in initial airport interview, in lengthier interview ten days after initial interview, and in his first written asylum application submitted several months after initial interview, applicant had denied that he had been arrested or tortured, and physician's determination that applicant's explanations of his scars and injuries were consistent with his physical findings left open possibility that applicant was tortured but not under circumstances he described. *Rachid v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 483, 2004 WL 753845, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ) adverse credibility determination was supported by substantial evidence in proceedings for asylum and withholding of removal, where alien failed to mention significant details of alleged assault that formed basis of his persecution claim, including use of knife, in his application for asylum, alien did not mention assault during his original visa interview, and alien's wife's stated that he left Sri Lanka for employment abroad. *Anura v. Ashcroft*, C.A.9 2004, 93 Fed.Appx. 155, 2004 WL 604242, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence did not support Immigration Judge's (IJ) adverse credibility finding in asylum proceeding, even though alien's application did not mention her rape in Somalia; alien mentioned the rapes of her sisters and that she had been touched "all over her body," inconsistency as to precise number of her attackers was not significant, confusion regarding her brother's escape might have resulted from a translation problem, and there was no basis to conclude that alien was lying about her father's job and her family's subjection to burglaries. *Hassan v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 461, 2004 WL 515611, Unreported. Aliens ↻ 54.1(4.1)

ALJ did not err, in deportation proceeding based upon alien's alleged participation in a sham marriage, in finding government witness more credible than alien, despite witness's history of drug use and participation in a sham marriage; witness was not promised immunity for his testimony. *Perry v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 359, 2004 WL 447233, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported adverse credibility finding in asylum proceeding involving Indian citizen; defendant was initially uncertain as to whether or not he had harbored a Sikh militant at his home, he did not know who had won a parliamentary election although he testified he had worked on it, and he did not adequately explain why he told an asylum officer that the police had not harassed him until after his arrest, when his asylum application indicated dozens of police contacts prior to that time. *Singh v. Ashcroft*, C.A.9 2004, 92 Fed.Appx. 475, 2004 WL 421724, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding, supporting denial of asylum; alien testified that Indian police personnel arrested and tortured him during a time when alien's original asylum application and other records indicated that alien was in the United States. *Singh v. Ashcroft*, C.A.9 2004, 90

8 U.S.C.A. § 1101

Fed.Appx. 238, 2004 WL 363363, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's adverse credibility determination concerning alien from Uganda applying for asylum and withholding of removal was not supported by substantial evidence; the immigration judge failed to give adequate weight to country reports indicating that the Ugandan government's human rights remained poor, and although the immigration judge found the alien's story of torture and escape from Uganda unbelievable, the judge failed to articulate a foundation for the disbelief. *Senoga v. Ashcroft*, C.A.3 2004, 87 Fed.Appx. 823, 2004 WL 326968, Unreported. Aliens ↪ 54.1(4.1)

Variance in alien's testimony at hearing and purported government document alien submitted to substantiate her claim of persecution did not constitute substantial evidence which could support IJ's adverse credibility finding at asylum proceeding; variance related only to specific location of particular incident of persecution, IJ did not question alien about discrepancy, and alien's written and oral testimony regarding material aspects of her persecution was otherwise specific, detailed, and consistent. *Tsaturyan v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 37, 2004 WL 326384, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination of immigration judge (IJ) that alien, a native and citizen of India, was not credible on application for asylum; alien's testimony about how the police arrested and killed his father differed substantially from his account of the same event in a legal document previously filed with Indian court which accuracy alien had previously confirmed, father's death was central to asylum claim because alien claimed he was persecuted for being in the same social group as father, and there were discrepancies in alien's account of when police came to his home when father died. *Vahniwal v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 30, 2004 WL 326379, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported adverse credibility finding by immigration judge (IJ) as to alien, in asylum proceeding; alien did not provide verification for critical parts of his story concerning his time in refugee camps in his native country and his journey to the United States, did not identify specific circumstances that impeded his gathering of evidence, and gave vague, contradictory testimony about his sister's alleged abduction, which was closely connected in time and place to the heart of alien's claim of fear of persecution. *Ibrahim v. Ashcroft*, C.A.9 2004, 88 Fed.Appx. 163, 2004 WL 260588, Unreported. Aliens ↪ 54.1(4.1)

Single discrepancy in alien's testimony regarding date on which his wife was sent to prison was not substantial evidence which could support IJ's adverse credibility finding at asylum proceeding; alien's claim of persecution was premised upon his devout practice of certain religion and his wife's imprisonment, which was not contingent upon actual date of imprisonment. *Liu v. Ashcroft*, C.A.9 2004, 88 Fed.Appx. 170, 2004 WL 260341, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's adverse credibility determination was not supported by substantial evidence; discrepancy in alien's testimony regarding the date of his first arrest was minor and was corrected by alien without prompting, perceived discrepancies regarding whether alien's father was arrested with him and whether alien was released voluntarily from custody resulted from language or translation problems, and perceived discrepancy between alien's testimony and his medical records was minor. *Singh v. Ashcroft*, C.A.9 2004, 87 Fed.Appx. 69, 2004 WL 193253, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's adverse credibility determination was not supported by sufficient evidence; whether alien's in-laws or cousins were currently living in the family's house in Armenia was entirely irrelevant to the asylum claim, whether the man who offered alien a bribe to kill her patient said that he would kill her because of her refusal or merely said that things would go badly for her because of her refusal was relevant to the claim, but was not necessarily inconsistent, and whether the bullet fired at alien hit the bumper of her car or grazed the trunk was a minor inconsistency. *Hakobyan v. Ashcroft*, C.A.9 2004, 86 Fed.Appx. 353, 2004 WL 162574, Unreported. Aliens ↪ 54.1(4.1)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Immigration judge's (IJ) determination that Albanian national's claims of past persecution were not credible, and thus that alien was not entitled to asylum, was supported by substantial evidence, where identification card, intended to show alien's affiliation with group advocating positions in opposition to Albanian government, that was counterfeit, alien presented absurd explanation for his escape to Greece after he was released from prison, and alien provided no corroborating evidence of injuries sustained due to his alleged persecution. *Demirzhiu v. Ashcroft*, C.A.6 2004, 96 Fed.Appx. 263, 2004 WL 162555, Unreported, certiorari denied 125 S.Ct. 66, 543 U.S. 821, 160 L.Ed.2d 30. Aliens ↻ 54.1(4.1)

Immigration judge's (IJ's) determination that alien seeking asylum and withholding of removal was not credible was a reasonable interpretation of the record and was therefore supported by substantial evidence. *Wu v. Ashcroft*, C.A.5 2004, 85 Fed.Appx. 389, 2004 WL 75426, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) adverse credibility determination in support of IJ's denial of alien's applications for asylum and withholding of removal to his native India; the IJ pointed to specific and cogent flaws in the alien's testimony, notably, that his testimony regarding loans his father supposedly took out to finance his escape from India conflicted with his father's statement that those loans were taken out by the alien to establish and/or maintain a dairy farm in India. *Labana v. Ashcroft*, C.A.9 2004, 85 Fed.Appx. 623, 2004 WL 68684, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien claimed that he feared persecution as result of having applied for resignation from his overseas government job for non-payment of wages, but IJ noted that it was incongruous that alien was allowed to continue working at his job for nearly two years after ambassador who alien worked for received orders to have alien returned to his native country at once, that alien vacationed in native country without incident after he expressed his desire to resign, and that the only letter from ambassador sympathized with desperate financial situation alien was faced with. *Mane v. Ashcroft*, C.A.3 2004, 84 Fed.Appx. 236, 2004 WL 46621, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence, including alien's initial failure to mention a trip, his subsequent obfuscation of the date upon which the trip occurred, and fact that he previously filed two fraudulent immigration documents, supported adverse credibility finding at asylum proceeding. *Fernando v. Ashcroft*, C.A.2 2003, 84 Fed.Appx. 117, 2003 WL 23145906, Unreported. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals's (BIA) adverse credibility determination, in connection with alien's appeal from IJ's denial of her application for asylum and withholding of removal on ground of religious persecution, based on fact that she did not know denomination of her uncle's church group was not supported by evidence in the record, where alien never testified that her church group was like her uncle's. *Chen v. Ashcroft*, C.A.9 2003, 85 Fed.Appx. 44, 2003 WL 23098584, Unreported. Aliens ↻ 54.1(4.1)

Record which included significant omissions in alien's asylum application, regarding past harm allegedly suffered in Guatemala, did not compel conclusion that alien's testimony was credible, and therefore he failed to establish eligibility for asylum or withholding of removal. *Buezo v. Ashcroft*, C.A.9 2003, 86 Fed.Appx. 255, 2003 WL 23097836, Unreported. Aliens ↻ 54.1(4.1)

Evidence was sufficient to support IJ's adverse credibility determination in denying alien's application for asylum and withholding of deportation; alien gave conflicting dates for the military maneuvers undertaken by the Chinese government, alien indicated that the military maneuvers were unsuccessful but he was unable to identify purpose of the maneuvers, alien did not recount an incident during his hearing which appeared on his application, and alien failed to mention the allegedly coerced abortion of his wife until ten days prior to the hearing. *Ou v. U.S. Dept. of Justice*, C.A.2 2003, 83 Fed.Appx. 390, 2003 WL 23015104, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding, and thus the denial of

8 U.S.C.A. § 1101

application for asylum; alien's testimony was contradictory and implausible and her demeanor was unconvincing, and those credibility findings went to heart of her asylum claim. *Rurki v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 808, 2003 WL 22954201, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported the Immigration Judge's (IJ) finding that testimony of alien, a native and citizen of the Philippines seeking asylum and withholding of deportation because of his problems with mayor of his Philippine home town, Philippine police, and New People's Army, was not credible; IJ found the testimony was inconsistent, both with regard to dates and the sequence of certain important events, that alien omitted from his testimony major incidents, such as torture, beatings, and the spraying of his house with bullets, which were noted in detail in his declaration, and that he offered no corroborating evidence although some could have been obtained. *Evangelista v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 695, 2003 WL 22803921, Unreported. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA's) determination that alien was not particularly credible was supported by substantial evidence, and thus, BIA's denial of alien's request for grant of asylum and withholding of removal would be upheld, where alien's testimony regarding substance of conversations with Shining Path members was vague and lacked meaningful detail; alien provided no explanation as to why the secretary of a neighborhood clean-up organization would be singled out for harassment, his testimony as to why he discarded death-threat letter was difficult to reconcile, and he could not explain how Shining Path would benefit from his fixing members' cars if they had to pay the owner for the repairs. *Zegarra-Cortez v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 701, 2003 WL 22782785, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence did not support adverse credibility finding, in asylum proceeding; there was no variance between alien's interview on his initial entry and his subsequent testimony at a merits hearing, inasmuch as nothing in the initial interview contradicted his later claim that he left China to escape persecution on basis of his homosexuality. *Chen v. Ashcroft*, C.A.9 2003, 81 Fed.Appx. 251, 2003 WL 22718174, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination that alien failed to support his asylum claim with credible evidence; alien failed to mention homosexuality, detention, or torture in his sworn interview and stated three times under oath that authorities in China had not harassed him, but he later testified differently, there were internal contradictions in his asylum application, and Immigration Judge (IJ) noted that alien, at hearing, feigned an inability to respond to questions. *Lin v. Ashcroft*, C.A.3 2003, 81 Fed.Appx. 403, 2003 WL 22697283, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported conclusion that alien failed to establish that it was more likely than not that he would be tortured, if deported to China, because of his homosexuality; alien was not credible inasmuch as he failed to mention homosexuality, detention, or torture in his sworn interview, and stated three times that authorities had not harassed him, and his statements appeared to be more embellished with each retelling. *Lin v. Ashcroft*, C.A.3 2003, 81 Fed.Appx. 403, 2003 WL 22697283, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge (IJ) reasonably found, in asylum proceeding, that alien's testimony, that she was a member of an Ethiopian resistance group, was not credible; testimony of an expert in African documents indicated that the letter produced by alien to support her claim was a phony. *Gebrendrias v. Ashcroft*, C.A.7 2003, 79 Fed.Appx. 202, 2003 WL 22435698, Unreported. Aliens ↪ 54.1(4.1)

