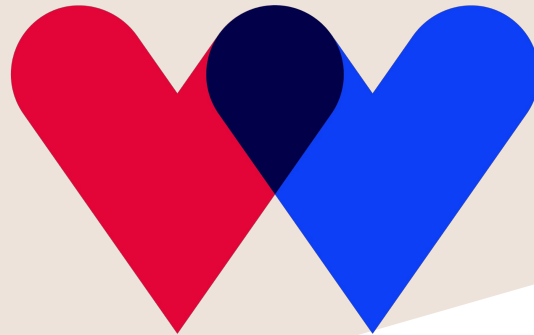


PARTICULAR SOCIAL GROUP WEBINAR



Welcome.US

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A G E N D A

1 | **ORIGIN, DEFINITION, & SOURCES OF LAW**

2 | **LEGAL STANDARD**

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5 | **GUIDELINES FOR DEFINING & ARGUING PSGs**

**PARTICULAR SOCIAL GROUP (PSG):
ORIGIN, DEFINITION,
& SOURCES OF LAW**

U.S. DEFINITION OF 'REFUGEE'

- International refugee law came out of and in response to the Holocaust & WWII
- “...any person who is **outside any country of such person’s nationality...** and who 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.” INA 101(a)(42(A)).

U.S. DEFINITION OF 'REFUGEE'

DEFINING "REFUGEE" STATUS (the statutory standard of eligibility for asylum) INA § (101)(a)(42):

- (1) well-founded fear of persecution
- (2) the persecution feared must be “on account of race, religion, nationality, **membership in a particular social group**, or political opinion”
- (3) the individual must be unable or unwilling to return to their country of nationality or to the country in which they last habitually resided because of persecution or well-founded fear of it

WHAT IS A PSG?

- Original definition of a refugee did NOT include membership in a PSG
- At the 1951 Convention Relating to the Status of Refugees, the UN expanded the definition to include PSGs, which was ratified by the United States pursuant to the 1967 Protocol
- Not defined in INA or CFR; must rely solely on Case Law
- *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) – BIA analogized to the other protected grounds:
 - found that those grounds are statuses or beliefs a person cannot change (immutable) or are so fundamental that the person should not have to change to avoid persecution (*e.g. religion, political opinion*)
 - held that PSG should be understood in the same way
- Shared characteristic might be innate (sex, skin color, kinship ties) OR it might be a shared experience (former military leaders (occupation) or land ownership)

BIA ADDITIONS TO PSG DEFINITION

- The BIA has added requirements of "social visibility" along with "particularity" to the PSG analysis.
- Social visibility has come to mean that the PSG is perceived as a group within society.
- Particularity refers to the ability to distinguish the group as a distinct class of persons.

Particular Social Group:
LEGAL STANDARDS

THE PROTECTED GROUNDS

(1) RACE

(2) RELIGION

(3) NATIONALITY

(4) MEMBERSHIP IN A
PARTICULAR SOCIAL GROUP

(5) POLITICAL OPINION

INA § (101)(a)(42)

Legal Standard

- PSG is NOT defined in INA or CFR...So, its standard is found in case law
- Note: Resulting Circuit Split on PSG formulations
 - **Ninth Circuit: Two-Part Test**
 - The group is “...united by a voluntary association, including a former association, or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it.” (*Perdomo*, 611 F.3d at 666.)
 - **Remaining circuits: Three-Part Test**
 - “...an applicant...seeking relief based on ‘membership in a particular social group’ must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” (*Matter of M-E-V-G-*, 26 I&N Dec. at 237)

PSG: THREE-PART TEST

Applicable to all circuits except the 9th Circuit

A group must fulfill the following to be a PSG:

- **(1) SHARE IMMUTABLE CHARACTERISTICS**
- **(2) BE PARTICULAR**
- **(3) BE SOCIALLY DISTINCT WITHIN THE SOCIETY IN QUESTION**

(Matter of M-E-V-G-, 26 I&N Dec. at 237; Matter of W-G-R-, 26 I&N Dec. at

212-218.)

[3-PART TEST]
PART 1: Immutability

PART 1: IMMUTABILITY

KEY

IMMUTABILITY
has 2 subparts:

- (A) Unchangeable Common Characteristic
- (B) Fundamental Common Characteristic

The common characteristic must be one that the group:

- (A) “CAN NOT CHANGE” OR
- (B) “SHOULD NOT BE REQUIRED TO CHANGE BECAUSE IT IS FUNDAMENTAL TO THEIR INDIVIDUAL IDENTITIES OR CONSCIENCES”

(Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985))

- Note: Immutability analysis of the trait...
 - done through the perspective of the PERSECUTOR
 - can be IMPUTED
 - can be Voluntary *OR* Involuntary

PART 1: IMMUTABILITY-Subpart A

(A): UNCHANGABLE COMMON TRAIT

- a shared group trait that cannot be changed
- **THE TRAIT MIGHT BE:**
 - (a) AN INNATE TRAIT OR
 - sex, ethnicity, kinship ties, etc.
 - (b) A SHARED PAST EXPERIENCE
 - former assistance to U.S. forces, land ownership, etc.

