



Welcome Legal Alliance

***THE PROTECTED GROUNDS SERIES:
RACE AND NATIONALITY GROUNDS***

For ATTORNEYS and ACCREDITED REPRESENTATIVES

May 4, 2023

3-4pm ET

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AMERICANBARASSOCIATION

Commission on Immigration



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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 Topic:

TBD
Particular Social Groups

Past Topic:

April 20, 2023: Religion and Political Opinion

****([Recording](#) and [slides](#) available)***



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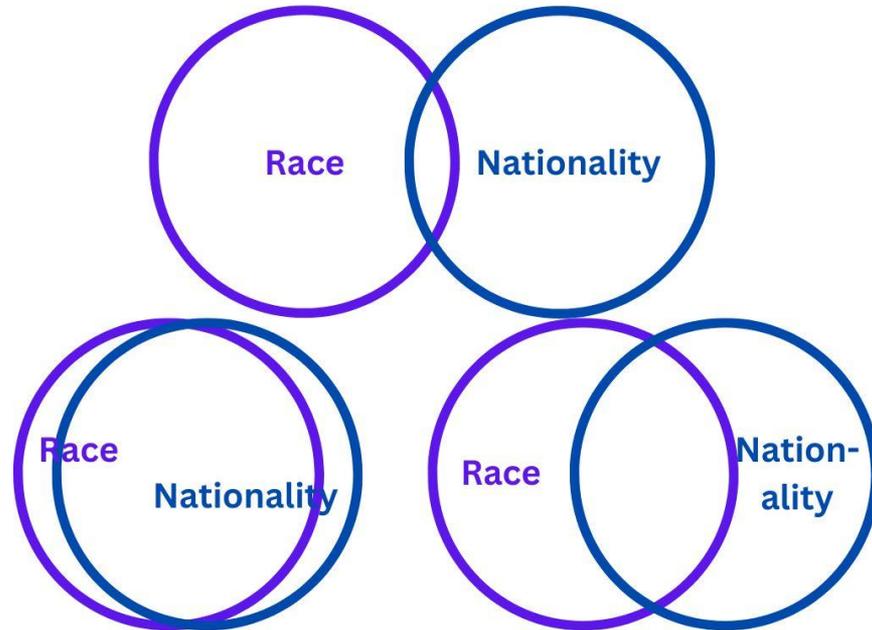
Roadmap

- Today's webinar: race and nationality as protected grounds for asylum
 - Introduction
 - Case law
 - Arguments and strategies
- NOT covered today
 - Firm resettlement
 - Statelessness
 - Other protected grounds

Introduction to Race and Nationality



Race and Nationality



Legal Definitions

- Race
 - “The relevant inquiry is how the country of origin or segments of the population delineate racial groupings, and where the applicant fits into that delineation.” - RAIO Training Module, Nexus and the Protected Grounds
- Nationality
 - Ethnic or linguistic group not just “what country?”
 - “[E]thnic groups, linguistic groups, and groups defined by common cultures.” - RAIO Training Module, Nexus and the Protected Grounds

History

- United States
 - 1790 Naturalization Law: limited citizenship to free, white (property-owning) men
 - *Dred Scott v. Sanford* (SCOTUS 1857): held that formerly enslaved Black folks could not be granted citizenship
 - Chinese Exclusion Act Cases (1889)
- International
 - Following the horrors of the Holocaust, the legal right to seek asylum created under the United Nations' Universal Declaration of Human Rights (1948) and the Refugee Convention (1951) (U.S. ratified in 1980)

What if More Than One Ground Applies?

