

THE ASYLUM GUIDEBOOK



Understand What It Takes To Win Asylum

Ben Baumgartner, Esq.

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Asylum. It's a common word. But what does it mean? And what does it take for a person to win asylum? In my years as an immigration attorney, I have seen many people seek asylum who don't know even its most basic points. This is no surprise. But, if you are reading this and thinking about seeking asylum, it is vital you know exactly who qualifies for asylum.

This guidebook covers the most important points you need to know about asylum and what it takes to win asylum. It takes a global perspective given that the roots of asylum are based in international treaties, but is of course applicable to seeking asylum in the United States specifically as well. Part I of this book will discuss the six requirements for asylum. Although the requirements may not make sense now, so that you can start to become familiar with them, they are: 1) being outside your country of nationality or, if you are stateless, the country of your last habitual residence; 2) having a well-founded fear; 3) of persecution; 4) on account of (because of); 5) a protected ground—race, nationality, religion, political opinion, or membership in a particular social group; and 6) a lack of government protection. Part II will then talk about the things that can disqualify you from asylum. Again, there are many details that will be talked about, but the big-picture bars to asylum are: 1) crimes; 2) reconnecting with your country; and 3) a change in country conditions. Lastly, Part III explains other important issues that can affect a person's eligibility for asylum. These include: 1) who is making the decision on a case; 2) whether you come from a "safe country of origin"; 3) whether you are required to seek asylum in a different country; and 4) your credibility.

Before jumping in, a brief but important legal disclaimer. This book is intended as general legal information and not as specific legal advice. It does not express an opinion

on whether you individually qualify for asylum or not, and does not create an attorney-client relationship. Although you should understand what the requirements of asylum are after reading this book, you should still find a lawyer in the country you seek asylum in. In fact, having a lawyer represent you is one of the single most important factors for whether a person wins asylum or not.

PART I **ASYLUM QUALIFICATION**

Although you may already know this, to be clear, “asylum” is protection that a country offers to certain people from other countries. It is a form of legal status given by the country of refuge to a person who qualifies for asylum and who is not barred for any reason. The individuals who are granted asylum are called “refugees.” “Refugee” is a technical legal term defined in international treaties, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

The definition of “refugee” is a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

It is this definition that must be satisfied to win asylum. Although the definition may seem simple, each phrase has a technical, legal meaning that must be understood. As noted above, there are six requirements to qualify for asylum. No more, no less. These are: 1) being outside your country of nationality or, if stateless, your last habitual residence; 2) having a well-founded fear; 3) of persecution; 4) on account of (because of); 5) a protected ground—race, nationality, religion, political opinion, or membership in a

particular social group; and 6) a lack of government protection. If you satisfy these six requirements, you qualify for asylum as long as you are not disqualified. If you do not meet these requirements, you cannot get asylum. However, some forms of temporary protection may still be available to you. Each of the six requirements is discussed below in order.

A. Outside Country of Nationality or Last Residence

The first thing in qualifying for asylum has to do with where you are when you apply. If you are a citizen of any country (instead of being a stateless person), you must be outside the country of your nationality (the country you have citizenship in) to be eligible for asylum. If you are stateless, you must be outside the most recent country in which you regularly lived. If you are a citizen of multiple countries, you cannot be in any of those countries if you want to apply for asylum.

If you are still inside your country but need protection nonetheless, there are options other than asylum. International organizations such as UNHCR can offer help in some cases. In such situation you are not, however, eligible for asylum. If you have left your country of citizenship or, if you are stateless, the country of your last habitual residence, then you satisfy the first requirement for asylum.

B. Well-Founded Fear

Next, to qualify for asylum, you must have a “well-founded fear” of returning to your country of citizenship (or the country of last habitual residence if stateless). As will be discussed below, this fear must be for specific reasons; not all fear qualifies a person for asylum. The “well-founded fear” requirement has two parts: 1) you must *feel* fearful

of being sent back to your country of citizenship (or last habitual residence if you are stateless); and 2) that fear must be legitimate.

The first part of having a “well-founded fear” is that you must show that you *feel* fearful of returning to your country. The technical requirement is that an applicant be fearful of “persecution” in their country. (The legal meaning of “persecution” will be discussed below). If a person does not express subjective fear of going back to their country of citizenship, they would not qualify for asylum. An applicant’s credible (believable) statement that they are afraid to go back is typically enough to prove this requirement. But, to be believable, a person’s actions should match their words. Several different facts might be seen by the decision-maker as contradicting your words that you fear returning. No one single fact destroys a case, and, often, valid excuses might exist. But, some common facts that can be a problem for proving you truly feel fear include the following: waiting several months or years after experiencing threats or harm to flee your country, living in the open after being persecuted rather than in hiding, returning to your country after leaving it, having a valid passport from the government you fear being harmed by, waiting too long in your country of refuge to apply for asylum, and traveling through various countries without requesting asylum in any of them.