(Matter of Acosta, 19 I&N Dec. 211, 233-34 (BIA 1985))

PART 1: IMMUTABILITY-Subpart A

(A): UNCHANGABLE COMMON TRAIT (cont.)

- **CAUTION**
 - a past experience is inherently unchangeable, making it an “immutable” trait of a group (satisfying *Part 1*)...*BUT* though group members may share an “immutable trait,” some may not be “Socially Distinct” (failing *Part 3: Social Distinction*)
 - Case Law Example: of a group meeting Part 1 but failing Part 3: past service in the police/military, where the individual is now targeted for such service is NOT socially distinct (*Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006).)

PART 1: IMMUTABILITY-Subpart B

(B) FUNDAMENTAL COMMON CHARACTERISTIC

- **DEFINITION:** Traits, beliefs, or statuses that are so fundamental to the identity or conscience of the group members that they should not be required to change because they are essential to the individual's liberty or conscience
- **Consider whether:**
 - (1) the applicant's perception of trait with respect to their identity AND
 - (2) if human rights norms suggest the trait is a fundamental one

(U.S. Citizenship and Immigration Services, Nexus-Particular Social Group, RAI0 Directorate-Officer Training, https://www.uscis.gov/sites/default/files/document/foia/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf (last modified July 20, 2021))

[3-PART TEST]
PART 2: Particularity

PART 2: PARTICULARITY

- Requires a showing that the group defined with sufficient specificity so as not to be unclear who are its members
- This requirement relates to the group's boundaries OR the need to put "outer limits" on the definition of a PSG (*Matter of M-E-V-G-*, 26 I&N Dec. 227, 238 (BIA 2014) (citing *Castellano-Chacon v. INS*, 341 F.3d 533, 549 (6th Cir. 2003)).)
- The common characteristics defining the group must draw a line between who is included in the group and who is not (*Id* at 239 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. at 76).)

PART 2: PARTICULARITY

- **NOTE:** BIA has held that it is “critical” that the terms used to describe the group have “**commonly accepted definitions in the society of which the group is a part**” (Matter of M-E-V-G-, 26 I&N Dec. at 239.)
 - Avoid using definitions that vary within the society from which your client is from
 - Too Narrow VS. Too Broad

3-PART TEST:
PART 3: Social Distinction

PART 3: SOCIAL DISTINCTION

- **the group characteristic must be perceived as distinct by society**
- **QUESTION TO BE ANSWERED**: whether the group (having a common, immutable characteristic) is identifiable within the society in question
(Matter of M-E-V-G-, 26 I&N Dec. 227, 240 (BIA 2014))
- **NOTE**: NOT required that the society knows your client has the immutable characteristic
 - *i.e., IF* the society knew of the client's immutable characteristic, *THEN* the society would identify the client as part of the PSG (because it exists within the society)
 - relevant to persons who assisted the U.S. in that such assistance is not visibly apparent
(Matter of M-E-V-G-, 26 I&N Dec. 227, 238 (BIA 2014))

EXAMPLES OF PSGs



PSG: FAMILY AS A SOCIAL GROUP

- Many cases have determined familial ties to be a PSG
- **3-PART TEST ANALYSIS:**
 - **PART 1:** can be easily established that familial ties are immutable traits (as they are “fundamental” traits)
 - **PART 2:** can be established that a family unit has well-defined boundaries
 - **PART 3:** *this Part is often the determinative part of the analysis*
 - **Question to be answered:** whether the society’s perception of the degree of the relationship shared by group members is one that they distinguish as a group based on that type of relationship
 - **Note:** some societies see the distinguishable family unit as more extensive (including extended family) than others

(U.S. Citizenship and Immigration Services, Nexus-Particular Social Group, RAI0 Directorate-Officer Training, https://www.uscis.gov/sites/default/files/document/foia/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf (last modified July 20, 2021).)

PSG: Former Status, Occupation, or Experience

Case Law Examples:

Examples of PSGs that have been found to be defined by immutable or fundamental characteristics:

- former employees in the AG's office in Colombia (*Sepulveda v Gonzales*, 464 F.3d 770 (7th Cir. 2006))
- children from northern Uganda who have escaped from involuntary servitude after being abducted and enslaved (*Lukwago v Ashcroft*, 329 F. 3d 157 (3d Cir. 2003))
- a former Salvadoran gang member (*Benitez-Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009))

PSG: Gender-Defined Social Groups

Case Law Examples:

Examples of PSGs that have been found to be defined by immutable or fundamental characteristics:

- Tchamba-Kusuntu tribe women who had not been subject to female genital mutilation and opposed it (*Matter of Kasinga*, 21 I & N Dec. 357 (BIA 1996))
- Iranian Christian women who do not comply with Islamic dress requirements (*Yadegar-Sargis v. INS*, 297 F.3d 596 (7th Cir. 2002))
- Guatemalan women (*Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010))