Immigration judge's (IJ) adverse credibility determination was supported by substantial evidence, where alien returned several times to Pakistan from Iran, despite claimed danger, alien's testimony regarding his trip to Dubai was inconsistent with stamps in his passport, country report did not support alien's account, alien's refusal to respond to subpoena in Pakistan for fear of bringing himself to authorities' attention was inconsistent with letters his family wrote to high-level government officials, and alien made false statements to United States immigration official. *Malik v. I.N.S.*, C.A.9 2003, 79 Fed.Appx. 287, 2003 WL 22434764, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Substantial evidence supported determination, in proceeding for asylum, withholding of removal, and relief under Convention Against Torture (CAT), that alien was not credible; alien provided vague and inconsistent testimony about, among other things, the circumstances and timing of his initial encounter with the police, whether he knew the affiliation of militants who threatened him in his home, and whether and how he knew that his acquaintances had been arrested. *Walia v. Ashcroft*, C.A.9 2003, 77 Fed.Appx. 999, 2003 WL 22389626, Unreported. Aliens ⚡ 54.1(4.1); Treaties ⚡ 8

Immigration judge's determination that alien's claims of persecution in applying for asylum were not credible was supported by substantial evidence; alien did not disclose alleged sexual assault in asylum application, alien offered no explanation for why she chose to report to police some alleged acts of persecution and not others, alien testified she was suffering from an eye condition when asked whether she was pretending to cry but cried later during hearing, and alien returned to home country twice, bringing her young children with on one trip, despite alleged fear of persecution. *Mikhail v. Ashcroft*, C.A.3 2003, 78 Fed.Appx. 187, 2003 WL 22359191, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding and conclusion that alien had failed to make an adequate showing of past or future persecution required for asylum and withholding of removal. *Moussa v. Ashcroft*, C.A.5 2003, 77 Fed.Appx. 266, 2003 WL 22316842, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported denial of alien's claim for asylum, where only evidence supporting alien's claim that she had been seized, raped, and physically abused in Iran was her own testimony and that of her aunt; alien's ex-husband testified that he had never been told about a past rape, and Immigration Judge (IJ) found both alien and her aunt not to be credible. *Houshmand-Nejad v. I.N.S.*, C.A.9 2003, 76 Fed.Appx. 803, 2003 WL 22220509, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence did not support determination, in asylum proceeding, that alien, a citizen of India, was not credible due to discrepancies in his views on issue of an independent Sikh state; alien, who was not fluent in English, was consistent in his testimony, the discrepancy with his application was the result of an error by the legal assistance who prepared the application, and the discrepancy had no bearing on alien's credibility inasmuch as it did not enhance his claims of persecution or bear upon his fear for his safety. *Shergill v. I.N.S.*, C.A.9 2003, 74 Fed.Appx. 786, 2003 WL 22097803, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported adverse finding as to credibility, for purposes of application for asylum by citizen of Guatemala; alien failed to adequately explain the contradiction between his asylum application and his hearing testimony regarding whether it was the guerrillas or the military who mistreated him. *Perez v. Ashcroft*, C.A.9 2003, 73 Fed.Appx. 301, 2003 WL 21995295, Unreported. Aliens ⚡ 54.1(4.1)

Substantial evidence supported finding that alien was not credible as to her asylum request; alien admitted that her asylum application was false and had been prepared by someone else, and that she lied to asylum officers in order to be consistent with the false application, there were internal inconsistencies in her testimony for which she offered no explanation when given an opportunity to explain, and her testimony was contradicted by her daughter's testimony regarding events following alien's alleged rape. *Baroi v. Ashcroft*, C.A.9 2003, 72 Fed.Appx. 682, 2003 WL 21994801, Unreported. Aliens ⚡ 54.1(4.1)

Finding by Immigration Judge (IJ), that asylum applicant purporting to be citizen of the Sudan and member of Dinka tribe did not testify credibly, was supported by substantial evidence, where applicant was unable to speak Dinka, he was proficient in Swahili, which was not a language of the Sudan, and he claimed to be practicing Catholic but provided sparse testimony regarding Catholic practices. *Abraham v. Ashcroft*, C.A.3 2003, 59 Fed.Appx. 476, 2003 WL 734196, Unreported. Aliens ⚡ 54.1(4.1)

203. Corroboration, refugee

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

Decision of Immigration Judge (IJ), that asylum applicant from Cameroon failed to reasonably corroborate her claim, was supported by substantial evidence, in that IJ's expectation that applicant's siblings, including her twin, would mention applicant's persecution in their asylum applications was entirely reasonable, and, although IJ continued hearing twice, applicant failed to provide any explanation for siblings' failure to mention her persecution. *Obale v. Attorney General of the U.S.*, C.A.3 2006, 453 F.3d 151. Aliens, Immigration, And Citizenship ↻ 642

In considering asylum application filed by citizen of Montenegro, Immigration Judge (IJ) did not violate applicable legal standards in taking into account absence of corroboration by applicant's relatives who were in Australia, inasmuch as such corroboration could easily have been made available. *Kanacevic v. I.N.S.*, C.A.2 2006, 448 F.3d 129. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Alien, a native of Burma, failed to prove past persecution on account of his political activism, for purpose of asylum claim, because he failed to present reasonably available corroborative evidence; aliens' parents allegedly knew of his arrests, persecution, and his political activities, and they were living as legal permanent residents in the same city in which the asylum hearing took place, but alien failed to present their testimony or any corroboration of the persecution or the political activities that allegedly motivated it. *Kyaw Zwar Tun v. U.S. I.N.S.*, C.A.2 2006, 445 F.3d 554. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration Judge (IJ) erred, in asylum proceeding, by requiring alien to produce corroborating evidence, including photographic evidence of the ransacking of his home in Cote d'Ivoire, without having given him notice that such evidence was required or an opportunity to explain its absence or seek supporting evidence; IJ did not indicate she expected such evidence until she rendered her oral decision. *Toure v. Attorney General of U.S.*, C.A.3 2006, 443 F.3d 310. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration Judge (IJ) erred, in credibility determination in asylum proceeding, by finding that a letter from alien's co-religionist in Russia provided few details in support of alien's claim; letter confirmed many material aspects of alien's story, including beatings inflicted on her religious group and her rape. *Pavlova v. I.N.S.*, C.A.2 2006, 441 F.3d 82. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration judge (IJ) erred in discounting Albanian asylum applicant's otherwise credible testimony because he was skeptical of the corroborating documents; since there was no testimony or evidence presented to demonstrate that applicant was aware of, much less responsible for, any authenticity problems, any confusion about whether the documents were copies or originals could not serve to undermine his credibility. *Gjerazi v. Gonzales*, C.A.7 2006, 435 F.3d 800. Aliens ↻ 54.1(4.1)

Immigration judge (IJ), in determining that claim of alien asylum applicant that he was married was not credible, improperly relied on alien's failure to provide corroborating evidence of marriage; IJ's determination that affidavit from alien's former wife was available to alien was based solely on unsubstantiated, implausible assertions by IJ without any record support, and IJ failed to consider alien's testimony that his wife was angry at him for leaving China and that she moved from the area and had remarried, and that his sister had contacted his wife's family and they had told his family not to contact them anymore. *Zhang v. Gonzales*, C.A.7 2006, 434 F.3d 993. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's denial, due to inadequate corroboration, of asylum application of alien, a citizen of China, who claimed persecution based on allegedly having been forced to abort her pregnancy; only corroboration alien offered in support of her claim was an unsworn letter from her father stating that she had been seized by "village cadres" and taken to the hospital where she was forced to undergo an abortion, which affidavit appeared to be based solely on what alien told him, and an "abortion certificate," which IJ questioned, based on country report which noted that embassy was "unaware" of practice of issuing abortion certificates, and country report also concluded that forced abortion was not governmental policy in China. *Chen v. Gonzales*, C.A.3 2005, 434 F.3d 212. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Immigration Judge (IJ) did not err in demanding additional corroborating evidence from Liberian alien to support his asylum application, where alien submitted a fraudulent document, altered his passport, and gave inconsistent testimony. *Bropleh v. Gonzales*, C.A.8 2005, 428 F.3d 772. Aliens ↪ 54.1(4.1)

Even if registration for the car next to which the body of alien's husband was found in Guatemala, were critical to her asylum claim, Immigration Judge (IJ) erred in relying on such lack of corroboration in asylum proceeding; in light of alien's claim that the registration had been taken by government agents after they killed her husband, a reasonable trier of fact would be compelled to conclude that such corroborating evidence was unavailable. *Rodriguez Galicia v. Gonzales*, C.A.7 2005, 422 F.3d 529. Aliens ↪ 54.1(4.1)

Immigration Judge (IJ), in asylum proceeding, improperly rejected alien's explanation for why corroborating documents did not arrive by time of hearing, although alien produced the airbill from the courier company, which had an incorrect address, and explained that the sender's efforts to locate the documents were hampered by the outbreak of war; IJ did not explain why he found alien's explanation inadequate, speculated that alien arranged to have an empty box sent to himself, and faulted alien for not having the documents collected sooner. *Soumahoro v. Gonzales*, C.A.7 2005, 415 F.3d 732. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals (BIA) abused its discretion, on alien's motion to reopen asylum application, by requiring alien, absent exceptional circumstances, to corroborate her conversion to Jehovah's Witness religion after BIA denied asylum application, where alien provided affidavit regarding her decision to convert to Jehovah's Witness religion, which was her husband's faith, and she also explained therein why "official" confirmation of conversion could not be submitted within given time limits. *Fessehaye v. Gonzales*, C.A.7 2005, 414 F.3d 746. Aliens ↪ 54(5)