At least one of these facts is pretty common in an asylum case—traveling through many countries before asking for asylum. Again, there may be good reasons for this. But, when a person does this the decision-maker may have it in their head that you are not actually scared and instead are just going there to make money—if you were truly fearful, you would have sought safety in the first country you could. Given all the facts and the

applicant's words, a decision is made as to whether the applicant truthfully does fear returning to their country. This genuine fear must exist to qualify for asylum.

Second, to be a “well-founded fear,” your fear of persecution must be objectively legitimate. Or, said in another way, the fear must be real and not just in your head. If a person feels afraid to return to their country but there is not in reality a chance of persecution, they do not qualify for asylum. Of course, the future is not absolutely certain. Thus, you are *not* required to prove that there is a 100% chance you will be persecuted if you are sent back. Indeed, almost all countries allow this requirement to be satisfied even if there is less than a 50% chance you will be persecuted. And, in the United States, courts have held that even a 10% chance of persecution counts as a “well-founded fear.” But, there must be a reasonable chance you will be persecuted if you went back to your country. A “remote” or “mere” possibility of harm is not enough.

Decision-makers take into account both the facts of your case *and* reports of the situation in your country when deciding whether this objective fear requirement is met. Decision-makers have access to detailed reports on the conditions of your country and will know whether people like you are being persecuted or not. If these reports show that people like you are living safely, it will make your case pretty difficult to win.

Even if the country reports show that bad things are happening, country reports alone are usually not enough to meet the requirement of showing a real basis for your fear. More is needed. For example, an asylum applicant might belong to a minority group and point to many news stories in which people belonging to the same minority group have been killed. But, unless this is an extreme case such as genocide or ethnic cleansing, these news stories alone would usually not be enough to win asylum. An applicant must

show that there is a real risk of persecution to them in particular, as an individual. A general risk of harm is not enough.

In deciding whether a particular person has a reasonable chance of being persecuted in the future, the decision-maker looks at many factors besides the country reports. The most important factor is usually the person's own past experience. If the person experienced persecution in the past, especially if it was a regular occurrence or was severe and the country has not improved, this really helps prove this requirement. Indeed, in the United States, if a person experienced past persecution then this creates a "rebuttable presumption" that they would also be persecuted in the future. Other factors are relevant too though, and past persecution is not an absolute must. For instance, the experiences of family and friends is important (assuming they share the same essential trait as you, for example, belonging to the same religious group or political party for which you claim asylum). If they have been persecuted in the recent past this helps show that you too may face harm. On the other hand, if they have lived in your country safely it shows that you may not be in danger, unless there is a good reason why they have been safe. Other examples of factors that can also be relevant are whether you have continued to receive threats after leaving and whether you are well-known to the government. No one single factor decides the case.

The two main points discussed above are the most important thing to know about the "well-founded fear" requirement. First, you must personally feel fearful of going back to your country. Your words alone are generally enough to prove this, but if your actions do not line up with your words you may have trouble and need a good excuse. Second, the fear you have must be reasonable. This means there must be an actual chance that you

will be persecuted if you are sent back. The conditions in your country are an important part of proving this, but alone they are usually not enough. Your own experience and the experiences of those close to you are also very important.

In addition to these main points, a few other issues related to the “well-founded fear” requirement are good to be aware of. First, the decision-maker analyzes the “well-founded fear” requirement from the point of view of the time the decision is made, as opposed to the time you leave your country. If things were dangerous when you left but they have since changed for the better, the decision-maker will be looking at whether things have changed enough so that it is now safe for you to return. This issue can arise in many cases, but one to watch out for is if you are part of a minority political party but that party wins an election after you have left. If this happens your asylum claim will be very unlikely to win.

Second, if there is a part of the country you could live in safely and it is reasonable for you to live there, your claim may be denied even if part of the country is dangerous. You are said not to have a “well-founded fear” of living in your country because you could live in part of the country safely. This could be an issue, for example, if you suffered harm in your local area but you were able to or could live safely in a bigger city or different part of the country. The threat of persecution generally must be country-wide. But, living somewhere else in your country must be reasonable. What is “reasonable” depends on many factors, including whether you speak the language in the part of the country that is safe for you, whether you know anyone there, whether you could get a job there, and whether you could safely travel there.