PSGs × AFGHAN ASYLEES

- **PSG arguments that will likely arise in Afghan asylee cases include:**
 - the immediate family of a certain individual
 - former Afghan military/government officials
 - Afghans seen as U.S. allies

PSGs × AFGHAN ASYLEES

Possible PSGs

- *Young Afghan boys who lack parental protection*
- *Afghan women and girls who believe in the right to education (or the rights of women and girls) (also political opinion)*
- *Former members of the Afghan military*
- *Former members of Afghan security forces*

Example Fact Pattern 1

Hussaini, a citizen of Afghanistan, was evacuated in August 2021. He has been granted a two-year parole, which expires in August 2023. He tells you that he worked for several months as an interpreter for the U.S. armed forces three years ago. He quit after he received death threats for his work. He did not suffer any further problems in Afghanistan after he quit his job, but he has heard that Taliban members are looking for anyone who worked with the U.S. military. Hussaini is Shi'a Muslim. He is also Hazara, a historically persecuted ethnic group in Afghanistan. When the Taliban first took over Afghanistan in the 1990s, he and his family fled to Pakistan where they lived for many years. He returned to Afghanistan in the early 2000s.



Example Fact Pattern 2

Laila is a citizen of Afghanistan. She left Afghanistan in August 2021 and was granted a two-year parole. Laila was evacuated because her brother, Ahmad, was previously granted a Special Immigrant Visa for his work as an interpreter. Ahmad lives in the U.S. and has had LPR status for several years. Laila's neighbor told her that the Taliban went to Ahmad's family home and threatened to kill any of family members if they ever returned to Afghanistan. Laila is college-educated and has become accustomed to wearing western clothing. Laila also tells you that she is married and suffered severe domestic violence during her marriage.



GUIDELINES FOR DEFINING & ARGUING PSGs



#1: BUILDING & DEFENDING A PSG

- Importance of case-by-case, record specific adjudication
- Get to know your client
 - Meet various times, always ask why your client thinks they were OR will be targeted, have them draft a declaration to get more information (if able)
- Ask why did the persecutor harm my client?
 - Then, find the characteristic your client cannot or should not be required to change
 - Make sure other group members share this characteristic
- Explore all theories, some can overlap (ex: Race and Hazara Minority Group)

#2: AVOID CIRCULARITY

a group cannot be defined by the harm suffered

- The harm that your client has experienced cannot be the common, immutable characteristic of the PSG you are identifying
 - Ex: a Salvadoran woman is your client and is a domestic violence victim
 - Salvadoran women who are DV victims cannot be the PSG
- Note: In general, do NOT use the violence/persecution your client experienced as part of the PSG definition
 - there are some exceptions, where the shared past experience of a harm is the reason they are targeted for future harm
 - Ex: honor killings, in which being a victim of certain violence is what puts them at risk for future persecution

#3: BALANCING THE PSG'S SIZE

- Must strike a balance between creating a group that is too broad that it fails to be 'particular' (Part 2: Particularity) *AND* a group that is too narrow that it fails to be 'socially distinct' (Part 3: Social Distinction)
 - If a PSG is too narrow, then it will not constitute a meaningful grouping within the given society
 - If a PSG is too broad, then it will be difficult to distinguish group members from other people within the given society

(U.S. Citizenship and Immigration Services, Nexus-Particular Social Group, RAI0 Directorate-Officer Training, https://www.uscis.gov/sites/default/files/document/foia/Nexus_-_Particular_Social_Group_PSG_LP_RAIO.pdf (last modified July 20, 2021).)

#4: PRECEDENT IS NOT DESTINY

- whether or not your PSG is deemed cognizable is fairly dependent on the case law within your federal circuit
 - federal circuits have deemed certain PSGS cognizable or not based on that particular precedential decision
- **...BUT a case-by-case determination by the Court is required to determine whether a PSG is cognizable or not**
 - PSG determinations are fact-based and record-dependent, so no PSGs are categorically excluded
- ***IF* a given PSG has been previously denied, *THEN* include evidence like country conditions, expert testimony, news reports, laws/policies, etc., to distinguish your case from the previous one**

(VECINA, Asylum Grounds: Particular Social Groups, Affirmative Asylum For Afghan Nationals, <https://vecina.teachable.com/courses/1607997/lectures/36753637>.)

#5: Strategies for Success Arguing PSGs

- Articulate the characteristic(s) of the PSG
- Define PSGs using the BIA's 3-Prong Test
- Avoid circular reasoning & defining the PSG by the harm
- Build the Record!
- You CAN argue more than one PSG
 - BUT be careful not to create confusion with the officer (or undermine one another)
- It's OK if there is not a case directly on point
 - look for asylum cases with consistencies or similarities (even if they are from different countries or on different grounds!)

QUESTIONS?

If you are interested in other webinars, resources, or would like further information to support immigrant communities, please visit <http://legal.welcome.us>.

THANK YOU!