



# Welcome Legal Alliance

**THE PROTECTED GROUNDS SERIES:**  
**POLITICAL OPINION AND RELIGION GROUNDS**  
For ATTORNEYS and ACCREDITED REPRESENTATIVES  
April 20, 2023  
3-4pm ET

Bill Rice, Human Rights First  
Alicia de la O, American Bar Association



GIBSON DUNN



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Welcome Legal Alliance's Ask the Experts Three-Part Series to help attorneys and accredited representatives understand the nuances of the protected grounds for Afghan OAW/OAR asylum seekers. Each one-hour presentation will help legal representatives navigate the different grounds.



### ***Upcoming Topics:***

***May 4, 2023, 3:00 - 4:00p ET  
Race and Nationality***

***May 18, 2023 3:00p - 4:00p ET  
Particular Social Groups***



**Welcome Legal Alliance**

# Political Opinion: Legal Standards



# Political Opinion: Legal Standards

- The political opinion of the asylum seeker (not the persecutor)
- However, there can be imputed political opinion: i.e., what the persecutor believes the asylum seeker's political opinion to be (“where one is erroneously thought to hold particular political opinions,” *Matter of S-P-*, 21 I&N Dec. 486 (BIA, 1996))
  - Not enough to show a persecutor's conduct furthers their goals in a political conflict; rather, the asylum seeker must show that it is their own, individual opinion that the persecutor seeks to overcome by the infliction of harm or suffering. (*Matter of Acosta*, 19 IN Dec. 211 (BIA, 1985))
  - The “mere existence of a generalized ‘political’ motive underlying” a persecutor's actions is insufficient. Must be evidence that persecutor will target or has targeted asylum seeker because of the asylum seeker's political opinion (*INS v. Elias-Zacarias*, 502 U.S. 478 (1992))

# Political Opinion: Legal Standards

- Must show that either:
  - (1) The persecutor is aware of the asylum seeker's political opinion or has imputed that political opinion on the asylum seeker, or
  - (2) There is a reasonable possibility that the persecutor will become aware of the asylum seeker's political opinion or will impute that political opinion onto the asylum seeker

# Political Opinion: Identifying Facts & Evidence

# Asylum Seeker's (Actual or Imputed) Political Opinion

- Look for:
  - Membership in any political parties
  - Membership in any organizations furthering social or political goals
  - Any history of activism on social or political issues
  - Attendance at any protests, demonstrations, marches
  - Attendance at any events (e.g., forums) on social or political issues
    - Afghan women or girls who attended any national, regional, or international events focused on women's rights
  - Employment or work with the pre-Taliban Afghan government, the U.S. government or military, allied forces, or any U.S. or Western contractors or NGOs.
  - Practices that may express political opinion
    - Afghan women or girls who have adopted Western clothing/dress

# Asylum Seeker's (Actual or Imputed) Political Opinion

- Corroborating Evidence:
  - Political party or social/political organization membership cards or other membership documentation
  - Records of participation or attendance at political or activist events
  - Photos of asylum seeker at political or activist events
  - Any social media posts expressing political opinion or identifying asylum seeker in a way that would cause Taliban to impute a political opinion to them (e.g., evidence of their work for previous Afghan government).
  - Employment records (e.g., employee badge/card)



# Persecutor's Motivations: Nexus

- Evidence of persecutor's motivations towards asylum seeker:
  - Statements made towards the asylum seeker by persecutor
    - Calling the asylum seeker a *kafir*/unbeliever for certain types of work or employment, political activities, or activism, etc.
  - Any communications towards asylum seeker (or family), such as letters, calls/messages, emails
  - Any statements or threats made in general by persecutor against groups relevant to asylum seeker's actual or imputed political opinion
    - Public threat statements or letters against Afghans who work with U.S. military, who worked for Afghan police department, who worked for certain Western NGOs, etc.