C. PERSECUTION

A person applying for asylum must prove that he or she has a well-founded fear of “persecution” if they go back to their country. The biggest point to know here is that not every bad thing to happen to a person is “persecution.” Even being beaten and suffering injuries may not qualify as “persecution.” As a general rule, the more serious and often the bad things happen, the more likely it is to qualify as “persecution.” There is not a clear line unfortunately as to what “persecution” is. One other important thing to know at the beginning—“persecution” can be the sum of all the bad things to happen to you. So even if no single experience is enough to be “persecution” on its own, the decision-maker can add up all the things to decide if “persecution” exists.

Different countries define “persecution” in different ways. The word is not defined in the treaties. Even still, the definitions are a good place to start for knowing what “persecution” means. In European countries, persecution is defined as an act or acts that are so “serious by its [or their] nature or repetition as to constitute a severe violation of basic human rights.” In the United States, “persecution” has been defined as “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” Other countries have similar definitions of “persecution.” Almost all definitions of “persecution” focus on two big things—how *serious* the harm is and how *often* the harm happens. The more serious and the more often harm happens, the more likely it is “persecution.” And of course then, the less serious and the less often harm happens, the less likely it is “persecution.”

How decision-makers in different countries apply the definition of “persecution” can vary widely. Even different decision-makers in the same country often have very

different ideas of what the word means. But, some general rules are pretty clear. The following kinds of harm are very likely to be considered “persecution”: torture, rape, slavery, female genital cutting, forced abortion, and other such very, very serious harm. Next, physical beatings and death threats are usually enough to count as “persecution,” but not always. The more serious and the more often the beatings and death threats occur the more likely a decision-maker is to conclude that “persecution” exists. A minor beating or two on its own might not be enough to count as “persecution.” Being thrown in prison on its own can also count as persecution, but it depends on how long you were in prison. If you were only in prison a few weeks some decision-makers may feel that is not long enough to be “persecution,” whereas several months or years would likely be “persecution.” Severe mental pain, like having to watch a family member be tortured, can count towards persecution, although on its own such an event is usually not enough to constitute persecution.

It is also helpful to state what usually is *not* enough to show persecution. Things that are usually *not* enough include things like insults, having your property stolen, not being able to spread your religion, becoming poor, not being allowed to vote, being socially rejected by society, and not being allowed the freedom of speech. These are only examples, but they should show you the kinds of things that decision-makers will usually say is *not* enough, on their own, to count as “persecution.” Many of these acts are referred to as “discrimination.” But discrimination is usually only considered “persecution” if it is very serious, such that you literally cannot survive. Lastly, if you committed a crime in your country and fear the punishment you will receive, this is usually not “persecution.” Punishment for a crime can be “persecution” though if the law

violates international human rights standards. For example, if you were sentenced to prison for several years or to death just because you handed out a religious paper, this will likely be considered persecution.

There is no clear cut line for what is “persecution.” As a general rule though, the more serious and more often the harm, the more likely it is persecution. And, many different harms can be added together to count as “persecution.” If you have a “well-founded fear” of “persecution” in your country, you are on your way to qualifying for asylum. To summarize at this point from all the above, to qualify for asylum you must be outside your country, feel afraid of returning because if you go back you will suffer enough harm that you will be “persecuted,” and that fear should be based in reality, not just your head.

D. FOR REASONS OF

The next requirement a person must satisfy is to have a well-founded fear of being persecuted “for reasons of” a protected ground. To understand the “for reasons of” requirement, the “protected ground” requirement must also be introduced. The protected ground requirement says that only persecution for certain *reasons* can qualify you for asylum. These reasons for persecution are race, nationality, religion, politics, and membership in a particular social group. If you fear harm because of any other reason (such as, for example, a personal land dispute with a neighbor), or even for no reason at all (for instance, just general crime), you do not qualify for asylum. This is one of the most common misunderstandings about asylum so definitely make sure this makes sense and you think about the consequences of this requirement. It will be explained in more detail below as well.

The “for reasons of” requirement, though, says that there must be a connection between your well-founded fear of persecution and the protected ground for which you fear persecution. You must fear persecution *because* of a protected ground. It is not enough simply that you fear being hurt and that you are a member of a protected group. There must be a link between the two. For example, you could be a member of a political minority party and also fear being kidnapped in your country because kidnappings are a common occurrence. But, this does not qualify you for asylum. The feared persecution (here, a kidnapping) must be *because* of a protected ground (here, political opinion).