Immigration judge reasonably requested documentary corroboration of asylum applicant's alleged membership in opposition political party and of his uncle's alleged murder based on his active role in this political party, given expert testimony that evidence of applicant's membership would be easily available from party offices, and that the murder of someone active in opposition party would have been reported in local press in Cameroon. *Eta-Ndu v. Gonzales*, C.A.8 2005, 411 F.3d 977, rehearing and rehearing en banc denied. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals' (BIA's) denial of Cameroon native's application for asylum was supported by reasonable, substantial and probative evidence, and would not be disturbed on petition for review, based on his failure to present credible corroborating evidence that should have been readily available to him either of his membership in opposition political party or of his uncle's alleged murder based on his active role in this political party; letters that alien presented to corroborate his membership in opposition party were not typed on official letterhead of that party but on plain white paper and were both typed on same machine, despite having allegedly been sent from two separate officials with offices located 40 miles apart. *Eta-Ndu v. Gonzales*, C.A.8 2005, 411 F.3d 977, rehearing and rehearing en banc denied. Aliens ↪ 54.1(4.1)

Chinese asylum applicant's failure to produce letters from her mother and "her priest" attesting to her church membership, to corroborate her claim that she feared persecution based upon her membership in illegal Catholic church if she returned to China, was improper basis for denial of asylum, inasmuch as it was doubtful IJ would have considered letter from mother as strong evidence, letter from priest in United States could not corroborate events in China, and it was not reasonable to request letter from priest in China, whom applicant was unable to contact. *Huang v. Gonzales*, C.A.7 2005, 403 F.3d 945. Aliens ↪ 54.1(4.1)

Alien could be reasonably expected to corroborate her claim of persecution even if her testimony at asylum proceeding was found credible. *Dorosh v. Ashcroft*, C.A.6 2004, 398 F.3d 379, rehearing en banc denied. Aliens ↪ 54.1(4.1)

Alien's explanation at asylum proceeding for absence of corroborative evidence of past persecution and fear of

8 U.S.C.A. § 1101

future persecution, that her letters did not reach her mother, that her mother had no telephone and had to go to post office to call her, and that any attempts to talk about her asylum case or obtain affidavits from others would have jeopardized her mother's safety, was inadequate to show that such evidence was not accessible; alien was in contact with her mother but produced no affidavit from her, alien could have requested a letter in manner that minimized risk of sensitive statements being overheard, and alien did not retain letters from her girlfriends documenting danger she would face if returned. *Dorosh v. Ashcroft*, C.A.6 2004, 398 F.3d 379, rehearing en banc denied. Aliens ↩ 54.1(4.1)

Alien could be reasonably expected to corroborate her claim of persecution even if her testimony at asylum proceeding was found credible. *Dorosh v. Ashcroft*, C.A.6 2004, 398 F.3d 379, rehearing en banc denied. Aliens ↩ 54.1(4.1)

Alien's explanation at asylum proceeding for absence of corroborative evidence of past persecution and fear of future persecution, that her letters did not reach her mother, that her mother had no telephone and had to go to post office to call her, and that any attempts to talk about her asylum case or obtain affidavits from others would have jeopardized her mother's safety, was inadequate to show that such evidence was not accessible; alien was in contact with her mother but produced no affidavit from her, alien could have requested a letter in manner that minimized risk of sensitive statements being overheard, and alien did not retain letters from her girlfriends documenting danger she would face if returned. *Dorosh v. Ashcroft*, C.A.6 2004, 398 F.3d 379, rehearing en banc denied. Aliens ↩ 54.1(4.1)

Egyptian asylum applicant of Coptic Christian faith failed to establish past persecution, based on alleged knife attack in Greece by Muslim extremist, where rough translation of newspaper article submitted by applicant did not identify him as victim or say that attack was religiously motivated, applicant failed to submit contemporaneous medical records from his attack or alleged two-week hospital stay, and he failed to provide police records from alleged extremist's arrest or criminal conviction. *Diab v. Ashcroft*, C.A.1 2005, 397 F.3d 35. Aliens ↩ 54.1(4.1)

Determination by Board of Immigration Appeals (BIA) that asylum applicant did not provide sufficient corroborating evidence to support her claim was not supported by substantial evidence; BIA failed to consider country condition reports or applicant's medical records, both of which supported her claims, and BIA overstated role of absence of certain pieces of corroborative evidence. *Mukamusoni v. Ashcroft*, C.A.1 2004, 390 F.3d 110. Aliens ↩ 54.1(4.1)

Board of Immigration Appeals (BIA) did not abuse its discretion in denying asylum application of Yugoslav alien who claimed to be of Albanian ethnicity and to have been persecuted by police in Montenegro, where alien's testimony, absent corroboration, could reasonably be found incredible by immigration judge (IJ). *Pilica v. Ashcroft*, C.A.6 2004, 388 F.3d 941. Aliens ↩ 54(5)

In asylum proceedings, immigration judge unreasonably applied the corroboration rule, under which an asylum applicant may be required to present evidence corroborating her testimony even when that testimony is deemed credible, to asylum applicant; although stating that the applicant's testimony was consistent with written narrative and established country conditions, the immigration judge required extensive corroborative documentation of applicant's claims of persecution, including documents from individuals that were not reasonably available due to threats and attacks that had been made against such individuals, and the immigration judge failed to explain why such documentation was reasonable. *Gontcharova v. Ashcroft*, C.A.7 2004, 384 F.3d 873. Aliens ↩ 54.1(4.1)

Immigration Judge (IJ) did not err in determining that asylum applicant was not credible, where her application did not refer to the most serious incidents of persecution she allegedly suffered in Ukraine due to being Seventh Day Adventist, she failed to provide corroborating documentation, and her testimony was inconsistent with State Department's country conditions report. *Kondakova v. Ashcroft*, C.A.8 2004, 383 F.3d 792, certiorari denied 125 S.Ct. 894, 543 U.S. 1053, 160 L.Ed.2d 775. Aliens ↩ 54.1(4.1)

8 U.S.C.A. § 1101

Alien failed to establish well-founded fear of future persecution for purposes of withholding of removal, where testimony concerning alleged arrests of his uncle and cousin was uncorroborated and lacking in detail, he failed to supply evidence supporting claim that he had been member of Socialist Labor Party in Egypt and United States, and he represented on his application for adjustment of status that he had never belonged to such party. *Hassanein v. Ashcroft*, C.A.8 2004, 380 F.3d 324. Aliens ↻ 54.1(4.1)

An alien seeking withholding of removal need not always corroborate his or her testimony, but it must bear some degree of reliability. *Hassanein v. Ashcroft*, C.A.8 2004, 380 F.3d 324. Aliens ↻ 54.1(4.1)

Immigration judge could not rely solely on her adverse credibility determination to support her denial of application for asylum and for withholding of removal to alien who presented independent evidence, including "notice of escape," copy of arrest warrant, and letter from leader of opposition political party to which she belonged, to corroborate her account that she was imprisoned for her political expression of opposition to her home country's ruling government, as well as State Department reports recording the brutal suppression of rival political group in that country, including imprisonment of its members. *Camara v. Ashcroft*, C.A.4 2004, 378 F.3d 361. Aliens ↻ 54.1(4.1)

Asylum applicant from Cameroon failed to establish well-founded fear of future persecution, where he testified he had been pursued because of his father's political activism, but he provided no corroboration as to such activism, and he denied knowledge of three other asylum applicants that bore striking resemblance to his. *Nyama v. Ashcroft*, C.A.8 2004, 357 F.3d 812. Aliens ↻ 54.1(4.1)

Chinese national who had filed application for asylum, on ground that her return to China while she was pregnant with what was allegedly her second child would purportedly subject her to forced abortion and sterilization under Mainland China's one-child policy, did not have to produce any corroborating documentation as to birth of prior son still present in China; rather, her testimony alone, if unrefuted and credible, would be sufficient to establish claim for asylum. *Zi Lin Chen v. Ashcroft*, C.A.9 2004, 362 F.3d 611.

Immigration judge's (IJ) decision to deny asylum applicant's application was not based on substantial evidence in light of his credibility determination errors and the undue weight given to the alleged lack of corroborating evidence; IJ's adverse credibility determination was based in part on speculation, and mistakes of fact, and his conclusions were drawn from insufficient or incomplete evidence. *Uwase v. Ashcroft*, C.A.7 2003, 349 F.3d 1039. Aliens ↻ 54.1(4.1)

Decision of Immigration Judge (IJ), that grant of asylum was precluded by applicant's failure to provide corroborating evidence concerning events in Democratic Republic of the Congo (DRC), was not supported by substantial evidence; applicant supplied State Department reports and medical certificate regarding her gunshot wound, and, although she failed to provide evidence corroborating her husband's political affiliation, IJ may have discouraged her from doing so, and it was unreasonable to expect such evidence given her four-year absence from DRC and subsequent detention. *Mulanga v. Ashcroft*, C.A.3 2003, 349 F.3d 123. Aliens ↻ 54.1(4.1)

Immigration Judge (IJ) should have given asylum applicant opportunity to provide corroborating documentation of her husband's political affiliation with Union for Democracy and Social Progress (UDPS) in Democratic Republic of the Congo (DRC), or, if she could not produce such evidence, opportunity to explain her inability to do so, rather than IJ requesting various other documents while failing to request documents concerning husband's political affiliation, thus perhaps signaling that latter documents were not needed. *Mulanga v. Ashcroft*, C.A.3 2003, 349 F.3d 123. Aliens ↻ 54.1(4.1)

Finding by immigration judge (IJ) that record did not contain corroborative or supporting evidence relating to the alien's alleged membership in political organization opposing native country's government, the political activities or arrests of the alien or her relatives, or her husband's alleged detention by the native country's government was

8 U.S.C.A. § 1101

not supported by the substantial evidence, for purposes of judicial review of IJ's denial of asylum and withholding of deportation, where translated version of letter from alien's daughter stated that husband was in prison, letter from political organization confirmed that alien was active member, and letter from native country's government corroborating circumstances of husband's arrest was improperly excluded. *Georgis v. Ashcroft*, C.A.7 2003, 328 F.3d 962. Aliens ↻ 54.1(4.1)

Immigration Judge (IJ), in asylum proceeding, failed to provide specific, cogent reasons supporting his adverse credibility determination; alien's failure to provide corroboration of an objective basis for her fear of arrest in China, or to provide documentary evidence that police were looking for her, were not proper bases for finding her not credible, conclusion that alien was not a Falun Gong leader who would have been sought by police was a misstatement of the facts in the record, and conclusion that officials could have arrested alien but did not choose to do so was speculative. *Li v. U.S. Attorney General*, C.A.2 2006, 173 Fed.Appx. 925, 2006 WL 898068, Unreported. Aliens, Immigration, And Citizenship ↻ 575

Albanian alien seeking asylum failed to provide adequate corroborating evidence of claimed persecution based on political opinion, where newspaper articles he presented were inconsistent with his testimony, affidavit of fellow member of democratic party did not match alien's version of relevant events, medical reports were not authenticated, and he did not present affidavits from his immediate family members who were allegedly involved in incidents of persecution. *Gjoni v. Gonzales*, C.A.6 2006, 168 Fed.Appx. 54, 2006 WL 388616, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

Immigration judge (IJ) was entitled to consider alien's weak explanations for inability to secure corroboration of claimed rape as factor to be weighed in determining whether alien, a citizen of Egypt, carried burden at asylum proceeding of showing religious persecution through rape; alien, a Christian, explained that Muslim neighbor raped her in attempt to compel her to marry him, testifying in considerable detail regarding abduction that preceded rape, but not offering testimony as to rape itself because she claimed to have been forcibly sedated prior to assault, and although alien testified that doctor who later examined her revealed rape to her, she did not submit medical report, testimony or affidavit of her mother, who had spoken with doctor, or letter from priest to whom alien said she had confided rape. *Beshay v. Gonzales*, C.A.2 (N.Y.) 2005, 143 Fed.Appx. 386, 2005 WL 2243366, Unreported.