- Generally, it is best practice to include ALL grounds that may apply in a case
 - Easier for adjudicator to approve/grant
 - Builds a strong record for appeal
- However, be careful not to couch everything in the Particular Social Group ground if you do not have to
 - Novel cases are not easy for asylum officers to grant
 - Oftentimes, practitioners use PSG in lieu of race or national origin but the race/nationality is a large part of the PSG
 - For example: Mayan Ixil as a PSG instead of race
 - We will discuss PSG more in our upcoming webinar

Case Law



Nationality Case Law

- *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998)
 - Russian natives, Ukraine citizens, Jewish nationality in Ukraine
 - Example of overlap between nationality, race and religion
- *Duarte de Guinac v. INS*, 179 F.3d 1156 (9th Cir. 1999)
 - Guatemalan citizen, Quiche ethnic group
 - Ethnic characteristic considered nationality (RAIO Training Module)
 - “[H]e was persecuted on account of his **"ethnicity,"** a category which falls somewhere **between and within the protected grounds of "race" and "nationality."**

Race Case Law

- *Baballah v. Ashcroft*, 367 F.3d 1067, 1075 n.10 (9th Cir. 2004) (in case of an Israeli applicant who was the child of a Muslim father and Jewish mother, the court noted that “ethnicity” falls between race and nationality)
- *Andriasian v. INS*, 180 F.3d 1033, 1042 n.15 (9th Cir. 1999) (where persecution based on Armenian ethnic origin was treated as on account of race)
- **Crux is persecution vs. “discrimination”**
- Good case law: *Surita v. INS*, 95 F.3d 814 (9th Cir. 1996) (overturning BIA’s factual findings that repeated robberies and threats to rape if Surita reported in addition to the police refusing to help her amounts to mere discrimination based on race and “taken in aggregate, these incidents and threats compel us to conclude that Surita suffered persecution...no reasonable finder of fact could conclude otherwise”)
- Distinguish from: *Babou v. Holder* (6th Cir. 2015), *Ly v. Holder*, 396 F. App’x 304, 310 (6th Cir. 2010), *Sow v. Mukasey*, 546 F.3d 953 (8th Cir. 2008); *Ba v. Mukasey*, 539 F.3d 1265 (10th Cir. 2008); *Lopez-Castro v. Holder*, 577 F.3d 49 (1st Cir. 2009)
- Important footnote that Mayan ethnicity can be either race or PSG and interchanging/picking only one as basis for appeal “is not important in the analysis, because it was clear that his claims stemmed from the fact that he is Mayan.” *Francisco-Nicolas v. U.S. Attorney General*, No. 08-16712 (11th Cir. 2009) (affirming BIA’s conclusion that petitioners failed to show past persecution on account of a protected ground)

Race and Nationality Grounds: Arguments & Strategies

Your Client is the Expert

- Ask your client:
 - How they identify (e.g., X is my race, Y is my nationality)
 - Demonstrate cultural humility in this conversation (e.g., the term “indigenous” may have a negative connotation for some)
 - How society identifies them (e.g., physical characteristics, traditional dress, geographical location)
 - Whether that classification limits or expands their access to justice, employment, education, etc.
- Remember your client is the expert in the room!

Common Afghan Race and Nationality Arguments

- Some ethnic/tribal groups in Afghanistan (not an exhaustive list):
 - Pashtun (majority, many Taliban are Pashtun)
 - Hazara
 - Turkmen
 - Tajik
 - Uzbek
 - Qezilbash
- There may also be other protected grounds related to the groups
- Remember any protected ground can be imputed by the persecutor

Corroboration

- Membership or identification cards/documentation that displays a person's race, tribe, ethnicity, clan, or national origin
- Photos or records of asylum seeker's participation in cultural events or practices
- Physical characteristics that may express race or nationality
 - Remember, this can be imputed
- Any social media posts expressing race or nationality that would cause the persecutor to know or impute their race or nationality
- Education records (if there are "special" schools for folks of X race/nationality)
- Country conditions (e.g., news reports, articles) about Taliban targeting X group of people

Q & A
and
Links to Resources

[USCIS RAIO Officer Training Module: Nexus and The Protected Grounds \(12/20/2019\)](#)

[Human Rights First – PALA Library](#)

[Welcome Legal Alliance Ask the Experts](#)

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