If the well-founded fear of persecution must be “for reasons of” a protected ground, how does an asylum applicant prove this? In cases where there has been past persecution, the persecutor’s *words* are generally the best sign of why the persecution occurred. For example, if a person’s religion was insulted while the person was being beaten, it is likely that the attack was *because of* the victim’s religion (a protected ground). The *timing* of past events is also important. If the threats or beating only occurred immediately before or after a religious service this would also indicate that the *reason* for the attack is likely religiously motivated. But, if the attacks happened at random times during a person’s week and the attacker did not say anything during the attacks, it would be more difficult to know *why* the attack happened. Another indication of motivation is whether the persecutor has attacked other similar people. For instance, if the government imprisoned not only you, but several other people belonging to the same minority political group as you do, this would indicate that politics was likely the reason for the imprisonment. Lastly, public statements by the government may help show what their reasons for persecutory acts were.

All of this may seem confusing, but it is usually not a requirement that cases are denied on. The various facts of a case usually make clear why a person is being persecuted, and as long as the reason is a protected ground, the “for reasons of” requirement is satisfied. One of the more common cases where there can be problems though is when a person is attacked by unknown people who do not say anything. Without knowing more, it would be difficult for this asylum applicant to prove that they were persecuted for any certain reason.

Another common way the “for reasons of” requirement comes up is when a persecutor has multiple reasons for persecuting an asylum applicant, some of which are protected grounds and some of which are not. This is called the “mixed motive” issue. For example, if a group of police are beating a person because he belongs to a religious minority group, this is a protected ground (religion). But, the police may also be trying to force the person they are beating to give them money because they know that person has money. Having money is not a protected ground of persecution. Thus, one of the reasons the police are beating the person is sufficient for asylum purposes (religion), while the other is not (money). The persecution must be “for reasons of” a protected ground, but what exactly does this mean in a case like this?

Even if persecutors have a “mixed motive,” this is no problem for asylum as long as a main part of the reason for the persecution is a protected ground. Different countries phrase the test differently, requiring that the protected ground is just a “significant” reason for the persecution or that it is the “primary” reason, for example. In the United States, the test is phrased as requiring that “at least one central reason” for the persecution is a protected ground. The tests are technically different, but not by much. These tests all

recognize that persecution may occur for several reasons, and as long as a protected ground is an important (or in some countries the most important) reason for the persecution there is no problem. The way in which the motives for the persecution is determined in a mixed-motive case is the same as noted above—words, timing, experiences of similar people, and country conditions, among other relevant facts. So for example, if the only thing the police say during the hypothetical attack mentioned above are about the person’s religion and they rip a religious symbol off the person and take money, this is very likely going to be enough to show that the main reason for the attack was religion.

Again, the “for reasons of” requirement is generally not an issue because it is usually obvious why a person has been or will be persecuted. More important to know is that certain reasons (such as general crime) are not protected grounds and will not qualify a person for asylum. Even still, the requirement does come up in some cases and it is important to know that the decision-maker will be checking to make sure that any feared persecution is “for reasons of” a protected ground.

E. A PROTECTED GROUND

As stated above, to qualify for asylum, the persecution you fear must be for one of a select number of reasons. This is one of the most important things to know about asylum. The valid reasons to be persecuted are because of your race, nationality, religion, political opinion, or membership in a particular social group. The reasons are separated by “or,” so any one of the reasons is enough on its own.

Before discussing the meaning of these five protected grounds, it is critical to see what is *not* on this list. First, crime is not on this list. So if you fear being hurt in your

country because there are many robberies, kidnappings, or shootings that could happen randomly to anyone, this will not qualify you for asylum. Second, you might be surprised to see that war is not on the list. The fact your country is very dangerous because of a war does *not*, by itself, mean you can get asylum. Even if there is a war in your country, you still must show your fear is connected to one of the five protected grounds. Third, fearing a life of poverty or poor economic conditions is not a reason that will qualify you for asylum. These are some of the common wrong ideas, but the list could go on and on. *Any* reason for persecution that is not one of the five protected grounds will not get you asylum.