Substantial evidence supported Board of Immigration Appeals' finding that alien failed to adequately corroborate claim of past persecution in India for involvement in Sikh organizations; three letters offered in corroboration were undated, perfunctory, lacked detail, and failed to mention torture, beating, and death of alien's father, which he claimed was directly related to his escape from India, two letters were not based on first-hand knowledge, and testimony of alien's wife contradicted his testimony on several points, and was diminished in value because wife was not sequestered during alien's testimony. *Khanna v. Ashcroft*, C.A.6 2005, 127 Fed.Appx. 872, 2005 WL 893406, Unreported. Aliens ↻ 54.1(4.1)

Indonesian citizen who alleged that he faced persecution in Indonesia due to his Chinese Catholic minority status was not entitled to asylum, despite documented anti-Chinese sentiment in Indonesia, where he was unable to show his involvement in the Catholic church, he provided no corroborating evidence that he was ethnically Chinese, there was no corroborating evidence of the attacks he personally faced, and the assaults to which he testified did not amount to persecution. *Tjhin v. Gonzales*, C.A.3 2005, 123 Fed.Appx. 520, 2005 WL 478009, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against asylum applicant; there were inconsistencies in applicant's testimony and documents applicant provided to corroborate his claims, that he had been active member of political party and had been subject to persecution by opposing party within government, which documents were shown to be fraudulent. *Milo v. Ashcroft*, C.A.6 2005, 123 Fed.Appx. 700, 2005 WL 434464, Unreported. Aliens ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Alien failed to establish well-founded fear of future persecution required for asylum; alien testified that he was persecuted for affiliation with political party and that he was physically beaten on numerous occasions, but he did not corroborate his physical scars with hospital records or other credible evidence, and alien made many inconsistent statements, making his fear objectively unreasonable. *Gjinaj v. Ashcroft*, C.A.6 2005, 119 Fed.Appx. 764, 2005 WL 221522, Unreported. Aliens ↻ 54.1(4.1)

Alien's inability to corroborate his claim of political persecution, premised on his imprisonment for alleged connection to high-ranking official, through confirmation by his siblings, provided basis for adverse credibility finding; although IJ may have held unrealistic expectations of corroboration concerning some factual aspects of case, given that siblings both left the country before alien's imprisonment, it was reasonable to expect that they might be able to confirm other details, such as alien's association with official, which predated departure of alien's sister. *Jebraail v. Ashcroft*, C.A.6 2005, 119 Fed.Appx. 759, 2005 WL 106803, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported adverse credibility determination underlying denial of alien's asylum application; Immigration Judge (IJ) observed that the alien was "shifty," "not responsive," and that she repeatedly changed her testimony, and moreover, she had members of her immediate family who could have given corroborating testimony, yet she failed to call them as witnesses. *Hoxholli v. Ashcroft*, C.A.3 2004, 118 Fed.Appx. 642, 2004 WL 2979819, Unreported. Aliens ↻ 54.1(4.1)

Alien's alleged failure to produce corroborating evidence that political party, to which he claimed membership, existed in India, or that its members had been abused by government or police, did not warrant adverse credibility determination in proceeding on alien's application for asylum; exhibits admitted at merits hearing specifically referred to political party and its conflicts with another party, whose members alien claimed persecuted him. *Wala v. Ashcroft*, C.A.9 2004, 119 Fed.Appx. 63, 2004 WL 2913570, Unreported. Aliens ↻ 54.1(4.1)

Alien was reasonably required to submit medical records related to his alleged beating by police, and an affidavit from a higher-level member of his political party, to corroborate his asylum claim of political persecution in Albania, after Immigration Judge determined that alien's testimony was not credible and thus did not by itself establish his eligibility for asylum. *Besnik v. Ashcroft*, C.A.3 2004, 112 Fed.Appx. 180, 2004 WL 2320745, Unreported. Aliens ↻ 54.1(4.1)

Immigration Judge's (IJ) adverse credibility finding against alien applying for asylum was not supported by substantial evidence; alien's account of two arrests as well as testimony regarding police abuse of her father was corroborated by her son, and although alien's application did not mention her claim that she was twice raped by station house officer (SHO) at police station, discrepancies were possibly result of mistranslation or communication, and alien provided reasonable explanation for her failure to describe rapes by male officials during her interview with male asylum officer, and conclusion drawn by IJ, that claim was fraudulent because alien's husband was ignorant of some details of her rape and he was not involved in her asylum application, was based on conjecture and speculation. *Kaur v. Ashcroft*, C.A.9 2004, 111 Fed.Appx. 475, 2004 WL 2203854, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ carefully and thoroughly outlined the many discrepancies and inconsistencies in alien's story as described in her application, her asylum interview, and her hearing testimony, and alien admitted she "altered her story" and offered vague and generalized excuses for not having obtained corroboratory evidence in support of her application, but expressed no specific reasons for why she did not or could not do so. *Kivumbi v. Ashcroft*, C.A.10 2004, 109 Fed.Appx. 378, 2004 WL 2110715, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien did not admit to visiting the American consulate twice until pressed to explain stamps in her passport, gave conflicting, incoherent testimony that undercut her claim that she was knowledgeable about, and a faithful practitioner of, particular

8 U.S.C.A. § 1101

religion, and did not provide any corroborating evidence to support her allegations. *Wang v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 519, 2004 WL 1941286, Unreported. Aliens ↻ 54.1(4.1)

Alien's failure to provide corroborating evidence regarding altercation between him and the family planning officials who came to his home, and his failure to provide evidence that police were looking for him, provided basis for IJ's adverse credibility finding at asylum proceeding. *Chen v. Ashcroft*, C.A.9 2004, 108 Fed.Appx. 465, 2004 WL 1931778, Unreported. Aliens ↻ 54.1(4.1)

Inconsistencies concerning alleged theft of alien's cattle, the death of his father, and alien's apparent lack of general knowledge regarding his native country, as well as lack of corroborating evidence regarding alien's identity and his claim that he had been imprisoned and beaten by government authorities, provided basis for IJ's adverse credibility finding at asylum proceeding. *Sow v. Ashcroft*, C.A.6 2004, 107 Fed.Appx. 552, 2004 WL 1859355, Unreported. Aliens ↻ 54.1(4.1)

Alien's previous use of an alias put his identity sufficiently into question to justify IJ's requirement that alien produce non-duplicative, material, and easily available corroborating evidence of his identity at asylum proceeding. *Mann v. Ashcroft*, C.A.9 2004, 105 Fed.Appx. 932, 2004 WL 1799745, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge's finding that alien failed to establish eligibility for asylum was not contrary to evidence establishing requisite fear of persecution; lack of corroborating evidence, after inconsistencies in alien's testimony, which was hesitant and vague with regard to the conditions of his confinement and the manner in which he had traveled to the United States, placed credibility of alien's allegations of past persecution in doubt. *Camara v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 950, 2004 WL 1533343, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's adverse credibility finding, supporting denial of application for asylum and withholding of deportation; even though alien had notice that his credibility was in question, alien did not offer any corroborative evidence about his father, whom he alleged was a lawyer and prominent politician in Bangladesh, enjoyed a relationship of mutual admiration with the president of Bangladesh, and was assassinated. *Mannan v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 583, 2004 WL 1398332, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding against alien seeking asylum; although alien contended that there had not been enough time to translate letters from his family into English, IJ had properly noted absence of corroborating evidence only after inconsistencies in alien's application and testimony had placed his credibility in doubt. *Jaber v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 465, 2004 WL 1380006, Unreported. Aliens ↻ 54.1(4.1)

Evidence supported Immigration Judge's (IJ) determination that alien was not credible, thus defeating the alien's claim for asylum; IJ correctly noted that alien's written application did not include any reference to the alleged rape of his wife or the death of his sister, and properly noted the lack of persuasive corroborating evidence after inconsistencies in the application and testimony had placed alien's credibility in doubt. *Ba v. Ashcroft*, C.A.6 2004, 101 Fed.Appx. 617, 2004 WL 1379952, Unreported. Aliens ↻ 54.1(4.1)

In light of alien's corroborating evidence, substantial evidence did not support Immigration Judge's (IJ) adverse credibility finding in asylum proceeding; IJ engaged in speculation in finding that alien's testimony concerning his escape from his acrobatic troupe, his sending of religious materials to China with his true name on the return address, and his failure to present the live corroborating testimony of his roommate, suggested that alien's testimony was untrue. *Gao v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 93, 2004 WL 1277108, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's (IJ) adverse credibility finding in asylum proceeding, despite the erroneous exclusion of two letters from officials in Yemen corroborating alien's testimony concerning his past

8 U.S.C.A. § 1101

persecution; there were fundamental discrepancies in alien's testimony about two other attempts on his life, which alien was unable to explain. *Mohamed-Nagi Tabt v. Ashcroft*, C.A.9 2004, 103 Fed.Appx. 90, 2004 WL 1277082, Unreported. Aliens 54.1(4.1)

Even if Immigration Judge (IJ) misinterpreted alien's written asylum application on two points, evidence supported adverse credibility finding; reliance on State Department's Country Reports was warranted in absence of any evidentiary support for a challenge to them, alien did not explain inconsistencies involving her inquiries to authorities about confiscated family land and interrogations following her husband's escape, and her brief failed to address the lack of corroborative evidence and her continued residence and employment in Albania. *Talelli v. Ashcroft*, C.A.7 2004, 100 Fed.Appx. 568, 2004 WL 1245302, Unreported. Aliens 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible; alien failed to mention her alleged rapes in her asylum interview and application, and her explanation, that she forgot to do so, was unpersuasive, and alien could not provide any explanation as to why she did not provide corroborating evidence of any rape, either of her two hospitalizations, or her husband's involvement in a political party. *Djoukouo v. Ashcroft*, C.A.3 2004, 99 Fed.Appx. 385, 2004 WL 1158586, Unreported. Aliens 54.1(4.1)

Immigration judge's (IJ) rejection of alien's testimony in support of her application for asylum was supported by substantial evidence, where declaration accompanying alien's asylum application failed to mention her husband's beating or her father's death during alleged attack, and alien presented no evidence to corroborate critical parts of her story. *Hassan v. Ashcroft*, C.A.9 2004, 94 Fed.Appx. 610, 2004 WL 764840, Unreported. Aliens 54.1(4.1)

Allegation that alien's deportation to Liberia would mean leaving his new family behind, and that he would have trouble finding a job and treatment for his high blood pressure in Liberia, were insufficient to compel a finding that alien would be subjected to extreme hardship if deported for immigration fraud; alien did not corroborate the existence of his alleged new wife and daughter. *Perry v. Ashcroft*, C.A.3 2004, 93 Fed.Appx. 359, 2004 WL 447233, Unreported. Aliens 53.10(3)