# Reports on Afghanistan & Taliban

- Check U.S. State Department Country Condition Report for Afghanistan:  
<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/afghanistan/>
- Information from this report can help provide evidence of Taliban or ISIS motivations for targeting of certain political opinions.

# Reports on Afghanistan & Taliban

- From report: “Between August 2021 and June, UNAMA Human Rights Service (HRS) recorded 160 targeted killings, 178 arbitrary arrests and detentions, 23 instances of incommunicado detentions, and 56 instances of torture and mistreatment of former security and pre-August 2021 government officials carried out by the Taliban...Reports of Taliban reprisal killings most often involved the targeting of individuals, many of them former government officials. For example, on February 22 in Laghman Province, a former local police officer was found dead from bullet wounds after being detained by the Taliban the prior day. The Taliban also targeted those holding lower-level positions in the pre-August 2021 government. For example, on May 18 in Takhar Province, the Taliban reportedly killed three men, all of whom had served as bodyguards for the former district governor.”

# Reports on Afghanistan & Taliban

- Can also look to other reports & news articles. For example:
  - Human Rights Watch report “Taliban Kill, ‘Disappear’ Ex-Officials”:  
<https://www.hrw.org/news/2021/11/30/afghanistan-taliban-kill-disappear-ex-officials>
  - NY Times article on Taliban killing of Afghans who worked for pre-Taliban government  
<https://www.nytimes.com/interactive/2022/04/12/opinion/taliban-afghanistan-revenge.html>

# Political Opinion: Arguments & Strategies



# Common Afghan Political Opinion Arguments

- Working with U.S. government, allied forces, Western NGOs, or Afghan government (pre-Taliban)
- Human rights support & activism
- Women's rights support & activism
- Note: These can also be tied to other asylum categories (e.g., Taliban targets those who worked with previous Afghan government as being kafirs/unbelievers)

# Common Afghan Political Opinion Arguments

- Again, political opinion can be imputed by persecutor.
  - Those with previous employment with U.S. government, allied forces, Western NGOs, or pre-Taliban Afghan government need not to have expressed a particular political opinion
  - It is enough to show that Taliban or ISIS have imputed a political opinion upon such individuals and are targeting them for harm because they believe these individuals hold that political opinion

# Common Afghan Political Opinion Arguments

- Again, political opinion can be imputed by persecutor.
  - The same goes for women or girls who worked as teachers/professors, worked in certain professions, or have adopted Western forms of dress/attire.



# Religious Claims: Legal Standards



# Religious Claims: Legal Standards

- The religious views of the asylum seeker
- However, there can be imputed religious view where the persecutor mistakenly believes the asylum seeker to be a member of a religious sect (*Matter of S-P-*, 21 I&N Dec. 486 (BIA, 1996)).
- *Matter of S-A-*, 22 I&N Dec. 1328 (B.I.A. 2000) - A woman with liberal Muslim beliefs established by credible evidence that she suffered past persecution and had a well-founded fear of future persecution at the hands of her father on account of her religious beliefs, which differ from her father's orthodox Muslim views concerning the proper role of women in Moroccan society.

# Religious Claims

- Must show:
  - (1) The persecution suffered by the asylum seeker is due to their religious views or the religious views imputed to them, or
  - (2) There is a reasonable possibility that the asylum seeker will suffer persecution because of their religious views or the religious views imputed to them.

# Religious Claims: Identifying Facts & Evidence

# Religious Claims: Identifying Facts & Evidence

- Look for:
  - Practice or membership in certain religious rites
  - Regular attendance at a particular place of worship
  - Practices or actions that indicate asylum seeker's religious views
  - Practices or actions that indicate asylum seeker's lack of religious views
  - Membership in a particular ethnic group that has imputed religious affiliations
    - For example: Ethnic Hazaras, a mostly Shiite Muslim minority
  - Practices or actions that indicate membership in a particular ethnic group that has imputed religious affiliations
    - For example: Traditional ethnic clothing