Of the five protected grounds, the first four are pretty clear. The last one though, “membership in a particular social group,” has a fuzzy border. It will be talked about last. The first ground of persecution, “race,” simply refers to racial groups and to different ethnicities. Persecution because of “race” overlaps a lot with “nationality.” “Nationality” includes your country of citizenship and, if it applies to you, the fact of having no country of citizenship (being stateless). But “nationality” also includes ethnic and linguistic groups. Ethnic groups can include tribes, but usually not small, family-based groups such as a clan. Although, a clan may count as a “particular social group.” If you fear persecution because of the ethnic group you are part of, this is a protected ground and counts as persecution because of “race” or “nationality.” A few random examples of ethnic groups include, but are by no means limited to, the Yoruba in Nigeria, the Parsi in India, the Xhosa in South Africa, the Rohingya in Myanmar, and the various American Indian groups in the Americas. These are just examples, many, many more ethnicities could be cited. Note though, simply being part of an ethnic group, even one that is

discriminated against, does not mean you win asylum. You always must show that every element of asylum is satisfied. This includes a “well-founded fear” of “persecution.”

The next reason you can claim asylum is for persecution based on religion. “Religion” definitely includes the many religions of the world, from major faiths to small cults, but it is not limited to just that. It also includes religious sects or denominations within a religion. So a member of a small, distinct group that is part of a bigger religious group and is persecuted by that bigger religious group can seek asylum, assuming all the other requirements are met. “Religion” also includes atheism. In addition, it includes opinions that are religious in nature, for instance, refusing to wear a religious veil or covering. Although you do not need to be the most devout person to claim persecution based on religion, you do need to be part of the religious group.

In addition, a claim for asylum may be made based on political opinion. This category of course includes membership in a political party. Formal membership in the party is not required. But, that would be evidence that your political belief is likely genuine. “Political opinion” also extends beyond political parties to include opinions on the running of government or on matters the government is involved in. For example, decision-makers have found “political opinion” to exist in cases involving labor unions, student organizations, whistleblowing against government corruption, writing articles against the government, feminist activities, and opposition to forced abortions. Also, just like atheism falls under the “religion” category, a person who actively advocates neutrality in a conflict is generally said to have a “political opinion.” There are many other, similar opinions a person could have that could be deemed “political,” although these kinds of cases can sometimes be closer calls than a person who just belongs to a

political party. For instance, some decision-makers have said being “anti-gang” is a “political opinion,” but many others have said this does not count. A helpful focus if you are not involved in a political party is to ask what about the government it is you are opposing. To be political, the opinion should be connected to something your government is involved in.

One unique case of “political opinion” is the issue of refusal to serve in a military group. Different countries treat the issue differently, but most countries say that objection to military service on its own does not qualify as a “political opinion.” For objection to military service to qualify as a protected ground it must be connected to an independent political or religious belief, or in some countries, especially European ones, it must be connected to a refusal to commit a violation of international human rights (such as refusing to murder innocent civilians).

Lastly, asylum may be claimed on the basis of membership in a “particular social group.” A classic example of what qualifies as a “particular social group” is sexual orientation, for example, being gay. This final category is the least clear of all the categories. Different countries have different tests for what the category means, and even in the same country it is often applied in very different ways. Even still, some general points can be made. To be a “particular social group,” most countries, including the United States, focus on a few similar things. First, the group should either share something in common that cannot be changed, for example, eye color, or something that is so important that it should never be required to be changed. Second, the group should be recognized as a distinct group in its society, that is, people recognize who is in the group and who is not. In some countries, either of the above is enough, while other

countries such as the United States say both are required, and a few countries have additional, similar requirements. If you can think of a group that satisfies both of these two requirements though, there is likely at least a decent argument it qualifies as a “particular social group.”

Examples of particular social groups that have been recognized include the following: members of a family unit, clans, former members of the police, victims of female genital cutting, and persons with serious disabilities. These are just examples, and other similar examples could be used. In each case, the tests described above are satisfied. For example, with the particular social group of a “clan,” being a member of a family clan is something that cannot be changed, so it satisfies the first test. For the second test, it depends on the country of origin for whether or not a clan is “distinct.” In an individualistic country, a clan may not be a distinct group, but in a clan-based country a clan would be a distinct group, that is, people would know who is in a certain clan and who is out. As noted, if both tests are satisfied for a group, there is a solid argument that a “particular social group” exists. But, this category varies widely in practice and is generally less certain of a category to rely on. This is especially true with groups such as “victims of domestic violence” or “persons fleeing gang violence.” Some decision-makers have said these groups qualify as “particular social groups,” while some have not. These are close calls and the local law and decisionmaker matters a lot for this category.