Alien failed to establish a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion, as would support grant of asylum; although alien asserted that his father was arrested by native country's government because he was a member of minority ethnic group and he had worked for previous government, alien failed to provide documentary evidence, affidavits from either of his parents, or specific details regarding father's political activities and father's arrest, alien did not explain why such corroborating evidence was not available, and state department profile report on native country indicated that members of minority ethnic groups participated in government and that there were no members of alien's ethnic group that were in exile facing trial or conviction upon their return. *Yoseph v. Ashcroft*, C.A.3 2004, 89 Fed.Appx. 343, 2004 WL 413234, Unreported. Aliens 54.1(4.1)

Alien's failure to submit corroborative evidence in support of her claim of persecution could not form basis for adverse credibility determination at asylum proceeding, where alien's testimony was, overall, consistent and detailed. *Tsaturyan v. Ashcroft*, C.A.9 2004, 89 Fed.Appx. 37, 2004 WL 326384, Unreported. Aliens 54.1(4.1)

There was no possible way alien could have obtained corroborating evidence demanded by IJ in asylum proceeding, and thus alien's failure to provide such evidence did not provide basis for making adverse credibility determination; materials alien had sent were confiscated by authorities in his native country when they arrested his wife, and wife was unavailable to provide an affidavit because she had been sent to jail. *Liu v. Ashcroft*, C.A.9 2004, 88 Fed.Appx. 170, 2004 WL 260341, Unreported. Aliens 54.1(4.1)

Substantial evidence supported finding, in asylum proceeding, that alien was not credible; alien claimed that he was

8 U.S.C.A. § 1101

on a list to be killed by Egyptian groups who hated Christians, but could not testify as to what the list was, how it was obtained, or why he was on it, there were discrepancies between alien's testimony and record evidence, and alien provided no evidence corroborating any of his testimony. *Botros v. Ashcroft*, C.A.3 2004, 86 Fed.Appx. 497, 2004 WL 65249, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence in the record did not support immigration judge's (IJ) finding that written statement from alien's parents did not corroborate alien's testimony that he had been threatened by police in his native country, in connection with his possession of some political magazines, in proceeding for asylum and withholding of deportation; although statement omitted certain information provided by alien, it did corroborate alien's testimony that police confiscated the magazines, threatened to arrest him, and closed alien's store after the incident. *Pan v. Ashcroft*, C.A.2 2003, 84 Fed.Appx. 126, 2003 WL 23105422, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge (IJ) clearly erred in basing decision to deny alien asylum and withholding of removal on his mere failure to offer corroborating documentation, where alien had no reason to believe that corroborating documentary evidence was necessary. *Vasquez-Hoyos v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 886, 2003 WL 23098583, Unreported. Aliens ↪ 54.1(4.1)

Alien's uncorroborated claim that his alleged persecution was sponsored by the national government of his native country was insufficient to meet alien's initial burden of demonstrating that his persecution was government sponsored, such as to shift to the government the burden of proving, in asylum proceeding, the reasonableness of internal relocation. *Singh v. Ashcroft*, C.A.5 2003, 83 Fed.Appx. 640, 2003 WL 22955888, Unreported. Aliens ↪ 54.1(2)

Substantial evidence supported decision of Immigration Judge (IJ) denying alien's request for asylum for failing to corroborate his claim of persecution for opposition to home country's coercive population control program; alien failed to provide an abortion certificate which would determine when wife's abortion occurred, evidence did not indicate whether wife's tubal ligation was involuntary, and no evidence corroborated alien's testimony that his family was fined for violating program. *Chen v. U.S. Attorney General*, C.A.3 2003, 81 Fed.Appx. 418, 2003 WL 22837629, Unreported. Aliens ↪ 54.1(4.1)

Record supported determination that aliens did not suffer past persecution in Macedonia, as required in their application for asylum, even though it was improper for Immigration Judge (IJ) to require corroboration that aliens' house burned down; there was no proof that house was burned by Albanians or that Albanians, as a faction, were beyond control of the Macedonian government, and burning of house did not rise to level of persecution. *Matlijoska v. Ashcroft*, C.A.3 2003, 82 Fed.Appx. 267, 2003 WL 22520410, Unreported. Aliens ↪ 53.10(3)

Alien was not required to submit corroborating evidence in support of his applications for asylum and withholding of removal, where IJ did not identify a legitimate reason for questioning alien's credibility. *Matharu v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 313, 2003 WL 22435189, Unreported. Aliens ↪ 54.1(4.1)

Determination by the Board of Immigration Appeals (BIA) in asylum hearing that alien was not credible was supported by substantial evidence; although alien claimed a reasonable fear of persecution based upon her sterilization, alien failed to mention the sterilization in her asylum application, there were inconsistencies in her description of her interactions with authorities from her native country, and she offered no corroborating evidence of her opposition to native country's birth control policy. *Wong v. Ashcroft*, C.A.3 2003, 76 Fed.Appx. 446, 2003 WL 22234874, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge's (IJ) finding, that alien failed to show a clear probability of persecution if returned to Cameroon, was not erroneous; IJ found that alien lacked credibility and that there was an absence of critical corroboration. *Tanjoh v. Ashcroft*, C.A.4 2003, 75 Fed.Appx. 184, 2003 WL 22138542, Unreported. Aliens ↪ 54.1(4.1)

8 U.S.C.A. § 1101

Immigration judge (IJ) and Board of Immigration Appeals (BIA) had adequate grounds for finding that alien's claim of past persecution for violating the marriage and birth control laws was not credible and denying alien's application for asylum and withholding of removal; alien contradicted himself with regards to the amount of fine he alleged was imposed for violating marriage and birth control laws, claim that alien's wife was forced to have an abortion after 15 months of pregnancy was implausible, and alien failed to provide corroborative evidence sought by the IJ, which alien conceded existed. *Shi v. Ashcroft*, C.A.2 2003, 73 Fed.Appx. 513, 2003 WL 22056226, Unreported. Aliens ↻ 54.1(4.1)

204. Findings and discussion, refugee

Board of Immigration Appeals (BIA) did not engage in improper fact-finding in asylum proceedings when it relied on inconsistency not mentioned in most recent decision of Immigration Judge (IJ) in upholding IJ's adverse credibility determination, where IJ had mentioned inconsistency in earlier decision, IJ had rejected applicant's assertion that he had attempted to correct discrepancy, and had addressed inconsistency in earlier decision. *Ye v. Department of Homeland Security*, C.A.2 2006, 446 F.3d 289. Aliens, Immigration, And Citizenship ↻ 54(5)

Immigration judge (IJ) hearing asylum application by native of People's Republic of China, arising from purported persecution due to his wife's under-legal-age pregnancy, should have evaluated alien's explanations for leaving China during pregnancy while wife stayed behind, and should have given explanation for crediting State Department's profile of conditions in China over alien's contradictory version of consequences of pregnancy, prior to discrediting alien's account as vague, inconsistent and unresponsive. *Cao He Lin v. U.S. Dept. of Justice*, C.A.2 2005, 428 F.3d 391. Aliens ↻ 54.1(4.1)

Immigration judge provided sufficiently cogent and specific reasons to support adverse finding as to alien's credibility, so that finding would not be disturbed and supported immigration judge's ultimate determination that alien was not eligible for asylum or for withholding of removal, given that alien admitted that he had lied when, on his initial asylum application, he claimed that his cousin had been raped during ethnic riots, and given that his application failed to mention either of alleged incidents of persecution that alien emphasized at hearing. *Prawira v. Gonzales*, C.A.8 2005, 405 F.3d 661. Aliens ↻ 54.1(4.1)

Denial of asylum to Afghani applicant, who testified that his sister was killed, and that he was beaten and threatened, after militia found their names in Bibles, was not supported by substantial evidence, in that there were no findings as to whether his testimony was credible, Board of Immigration Appeals (BIA) failed to consider impact of sister's murder on his asylum claim, and BIA did not consider whether treatment of apostates in Afghanistan had changed with transition in Afghanistan's government. *Ahmadshah v. Ashcroft*, C.A.8 2005, 396 F.3d 917. Aliens ↻ 54.1(4.1)

Substantial evidence supported immigration judge's (IJ) finding, in denying alien's application for asylum and withholding of removal, that alien's testimony was not credible; IJ detailed reasons for her conclusions, drawing on her observations of alien while testifying as well as analyzing inconsistencies in and improbability of portions of that testimony. *Settenda v. Ashcroft*, C.A.1 2004, 377 F.3d 89. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals' (BIA) conclusory determination regarding changed country circumstances was not sufficiently individualized to rebut the compelling presumption of well-founded fear of future persecution that arose due to asylum applicant's showing of past persecution on account of political opinion; thus, asylum claim would be remanded to the BIA for its determination of the effect on the presumption of changed country conditions, under proper legal standards that required the BIA to make an individualized determination as to applicant. *Lopez v. Ashcroft*, C.A.9 2004, 366 F.3d 799. Aliens ↻ 54.1(4.1); Aliens ↻ 54.3(6)

Alien failed to successfully challenge immigration judge's (IJ) credibility determination underlying his removal order; IJ established a legitimate, articulable basis to question alien's credibility and offered specific, cogent

8 U.S.C.A. § 1101

reasons for disbelief, and the credibility findings went to key elements of the asylum application, including identity, membership in a persecuted group, and date of entry in the United States. *Farah v. Ashcroft*, C.A.9 2003, 348 F.3d 1153. Aliens ↻ 54.1(4.1)

In determining whether government had met its burden to prove that alien who had demonstrated past persecution in Egypt could avoid future persecution by relocating to another part of Egypt, immigration judge was required to make a finding as to whether relocation within Egypt was a reasonable option under all of the circumstances, including alien's particular circumstances and information on overall country conditions regarding Coptic Christians. *Morkos v. Gonzales*, C.A.2 2006, 2006 WL 1318844, Unreported. Aliens, Immigration, And Citizenship ↻ 512

Decision in which Board of Immigration Appeals (BIA) upheld determination of immigration judge (IJ) that alien presented insufficient evidence to support her claims for asylum and withholding of removal had to be vacated when BIA explicitly made no determination respecting IJ's adverse credibility finding, but IJ's sole basis for denying relief was his adverse credibility determination, such that BIA, if it credited alien's credibility, lacked basis to hold that claims were not supported by sufficient evidence. *Chen v. Gonzales*, C.A.2 2006, 167 Fed.Appx. 869, 2006 WL 373831, Unreported. Aliens, Immigration, And Citizenship ↻ 54(5)

Immigration judge's denial of alien's application for asylum and withholding of removal was not supported by substantial evidence; the immigration judge did not make an adverse credibility decertification in finding that alien would not face persecution upon his return to Gambia, but rather misstated the record to reach his conclusion, finding that although the alien had family still living in Gambia, those relatives were not political and the only political relatives were both arrested and lived in exile, and, country reports both reports documented and explain the severe human rights situation in Gambia, and the persecution that could result from political beliefs and practices. *Cesay v. Gonzales*, C.A.2 2005, 153 Fed.Appx. 766, 2005 WL 2649999, Unreported. Aliens ↻ 54.1(4.1)