# Asylum Seeker's (Actual or Imputed) Religious Claims

- Corroborating Evidence:
  - Documentation from asylum seeker's local religious leader, confirming their regular attendance at their place of worship
  - Evidence of regular attendance at asylum seeker's place of worship
  - Evidence of asylum seeker's religious views
    - For example: social media posts, photos of asylum seeker during religious events or celebrations
  - Evidence of the asylum seeker's lack of religious views
    - For example: anti-religious social media posts
  - If applicable, explanation why the asylum seeker did not openly practice or express their religious views
    - For example: were they afraid for their safety?
  - Evidence of asylum seeker's ethnicity that has imputed religious affiliations
- Although it is well established that an asylum seeker's asylum burden of proof can be met through testimony alone, corroborative documentary evidence is usually also required. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

# Persecutor's Motivations: Nexus

- Evidence of persecutor's motivations towards asylum seeker:
  - Disparaging statements made towards the asylum seeker by the persecutor
    - For example: calling the asylum seeker kafir/unbeliever
  - Physical and/or violent actions made towards the asylum seeker by the persecutor
  - Any communications or correspondence towards the asylum seeker (or their family), such as letters, calls/messages, emails
    - Can include texts, social media, WhatsApp
  - Any statements or threats made generally by the persecutor towards similarly situated groups relevant to the asylum seeker's actual or imputed religious views

# Reports on Afghanistan & Taliban

- U.S. State Department [2022 Country Reports on Human Rights Practices: Afghanistan](#)
  - This report includes information on significant human rights issues and credible reports of severe restrictions on religious freedom and violence or threats of violence targeting members of ethnic and religious minority groups as of 2022.
- U.S. State Department [2021 Report on International Religious Freedom: Afghanistan](#)
  - Information from this report describes the status of religious freedom in Afghanistan as of 2021.
  - [Religious Freedom in Afghanistan: One Year Since the Taliban Takeover | USCIRF](#)  
U.S. Commission on International Religious Freedom's (USCIRF) August 24, 2022 virtual hearing examining Afghanistan's freedom of religion or belief under the Taliban's rule since its takeover.



# Reports on Afghanistan & Taliban

- Example from [2022 Country Report on Human Rights Practices](#):
  - A lull in the frequency and severity of ISIS-K attacks on civilians between December 2021 and March was followed by a series of IED attacks in April deliberately targeting religious and ethnic minorities, especially Hazaras. The attacks also targeted Shia communities in Kabul and Mazar-e-Sharif, as well as Sufi gatherings in Kabul and Kunduz, killing scores.
- Example from [2021 Report on International Religious Freedom](#):
  - In November and December, high level Taliban representatives held meetings with leaders of Shia, Sikh, and Hindu communities, reportedly to offer protection and improve relations. According to community representatives, in these meetings the Taliban laid out rules for the behavior of women, forbade the playing of music, and presented restrictions on businesses owned by minority religious group members.

# Reports on Afghanistan & Taliban

- Can also look to other reports and news articles:
  - [USCIRF Releases New Report on Religious Minorities in Afghanistan | USCIRF](#)
  - [Afghanistan: Religious minorities on the run or in hiding | Lifestyles | goshennews.com](#)
  - [Afghanistan: Taliban morality police replace women's ministry - BBC News](#)
  - [Afghanistan's religious minorities live in fear of Taliban, brace for persecution \(nbcnews.com\)](#)
  - Human Rights Watch [World Report 2022: Afghanistan](#)

# Religious Claims: Arguments & Strategies



# Common Afghan Religious Claims Arguments

- Individuals who practice Islam but whose views differ from the Taliban's strict interpretations
- Individuals from particular ethnic groups whose religious views are imputed to them
  - It is enough to show that Taliban or ISIS have imputed a religious view upon a particular ethnic group and are targeting them for harm because they believe these individuals hold that religious view
- Individuals who do not practice Islam
- Individuals who do not hold any religious beliefs/atheists

Q & A  
and  
Links to Resources

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