Before talking about the final requirement for asylum, a few final points about the protected ground requirement are important to know. First, you usually must prove that you actually belong to the category you say you do. So if you say you belong to a religious or political group, do not be surprised if you are asked about details of the

religion or political party's beliefs. There is an exception though for when membership in the protected ground is "imputed." In this case you do not need to prove you actually belong to the protected ground for which you fear persecution. "Imputed" means that if the people persecuting you *think* you are part of a protected ground, even though you are not, that alone is enough. For example, you might not have any political opinion, but because a family member is a politician the family member's political opponents might assume that you share their political opinion and persecute you for this *imputed* political opinion. Lastly, it is important to just repeat once more that you always must show that your fear of persecution is connected to a protected ground. You may not want to return to your country for many different reasons—war, poverty, starvation, crime, a natural disaster, etc. But, the decision-maker will not care in the end about these reasons. Your fear of persecution *must* be tied to one of the five protected grounds.

F. LACK OF GOVERNMENT PROTECTION

The final requirement for asylum is that your government must fail to provide enough protection for you. If you are a citizen of a country, the government in question is the government of the country you are a citizen of. If you are stateless, the government in question is the government of the country in which you last lived on a regular basis.

All countries agree that if your government is the one persecuting you, the lack of government protection requirement is satisfied. This is obvious because if the government is harming you, clearly they are not protecting you. For example, if the government is imprisoning and torturing political opponents then the lack of government protection element is satisfied for those political opponents. A couple notes about this though. The "government" includes government officials, court officers, the military, and

police, but not just civilian members of the party that controls the government. Also, if it is a single, rogue government official that you fear persecution from, this does not qualify you for asylum if the government as a whole is responsible and would punish the single, rogue official.

Even if the government itself is not persecuting a person, but the person is instead persecuted by “non-state actors,” the lack of government protection requirement can still be satisfied as long as the government does not provide sufficient protection. The question though is what is sufficient enough protection. If the person’s country has an effective police force and court system to protect the person, asylum will very likely be denied. The two most important things decision-makers look at are: 1) what do reports from your country say about how good the police and court systems are; and 2) if you, or other people you know in the same situation, were persecuted in the past, were the police contacted and how did they respond? If the reports show that your country’s police and court system refuse to protect people like you or are entirely unable to do anything to stop attacks, this is usually enough to prove the lack of protection requirement. But the police and courts do not have to be perfect, no country can guarantee with 100% certainty that everyone will be protected, and even though some attacks do occur there may be enough government protection for the decision-maker to deny you asylum. Further proof of the lack of government protection would exist in the case of someone who reported previous persecution to the police but the police refused to do anything to help. Reporting to the police is not an absolute requirement though, if it would be futile to do so. This means that there were reasons for you to know that the police would have done nothing if you had reported the incident to them.

Different countries phrase the test differently for precisely what an applicant must show to establish a lack of sufficient government protection. In the United States, for example, the test is whether the government is “unable or unwilling” to offer protection. But, these two factors (country reports and your experience with the police) are the essential things decision-makers look at. As with other asylum requirements, it is not possible to draw a bright line and say what is enough to prove this requirement in every case. As with other requirements, the more evidence a person has for the lack of government protection, the more likely it will succeed.

G. CONCLUSION OF ASYLUM QUALIFICATION

Part I has laid out what it takes to qualify for asylum. Each requirement discussed above is a must. A person seeking asylum must prove that: 1) they are outside their country of nationality (or last country of habitual residence if stateless); 2) they have a “well-founded fear” that is both personally felt and objectively real; 3) the harm that is feared is serious enough to rise to the level of “persecution”; 4) the persecution is “for reasons of,” that is, because of; 5) a protected ground—race, nationality, religion, political opinion, or membership in a particular social group; and 6) the applicant’s country’s government must not provide adequate protection. This is what it takes to qualify for asylum. No more, no less. If you are thinking about applying for asylum, it is a good idea to think about your claim and go through each requirement like a checkbox. Think about how each requirement is satisfied or is not satisfied by your case. Each element is a must if you are going to win asylum. Do not just assume that each one is met.

As mentioned at the beginning, hiring a lawyer is important for your success. And, even with a lawyer, success can never be guaranteed. Different countries take stricter positions than others, and decision-makers within a country may read the requirements in a more narrow or loose way than others. No matter who your decision-maker is though, or where the case is brought, these six things are what you must show if you want to win asylum.

PART II **ASYLUM DISQUALIFICATION**

Part I discussed what it takes to qualify for asylum. Part II will now talk about the various things that may cause you to lose your asylum case, even if you satisfy each of the six above requirements. As a general rule, the following categories can bar you from getting asylum in the first place and, in some cases, can also cause you to lose asylum after being granted it. The three main categories of things that can disqualify you from asylum are: 1) crimes you commit; 2) re-establishing connection with your country of persecution; and 3) a positive change in the situation of your country.