Substantial evidence supported Immigration Judge's adverse credibility finding on application for asylum; IJ offered specific, cogent reasons for finding based on inconsistency between applicant's testimony and application, applicant's failure to present corroborating evidence, and applicant's evasive demeanor. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 315, 2005 WL 752410, Unreported. Aliens ↻ 54.1(4.1)

Immigration judge could not properly base finding that asylum applicant's testimony was not credible on inconsistency with affidavit filed by applicant's mother without addressing applicant's explanation for inconsistency. *Singh v. Gonzales*, C.A.9 2005, 127 Fed.Appx. 257, 2005 WL 697031, Unreported. Aliens ↻ 54(3.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ gave cogent reasons for finding, based on facts central to alien's claim, such as her lack of knowledge about political party for which she was allegedly persecuted, fact that she added her daughter to her passport just before she was arrested, and unlikelihood that a person thought to be involved in assassination of the president could leave the country with relative ease. *Tshilumba v. Ashcroft*, C.A.5 2005, 119 Fed.Appx. 689, 2005 WL 148085, Unreported. Aliens ↻ 54.1(4.1)

Board of Immigration Appeals (BIA) erred in adopting the Immigration Judge's (IJ's) credibility determination with regard to testimony of alien who was seeking asylum, where IJ failed to explain the discrediting of alien's explanation for not being able to provide some corroborating documents, and IJ failed to provide reasons for the adverse credibility determination. *Galko v. Ashcroft*, C.A.7 2004, 114 Fed.Appx. 206, 2004 WL 2030083, Unreported. Aliens ↻ 54(5)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ gave specific, cogent

8 U.S.C.A. § 1101

reasons for finding, including fact that alien had claimed in his written application that he had been beaten in the summer of particular year and that his teeth had been knocked out, but denied in his testimony that he had been beaten on that occasion, as well as alien's failure to offer corroborating evidence that should have been reasonably available. *Mersinaj v. Ashcroft*, C.A.6 2004, 107 Fed.Appx. 553, 2004 WL 1859356, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ offered specific, cogent reasons for disbelieving alien, including his submission of fabricated medical records concerning injuries allegedly received on account of his political activities. *Najaryan v. Ashcroft*, C.A.9 2004, 106 Fed.Appx. 615, 2004 WL 1827939, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; IJ gave specific, cogent reasons for his disbelief, including that alien's birth certificate was a counterfeit or forgery, that she was inconsistent regarding whether it was one or two men who raped her, that she was inconsistent regarding when her boyfriend died, that it was implausible that she traveled from her country to various other countries without ever being asked any questions regarding her lack of documentation or her identity, and that she had made absolutely no effort to contact her mother and uncle, her closest living relatives, who could corroborate her story and identity. *Cowens v. Ashcroft*, C.A.8 2004, 106 Fed.Appx. 523, 2004 WL 1809524, Unreported. Aliens ↪ 54.1(4.1)

Immigration Judge's (IJ) inaccurate statements, in opinion denying alien's application for asylum, were too minor to be of issue on appeal; IJ mistakenly stated that alien and his current wife met while working in the same restaurant, whereas the testimony was that she came in to the restaurant when he was working, IJ stated that alien decided to divorce his first wife on January 1 or February 2, whereas the testimony only referred to January or February, and IJ discredited alien's explanation of the difference between the amount alien allegedly paid as a fine and the amount on his receipt. *Fa Dai Yang v. Ashcroft*, C.A.3 2004, 104 Fed.Appx. 259, 2004 WL 1588179, Unreported. Aliens ↪ 54.3(5)

Immigration Judge's (IJ) adverse credibility determination against alien seeking asylum was supported by substantial evidence and sufficient statement of reasons; reasons included but were not limited to discrepancy between alien's asylum application and his testimony about nature of alleged beating, and significantly inconsistent testimony about how often he had to visit police station, which inconsistencies went to heart of application, and IJ found that jail time alien faced upon his return would be imposed because of his failure to register for military service, not because of his religion, as he testified. *Dunca v. Ashcroft*, C.A.9 2004, 102 Fed.Appx. 557, 2004 WL 1380270, Unreported. Aliens ↪ 54(3.1); Aliens ↪ 54.1(4.1)

Substantial evidence did not support adverse credibility determination, in asylum proceeding, where neither the Immigration Judge's (IJ) decision nor the Board of Immigration Appeals' (BIA) summary affirmance provided specific cogent reasons why alien was not a credible witness, and therefore alien's testimony would be deemed to be credible. *Castellanos-Garcia v. Ashcroft*, C.A.9 2004, 99 Fed.Appx. 96, 2004 WL 1088254, Unreported. Aliens ↪ 54(3.1); Aliens ↪ 54.3(4)

Immigration Judge (IJ) and Board of Immigration Appeals (BIA) did not err, in asylum proceeding, by not making a credibility finding as to alien; finding was only required if alien was found not credible. *Rabadi v. Ashcroft*, C.A.9 2003, 84 Fed.Appx. 816, 2003 WL 22977108, Unreported. Aliens ↪ 54(3.1); Aliens ↪ 54(5)

Immigration judge's (IJ's) adverse credibility finding in proceeding for asylum and withholding of deportation was not supported by substantial evidence; none of purported discrepancies could be viewed as attempts by alien to enhance his claims of persecution, and IJ failed to point to specific grounds for questioning alien's demeanor. *Mughal v. Ashcroft*, C.A.9 2003, 79 Fed.Appx. 314, 2003 WL 22435191, Unreported. Aliens ↪ 54.1(4.1)

Substantial evidence supported determination that alien failed to establish her refugee status on application for

8 U.S.C.A. § 1101

asylum, withholding of removal, and relief under the Convention Against Torture; immigration judge's (IJ) credibility determinations were supported by specific, cogent reasoning and were entitled to substantial deference. *Tejan v. Ashcroft*, C.A.4 2003, 75 Fed.Appx. 130, 2003 WL 22070539, Unreported. Treaties 8

In asylum proceeding, Immigration Judge (IJ) presented sufficient reasons to discredit alien's testimony that he feared political persecution; IJ noted that alien was unable to articulate any factual basis for his alleged fear of persecution, and that alien's testimony was vague and unresponsive to many questions. *Wimalaratna v. Ashcroft*, C.A.6 2003, 69 Fed.Appx. 271, 2003 WL 21456235, Unreported. Aliens 54(3.1)

205. Reconsideration, refugee

Immigration Judge (IJ) did not abuse her discretion, in asylum proceeding involving a native of Cameroon, by denying his motion to reconsider finding which concluded that alien had incorrectly identified himself and provided fraudulent documents; motion to reconsider was not proper vehicle for alien to argue against IJ's evaluation of the evidence. *Fongwo v. Gonzales*, C.A.8 2005, 430 F.3d 944. Aliens 54(5)

Board of Immigration Appeals (BIA) abused its discretion in construing asylum applicant's motion to stay proceedings while appeal of Immigration Judge's denial of asylum was pending as a motion to reopen and denying motion for failure to comply with requirements for a motion to reopen; applicant did not intend to file motion to reopen, motion was filed in absence of a final administrative decision and could not be a motion to reopen, and thus motion was not subject to requirements applicable to a motion to reopen. *Akhtar v. Gonzales*, C.A.6 2005, 406 F.3d 399, rehearing and rehearing en banc denied. Aliens 54(5)

Board of Immigration Appeals (BIA) did not abuse its discretion in determining, on motion to reconsider asylum denials, that Ukrainian applicants failed to undermine BIA's earlier conclusion that asylum was unwarranted, where motion provided no legal or factual reasons discrediting Immigration Judge's (IJ) findings that testimony regarding beating by militia officers was questionable, and that remaining testimony, concerning, inter alia, denial of educational opportunities, described discrimination based on applicants' Baptist faith rather than persecution. *Sukhov v. Gonzales*, C.A.8 2005, 403 F.3d 568. Aliens 54(5)

Denial of alien's motion to reopen deportation proceedings to allow him to present evidence in support of his claim for relief under the United Nations Convention Against Torture (CAT) was not abuse of discretion, where information that alien sought to present was available to him earlier, and where the Board of Immigration Appeals (BIA) provided a reasoned explanation for its decision. *Allabani v. Gonzales*, C.A.6 2005, 402 F.3d 668. Aliens 54(5)

Applicant who was native of Laos, of Hmong ethnicity, and citizen of France established plausible grounds for relief on his claim of asylum from France, as required to show prejudice, on motion for reopening, from counsel's failure to timely file appeal, where Immigration Judge (IJ) found that applicant and his wife testified credibly as to written threats they received in France, and attacks in France on four friends who, like applicant, had worked with Central Intelligence Agency (CIA) in Laos. *Siong v. Immigration and Naturalization Service*, C.A.9 2004, 376 F.3d 1030. Aliens 54(5)

Denial of aliens' motion to reconsider previous order denying their application for asylum and for withholding of removal was not abuse of discretion, where aliens' motion simply reargued whether the same evidence which they had previously submitted to immigration judge established the requisite past persecution or well-founded fear of future persecution. *Boudaguian v. Ashcroft*, C.A.8 2004, 376 F.3d 825, rehearing and rehearing en banc denied. Aliens 54(5)

Ethnic Muslim Albanian from Montenegro was not entitled to reopening of asylum application based upon changed country conditions on claim that Yugoslav government's new campaign against ethnic-Albanian Kosovar

8 U.S.C.A. § 1101

insurgents subjected all ethnic-Albanian Montenegrins to credible fear of persecution by Serbian nationalists; evidence of escalating civil strife between Serbia and Montenegro over Kosovo war efforts affected all Montenegrins equally, regardless of ethnicity, and did not establish that alien would be per se subject to persecution based on religion and ethnicity. *Pelinkovic v. Ashcroft*, C.A.7 2004, 366 F.3d 532. Aliens 53.10(3); Aliens 54(5)

Assuming that the Board of Immigration Appeals found that alien's wife was forcibly sterilized, the Board improperly denied motion of alien, a national of the People's Republic of China (PRC) seeking asylum on account of PRC's one family-one child policy, to reopen his asylum application, where the Board failed to explain why its decision was permissible despite having conditionally granted asylum and withholding of deportation in a similar previous case. *Zhao v. U.S. Dept. of Justice*, C.A.2 2001, 265 F.3d 83. Aliens 54(5)

Board of Immigration Appeals (BIA) abused its discretion in failing to consider all the evidence with respect to health condition of aliens' child when denying their motion to reconsider prior denial of motion to remand cancellation of removal proceedings for purpose of presenting new information regarding child's health; BIA stated that there was nothing in record to suggest that comparable medical care would not be available in alien's native country, which ignored absence of any clinics in country on list of international care centers, and BIA did not address opinion of child's physician that removing him from his medical community, which was familiar with his diseases, could have significant harmful consequences. *Zumel v. Gonzales*, C.A.9 2005, 125 Fed.Appx. 841, 2005 WL 752326, Unreported. Aliens 54(5)