A. CRIMES

Probably the most common reason people are denied asylum who otherwise would get it is criminal activity. This also includes human rights violations that are “legal” at the time of being done. Hopefully this category does not fit you at all, in which case you can ignore this section, although, the crimes discussed below can also cause you to lose asylum status if you get it. For all of the following categories, an official conviction is generally not required if there is enough evidence that you committed the crime or were involved in it. In addition, legal defenses that would be available if you

were charged with the crime are also allowed as defenses in asylum cases. For example, it would be a defense to the asylum disqualification bar if you committed the crime because of self-defense or under duress (for instance, you were told to commit the crime and were going to be killed if you did not do it).

The first category of crimes that can disqualify you from asylum are serious, non-political crimes committed outside the country of refuge, that is, outside the country you seek asylum in. Thus, this category includes crimes you commit in your original country or other countries you were in before the country you seek asylum in. There is not a clear boundary for what crimes are “serious.” The vast majority of countries agree though that it includes crimes such as murder, rape, drug trafficking, terrorism, serious theft or assault offenses, armed robbery, and other similar crimes. Crimes that are punishable by one year or more in prison (even if you were not actually sentenced to that amount of time) may or may not cause disqualification, depending on the crime and the country you seek asylum in. Minor offenses with small sentences are generally not a problem. If the crime is “political,” it does not bar you from asylum. But, even if the crime is “political,” if it is too violent it will likely still disqualify you. For instance, a member of a separatist group who attacks and kills civilians to pursue his political goal of a separate state likely is barred by this category even though it arguably is a “political” offense.

A quick note about terrorism is important here. Even a hint of involvement in terrorist activities is likely to be a bar to asylum. The United States approaches this issue the most strictly, so its law will be discussed, and if you are not barred by this law you should not have problems in any other country on the grounds of terrorism. In the United States, if you have been a member of a terrorist organization or even provided support to

one, you will be barred from asylum. The United States defines “terrorist organization” and “support” very broadly though. Support includes things like giving goods or services, even food or money. A terrorist organization includes classic terror groups, but also any group that illegally uses explosives or weapons to hurt people or damage property, or any group that has a subgroup that does these things. Plus, there is no defense for terrorism charges such as self-defense or duress like is usually available for the criminal bars. So if someone gives money to an organization, and there is a group that is a part of that organization that carries out violent attacks, the donor would be barred from asylum. This is the strictest approach to barring people from asylum, although many other countries are also very serious about barring people who have any kind of connections to terror organizations. If you are fine under this test though you almost certainly should be fine under the law of other countries.

The second category of crimes only apply to crimes committed in the country you are seeking refuge. The kind of crimes done in the country of refuge that cause problems are “particularly serious crimes” and those that create a danger to the security of the host country. Again, the borders of what kind of crimes are included is not crystal clear in the law. The crimes listed above though are generally the same kind of crimes that cause problems in the host country—murder, rape, drug trafficking (or even possession potentially), terrorism, serious theft or assault offenses, armed robbery, and other similar crimes. As noted, a crime punishable by one year or more in prison also can cause disqualification to kick in. To be on the safe side, it is of course best to stay well away from crime.

The third category of crimes that can disqualify you from asylum are war crimes or crimes against humanity. This means more than just serving in the military, even during a time of war. Your conduct must violate international standards for conduct during war time, and includes conduct like killing civilians or torturing people. In addition, if you yourself have persecuted others just as you fear persecution, this category disqualifies you.

The fourth and final category of crimes are acts that are contrary to the purposes of the United Nations. This category is almost never used, and there are almost no cases on this category. If you do not have any crimes that fall in any of the above categories you almost certainly do not need to worry about this category.

B. RECONNECTING WITH COUNTRY OF PERSECUTION

This category of disqualification bars, commonly referred to as “cessation,” deals more with people who have already been granted asylum. But, it is good to know even if you have not yet applied for asylum because reconnecting with your country can cause problems even if you have left your country but not yet applied for asylum, or have a case pending. Once you leave your country of persecution, the country you are seeking asylum in or have been granted asylum in expects that you do not reconnect with the country in which you fear persecution. In the United States, this applies until you become a citizen. Talking with family and friends and such is fine, but interacting with the government or visiting the country is to be avoided. Doing so could cause you to not be granted asylum or to lose it if you have already gotten it. There are distinct legal disqualification bars under this category, but they are all similar.