One inconsistency in alien's testimony with regard to whether her government gave official recognition to alien's organization, which was organized to research the Ukrainian army's killing of its Jewish community in the late 1930s, was not enough to uphold Board of Immigration Appeals' (BIA's) denial of alien's motion to reconsider the denial of her asylum petition, where other purported discrepancies were minor or not actually discrepancies, and BIA in its earlier decision had determined that the "three discrepancies" undermined alien's claim "when considered together." *Galko v. Ashcroft*, C.A.7 2004, 114 Fed.Appx. 206, 2004 WL 2030083, Unreported. Aliens 54(5)

Board of Immigration Appeals (BIA) did not abuse its discretion by denying alien's motion to reopen his applications for asylum, withholding of removal, relief under the Convention Against Torture (CAT), and voluntary departure, where alien failed to introduce previously unavailable material evidence. *Dume v. Ashcroft*, C.A.6 2004, 102 Fed.Appx. 929, 2004 WL 1376622, Unreported. Aliens 54(5)

Evidence which alien submitted in support of a motion to reopen following denial of his application for asylum did not show that he would personally be singled out for persecution, and thus, the evidence was not material and denial of the motion was not an abuse of discretion; the evidence addressed only the current political situation in Nigeria, without providing any information specifying why the alien would be persecuted individually. *Otenaike v. Ashcroft*, C.A.7 2004, 88 Fed.Appx. 116, 2004 WL 237717, Unreported. Aliens 54(5)

206. Stay, refugee

Board of Immigration Appeals (BIA) abused its discretion in construing asylum applicant's motion to stay proceedings while appeal of Immigration Judge's denial of asylum was pending as a motion to reopen and denying motion for failure to comply with requirements for a motion to reopen; applicant did not intend to file motion to reopen, motion was filed in absence of a final administrative decision and could not be a motion to reopen, and thus motion was not subject to requirements applicable to a motion to reopen. *Akhtar v. Gonzales*, C.A.6 2005, 406 F.3d 399, rehearing and rehearing en banc denied. Aliens 54(5)

207. Appeals, refugee

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

The Board of Immigration Appeals (BIA), in concluding that Albanian Muslim seeking asylum lacked an objectively reasonable fear of future persecution, did not improperly limit its examination to only past incidents of persecution; rather, BIA's analysis of alien's fear of persecution involved a consideration both of past incidents of alleged persecution and of changed country conditions within Yugoslavia in 11 years since alien had left. *Useinovic v. I.N.S.*, C.A.7 2002, 313 F.3d 1025. Aliens ↪ 53.10(3)

Board of Immigration Appeals (BIA) violated alien's right to procedural due process when, in proceedings on alien's application for asylum and withholding of deportation, BIA made dispositive and independent adverse credibility finding, in the absence of any such finding by immigration judge, without affording alien opportunity to establish her credibility or clarify her testimony. *Liu v. I.N.S.*, S.D.N.Y.2003, 2003 WL 1872710, Unreported. Aliens ↪ 54(5); Constitutional Law ↪ 274.3

208. Judicial review, refugee

In action brought by Guatemalan nationals seeking review of final order of Board of Immigration Appeals (BIA), denying their applications for asylum and withholding of removal, Court of Appeals lacked ability to assess immigration judge's adverse credibility determination, since it could not determine which facts alleged by nationals would suffice to confer status as members of social group protected from persecution by Immigration and Nationality Act (INA). *Ucelo-Gomez v. Gonzales*, C.A.2 2006, 448 F.3d 180. Aliens, Immigration, And Citizenship ↪ 622

Alien's explanation for inconsistencies about his persecution in Bangladesh between his testimony before immigration judge (IJ) and his asylum application, although not implausible, was insufficient to overcome deference owed IJ's adverse credibility finding, absent showing that reasonable fact-finder would have been compelled to credit his testimony. *Majidi v. Gonzales*, C.A.2 2005, 430 F.3d 77. Aliens ↪ 54.1(4.1)

Board of Immigration Appeals (BIA) explained its reasons for denying alien's applications for asylum or withholding of removal in manner sufficient to permit judicial review, where the BIA indicated in its decision that, even accepting alien's testimony as true, she had not satisfied her burdens of proof, and where all of alien's evidence, including her testimony at removal hearing, was present on the record to permit Court of Appeals to determine whether this determination was supported by substantial evidence. *Huang v. U.S. Atty. Gen.*, C.A.11 2005, 429 F.3d 1002. Aliens ↪ 54.3(4)

Court of Appeals was without jurisdiction to hear alien's untimely petition for review of order of the Board of Immigration Appeals (BIA) upholding immigration judge's denial of alien's application for asylum or withholding of removal, where there was no plausibly authentic document or other evidence indicating that petition for review had been filed, either in the Second Circuit Court of Appeals or in another Circuit, prior to expiration of 30-day period specified in federal statute. *Lucaj v. Gonzales*, C.A.2 2005, 425 F.3d 203. Aliens, Immigration, And Citizenship ↪ 54.3(1)

Asylum applicant failed to raise claim of ineffective assistance of counsel in appeal to Board of Immigration Appeals (BIA), and thus did not exhaust administrative claims. *Dawoud v. Gonzales*, C.A.7 2005, 424 F.3d 608. Aliens ↪ 54.3(1)

Board of Immigration Appeals (BIA) decision which dismissed asylum claim in one paragraph, by upholding adverse credibility finding of Immigration Judge (IJ), essentially adopted opinion of IJ, and thus Court of Appeals would review opinion of IJ. *Wang v. Attorney General of U.S.*, C.A.3 2005, 423 F.3d 260. Aliens ↪ 54.3(1)

Individual immigration judge's (IJ's) construction of the Immigration and Naturalization Act (INA) is not entitled to *Chevron* deference where the IJ has engaged in statutory construction and the Board of Immigration Appeals (BIA) has summarily affirmed; although Congress has generally delegated the authority to make immigration rules

8 U.S.C.A. § 1101

carrying the force of law, and the INA unambiguously vests such power in the Attorney General (AG), among others, an IJ's summarily affirmed construction of the INA is not "promulgated in the exercise of" the AG's authority, because while the AG expressly delegated rule-making authority to the BIA, the AG never delegated such authority to the IJs themselves, who lack the juridical power to issue binding decisions, and a summarily affirmed IJ decision cannot be construed as a "rule" promulgated by the BIA, as such a summary affirmance is only an approval of the result reached by the IJ, not necessarily of the IJ's reasoning. *Lin v. U.S. Dept. of Justice*, C.A.2 2005, 416 F.3d 184. Aliens ↻ 54.3(4)

While credible death threats can support a finding of past persecution, fact that Philippine national credibly testified to receiving such threats from members of communist militia did not compel such a finding, as required for Court of Appeals to disturb immigration judge's contrary finding as not being supported by substantial evidence. *Marcos v. Gonzales*, C.A.9 2005, 410 F.3d 1112. Aliens ↻ 54.1(4.1)

Where alien, on his appeal from immigration judge's decision to the Board of Immigration Appeals (BIA), did not challenge immigration judge's adverse credibility determination or judge's denial of withholding of deportation and protection under the Convention Against Torture, Court of Appeals lacked jurisdiction to review those issues on petition for review of decision of the BIA. *Hasan v. Ashcroft*, C.A.6 2005, 397 F.3d 417. Aliens ↻ 54.3(1)

Court of Appeals had to affirm determination of Board of Immigration Appeals (BIA) that alien, who allegedly suffered beating at hands of gang of Muslim youths, was not entitled to asylum, given alien's failure to show that evidence was so compelling as to require contrary conclusion. *Serjani v. Gonzales*, C.A.5 2005, 124 Fed.Appx. 286, 2005 WL 673502, Unreported. Aliens ↻ 54.3(4)

Evidence did not compel reasonable fact-finder to conclude that alien suffered past persecution or had well-founded fear of future persecution because of her political opinion, as required for Court of Appeals to reverse Board of Immigration Appeals' (BIA) denial of alien's application for asylum. *Kharshiladze v. Ashcroft*, C.A.5 2004, 100 Fed.Appx. 1000, 2004 WL 1376391, Unreported. Aliens ↻ 54.1(4.1)

Alien was entitled to review of his claim for asylum, inasmuch as his uncontradicted testimony as to his kidnaping and torture, by rebels that the government of Sri Lanka was unable to control, compelled conclusion that he was persecuted on account of his political opinion and humanitarian opinions and that he had a well-founded fear of future persecution. *Mudalige v. Ashcroft*, C.A.9 2004, 101 Fed.Appx. 663, 2004 WL 1171355, Unreported. Aliens ↻ 54.3(4)

209. Reversal, refugee

Alien failed to show that evidence he presented was so compelling that no reasonable factfinder could fail to find that alien had well-founded fear of persecution based upon his political beliefs and opinions if he returned to Sierra Leone, as required to obtain reversal of Bureau of Immigration Appeals' (BIA) denial of his application for asylum. *Bangura v. Ashcroft*, C.A.4 2004, 117 Fed.Appx. 238, 2004 WL 2810174, Unreported. Aliens ↻ 54.3(4)

210. Remand, refugee

The proper course for a court of appeals, after reversing a decision of the Board of Immigration Appeals (BIA) concerning alien's eligibility for asylum, except in rare circumstances, is to remand to the BIA for additional investigation or explanation. *Gonzales v. Thomas*, U.S.2006, 126 S.Ct. 1613, 164 L.Ed.2d 358. Aliens, Immigration, And Citizenship ↻ 54.3(6)

Immigration judge's (IJ) bias toward Chinese alien required remand to the Board of Immigration Appeals (BIA) for reconsideration and reassignment to a different immigration judge if the BIA determined that further consideration was warranted; the immigration judge berated alien for not having employment despite alien's valid explanation

8 U.S.C.A. § 1101

that he could not lawfully work, and refused to reach the merits of the asylum application until alien found employment, the IJ questioned why alien would live in a Hispanic neighborhood since "most of the people are living in Chinatown" and IJ expressed the view that Chinese applicants consider the witness stand a "magic chair" from which they would change their story from what they would tell their friends in a "restaurant in Chinatown," and, further, chastised alien for giving his daughter up for adoption and criticized Chinese rural attitudes that value sons more than daughters. *Huang v. Gonzales*, C.A.2 2006, 453 F.3d 142. Aliens, Immigration, And Citizenship ↻ 626

The numerous errors in Immigration Judge's (IJ) adverse credibility determination precluded Court of Appeals from determining that Board of Immigration Appeals (BIA) would have reached the same result in the absence of the errors, and thus Chinese asylum applicant was entitled to remand; IJ did not give valid alternative grounds for denying relief and there was little besides error in IJ's decision. *Li v. I.N.S.*, C.A.2 2006, 453 F.3d 129. Aliens, Immigration, And Citizenship ↻ 626

In action brought by Guatemalan nationals seeking review of final order of Board of Immigration Appeals (BIA), denying their applications for asylum and withholding of removal, remand was necessary to determine whether "affluent Guatemalans" constituted social group within meaning of Immigration and Nationality Act (INA); BIA had not made such determination in summarily affirming decision of immigration judge that nationals were not entitled to protection as members of purported group. *Ucelo-Gomez v. Gonzales*, C.A.2 2006, 448 F.3d 180. Aliens, Immigration, And Citizenship ↻ 626

Remand was required based on immigration judge's (IJ) failure to consider whether Burmese alien's pro-democracy activities in the United States gave rise to well-founded fear of future persecution, for purpose of asylum claim, or established likelihood of torture upon return to Burma, for purpose of claim under the Convention Against Torture (CAT); alien presented expert testimony that the Burmese government conducted surveillance of dissident activities in the United States, there was no dispute that alien engaged in pro-democracy dissident activities in the United States with other Burmese exiles, and that he attended various demonstrations in front of the Burmese consulate, and state department country reports indicated that Burmese authorities would take severe action against returnees who engaged in such pro-democracy activities. *Kyaw Zwar Tun v. U.S. I.N.S.*, C.A.2 2006, 445 F.3d 554

Board of Immigration Appeals (BIA) was bound, on remand in asylum proceeding, by the scope of the remand as directed by the Court of Appeals, where that remand was limited to resolution of the only remaining issue: whether alien had established a prima facie case of eligibility for asylum. *Mendez-Gutierrez v. Gonzales*, C.A.9 2006, 444 F.3d 1168. Aliens, Immigration, And Citizenship ↻ 54.3(6)

Remand to the Board of Immigration Appeals (BIA) was required to determine whether alien established entitlement to asylum and withholding of removal, where BIA initially affirmed the denial of the asylum and withholding of removal claims based upon immigration judge's (IJ) adverse credibility finding, which the Court of Appeals subsequently reversed. *Singh v. Gonzales*, C.A.9 2006, 439 F.3d 1100. Aliens, Immigration, And Citizenship ↻ 54.3(6)

Appropriate course was to remand asylum case to Board of Immigration Appeals (BIA) for determination, in first instance, of whether Chinese merchant's acts in opposition to extortion by local officials resulted in persecution on account of political opinion within meaning of asylum statute, where BIA had not considered political context to determine whether merchant's persecutors were motivated by alien's opposition to government. *Zhang v. Gonzales*, C.A.2 2005, 426 F.3d 540. Aliens ↻ 54.3(6)

Immigration Judge's failure to address asylum applicant's argument that his untimely filing of application was due to extraordinary circumstances was error requiring remand, where IJ believed that one-year deadline was absolute and not subject to any exception. *Sagaydak v. Gonzales*, C.A.9 2005, 405 F.3d 1035. Aliens ↻ 54.3(6)

8 U.S.C.A. § 1101

Immigration judge's adverse finding on credibility of asylum applicant, notwithstanding that he had provided quite detailed, internally consistent testimony that was materially in accord with his asylum application, and that was corroborated, at least in part, by documentary evidence and by evidence of general country conditions, based upon alleged lack of detail on other matters not bearing heavily on asylum application and on judge's belief as to implausibility of certain events testified to by applicant, including suggestion that government officials would be involved in arson which, while it most heavily damaged applicant's business, also threatened other businesses in same building, and that applicant's parents had never told government officials harassing them of applicant's flight to the United States in attempt to end this harassment, was not based on substantial evidence and necessitated remand for further development of factual record, or to allow judge to provide further support for conclusions. *Jishiashvili v. Attorney General of the U.S.*, C.A.3 2005, 402 F.3d 386. Aliens ↻ 54.1(4.1); Aliens ↻ 54.3(6)

Where immigration judge's opinion, in support of order denying alien's application for asylum and withholding of removal, appeared to be unedited version of badly transcribed, rambling set of oral observations, which did not articulate, in any coherent fashion, what findings were made or what legal standards were applied, Court of Appeals could not review immigration judge's decision, but had to grant alien's petition and remand case. *Recinos De Leon v. Gonzales*, C.A.9 2005, 400 F.3d 1185. Aliens ↻ 54.3(1); Aliens ↻ 54.3(6)

Order of Board of Immigration Appeals (BIA) denying alien's application for withholding of removal lacked reasoned discussion of past persecution, requiring remand to BIA for further explanation and consideration; BIA overturned immigration judge's (IJ) finding that alien's claims of past persecution were not credible, but failed to indicate alternative basis for finding that alien was ineligible for withholding of removal. *Gjyzi v. Ashcroft*, C.A.6 2004, 386 F.3d 710, rehearing denied. Aliens ↻ 54.3(6)

Immigration judge failed to state a substantial basis for adverse credibility finding on alien's claim, at asylum proceeding in which alien sought relief on basis of ethnic persecution, that he was ethnically Chinese, and thus, remand was warranted. *Wiransane v. Ashcroft*, C.A.10 2004, 366 F.3d 889. Aliens ↻ 54(3.1); Aliens ↻ 54.3(6)

Remand to immigration judge (IJ) for rehearing on alien's application for asylum was required, where IJ failed to acknowledge, much less evaluate, alien's testimony that he had been beaten on basis of his religion in concluding that alien had failed to prove past persecution, or well-founded fear of future persecution. *Chen v. U.S. I.N.S.*, C.A.2 2004, 359 F.3d 121. Aliens ↻ 54.3(6)

Remand was required, in asylum proceeding in which substantial evidence did not support adverse credibility determination, to determine whether alien's testimony about being beaten by Albanian authorities established a new instance of persecution subsequent to the unseating of the Communist regime, as would require government to establish that country circumstances had changed sufficiently to show that alien lacked any well-founded fear of future persecution. *Pacaj v. Gonzales*, C.A.2 2006, 2006 WL 1228873, Unreported. Aliens, Immigration, And Citizenship ↻ 626

Remand was required to determine whether Chinese alien's subjective fear of future persecution was well-founded, so as to warrant grant of asylum, given documentary evidence regarding the serious abuses of Falun Gong practitioners by the Chinese government and letter from alien's mother stating that the government had visited her home many times in an attempt to arrest alien for practicing Falun Gong. *Bao Quan Chen v. U.S. Dept. of Justice*, C.A.2 2006, 173 Fed.Appx. 102, 2006 WL 851706, Unreported. Aliens, Immigration, And Citizenship ↻ 626

Remand was warranted, in asylum proceeding, where BIA failed to consider evidence of physical assault and threats connected to political activities when considering two alleged incidents of persecution in Albania, failed to consider the cumulative effect of both incidents, and relied on a country conditions report as if it were dispositive while disregarding alien's testimony about her specific experiences. *Zuna v. Gonzales*, C.A.2 (N.Y.) 2006, 170 Fed.Appx. 173, 2006 WL 508357, Unreported. Aliens, Immigration, And Citizenship ↻ 54.1(4.1)

8 U.S.C.A. § 1101

Immigration judge (IJ) demonstrated bias and hostility toward alien that might have tainted his decision to order alien's removal to China and prejudiced alien's claims for asylum, withholding of removal, and relief under Convention Against Torture (CAT), warranting remand for further proceedings; IJ doggedly assumed that alien was lying when she stated, consistently, that she lived and worked at her sister's house, IJ regularly used combative and insulting language in questioning alien, IJ implied that any asylum claim based on China's coercive family planning policies would be presumed incredible, and IJ doubted alien's asylum claim because she had not fled to "someplace worse." *Liu v. Board of Immigration Appeals*, C.A.2 2006, 167 Fed.Appx. 871, 2006 WL 374125, Unreported. Aliens, Immigration, And Citizenship ↻ 54(3.1)

Remand was required, in asylum proceeding, to determine the grounds on which Board of Immigration Appeals (BIA) rested its reversal of decision to grant asylum to a Chinese citizen who testified against Snakehead alien smugglers; Court of Appeals was unable to determine whether BIA's decision rested on a finding that juvenile informants on smuggling rings did not constitute a particular social group, or on a finding that alien had no well-founded fear of persecution based on such membership. *Hong v. Atty. Gen. of U.S.*, C.A.3 2006, 165 Fed.Appx. 995, 2006 WL 325768, Unreported. Aliens, Immigration, And Citizenship ↻ 54.3(6)

Pursuant to Court of Appeals's intervening decision in *Shi Liang Lin v. U.S. Dep't of Justice*, Chinese alien possibly had claim to refugee status as boyfriend of woman who was forcibly aborted of child that alien had fathered, and, to the extent that alien had such claim, denial by Board of Immigration Appeals (BIA) of alien's motion to reconsider final order of removal would be based on error of law, and thus constitute abuse of discretion, warranting remand by Court of Appeals for further proceedings. *Zhou Zong Deng v. Gonzales*, C.A.2 2006, 169 Fed.Appx. 600, 2006 WL 304744, Unreported. Aliens, Immigration, And Citizenship ↻ 54.3(6)

Failure of Board of Immigration Appeals (BIA) to consider, in aggregate, all of harm described by alien, a citizen of China, including impact of fine government imposed on alien personally as result of her having been born in violation of country's population control policy, alien's inability to obtain a marriage certificate or birth permit, or government's ransacking of her house when alien was 14 years old, when determining alien's eligibility for asylum, required remand to Board of Immigration Appeals (BIA) for consideration of alien's claims of past and future persecution in light of all record evidence. *Chen v. Gonzales*, C.A.2 2005, 152 Fed.Appx. 92, 2005 WL 2813835, Unreported. Aliens ↻ 54.3(6)

Substantial evidence did not support finding, in asylum proceeding, that alien was subjected to torture not because of his political opinions but because of his involvement in the sale of a jet owned by the Ugandan government, requiring remand to determine whether the persecution alien suffered was motivated in part by his imputed political opinions; sale of the jet took place after alien was tortured. *Mutebi v. Ashcroft*, C.A.5 2004, 103 Fed.Appx. 812, 2004 WL 1491591, Unreported. Aliens ↻ 54.3(6)

Immigration judge abused his discretion by failing to consider whether long-term, past persecution of alien from Albania and his family was sufficiently atrocious to merit a discretionary grant of asylum, where persecution included execution, murder, and lifetime imprisonment of various members of the family, multiple arrests and sometimes severe beatings of alien himself, and repeated threats of bodily injury or death to alien, his wife and his children; thus, case had to be remanded for a determination and a clear explanation of whether alien's past persecution warranted discretionary grant of asylum. *Neli v. Ashcroft*, C.A.6 2003, 85 Fed.Appx. 433, 2003 WL 23156644, Unreported. Aliens ↻ 53.10(3); Aliens ↻ 54.3(6)

Board of Immigration Appeals (BIA) failed to show that alien's fear of persecution if she returned to Guatemala was not objectively reasonable, requiring remand; BIA relied on a five-year-old profile of asylum claims and country conditions and failed to conduct an individualized analysis as to whether changed country conditions affected alien's situation, in view of fact that despite peace accords, there continued to be a high level of instability in Guatemala, including death threats and killings, which were the reason for alien's flight. *Salazar-De Leon v. Ashcroft*, C.A.9 2003, 69 Fed.Appx. 851, 2003 WL 21462474, Unreported. Aliens ↻ 53.10(3)

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

8 U.S.C.A. § 1101

8 U.S.C.A. § 1101, **8 USCA § 1101**

Current through P.L. 109-367 (excluding P.L. 109-304, P.L. 109-364)
approved 10-26-06

Copr. © 2006 Thomson/West. No. Claim to Orig. U.S. Govt. Works

END OF DOCUMENT

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.