First, if you are granted asylum and go back to live in your country on a permanent basis, this is definitely a disqualification. A temporary visit back to your country is not supposed to count, but many countries, including the United States, would see even a temporary visit as a problem. You should speak with a lawyer as always, but even taking a temporary trip back to the country you fear persecution in is usually a bad idea, even to visit family for a short period of time. If you have been granted asylum status, even a temporary trip could put that status in question. In addition, even applying for, renewing, or traveling on a passport from your country of persecution could cause you to lose asylum status. Also, other actions, like starting a business in the country you left, could very likely cause problems. And, almost certainly, if you have lost citizenship in your old country, re-obtaining that lost citizenship will cause you to lose asylum status.

All of this is important to realize not just if you already have asylum, but also if you are considering seeking asylum. You should not expect that if you win asylum you will be able to come and go back to your country as you please. The whole point of asylum is to give you protection from a country you fear. Each country has their own rules, but they follow the same general principles—if you have been given legal status after getting asylum and reconnect with your country you are in danger of losing that status.

A similar case to these bars is if you left your country once, then went back to it, and then left your country again and *then* applied for asylum that second or third time you left. There is no official rule against doing this like there is for someone who has already been given asylum. But, you will very likely face a challenge in winning asylum if you left your country, returned to it, and then left again. This has to do with credibility, why

would you go back to your country if it is where you fear persecution? It doesn't make sense. Various cases could be possible though. For example, if when you went back to your country the situation all of a sudden got way worse than it had been before and it was only when you were back that you experienced persecution. In that case leaving the second time would make sense and winning asylum can be possible.

A final disqualification bar in this category that can cause you to lose asylum is gaining a totally new nationality, in addition to the country you left in fear of persecution and the country you were granted asylum in. The assumption by the country that gives you asylum is that you would be safe in that new country. A defense exists if you can show that you would also face persecution in this new country, though this would likely be difficult.

C. CHANGE IN COUNTRY CONDITIONS

Another way to be disqualified from asylum is a positive change in the conditions of the country you left. This bar technically only applies once you have already received asylum. Because the focus of this guidebook is on getting asylum it will not talk much about the changed country conditions disqualification bar. Even still, it is good to look down the road and think about the possibilities. And, a related issue to this bar *is* important to be aware of even before applying for asylum.

This important issue that is similar to the change in country conditions disqualification bar is that, if you have not yet received asylum, a positive change in country conditions negatively affects your asylum claim. For instance, as mentioned before, if you fear persecution based on membership in a minority political group and there is an election in which your party wins before you apply for asylum, it will be very

difficult to win asylum. This is related to the disqualification bar, but different from it. This kind of situation is just an application of what was noted above—an asylum claim is decided as of the time the decision is made, not as of the time you left your country. There is no legal disqualification bar for this situation, you just would not satisfy the basic requirements for asylum protection.

As for the change in country conditions disqualification bar, it only applies after a person receives asylum. As usual, different countries phrase the test a bit different but for the most part they are looking at how big of a change there is in the country you left and how long that change can be expected to last. If the change is big enough that you no longer have a reasonable fear of persecution and this change is lasting, it is possible for your asylum status to end. However, in practice, this is quite rare and not a big cause for concern. Examples can include the end of a civil war, a declaration of amnesty, or a government getting rid of a military unit that was persecuting people. An exception does exist here. If a person experienced extremely severe persecution they may have been so traumatized that even a positive change in their country does not warrant sending them back.

D. OTHER BARS

A few other, final disqualification bars exist for asylum that do not share much in common with each other. The first and most important one is known as the “one-year bar.” It applies only in the United States. This rule says that a person cannot apply for asylum more than one year after arriving in the US. There are a couple small exceptions, but it is best not to try and fit in an exception and just apply within one year if you are truly seeking asylum. The United States alone has this legal bar. As stated above though,

in all countries the timing of your application can affect whether a decision-maker believes you truly fear persecution. If you wait many years to apply for asylum or only do so after the government starts trying to deport you, a decision-maker may look at this as a sign that you do not truly fear persecution and deny your claim. Thus, how soon you apply for asylum is always relevant.

Second, if you have become a resident of a country other than your own and have been given the same rights as citizens of that country, then the country you seek refuge in can deny you asylum. This is rare. But, if you have lived for a long time in a country other than the one you are a citizen of or have been given any kind of status in that country it will be something to explore further.

Third and finally, if you are being given protection by the United Nations you are ineligible for asylum. Again, this is a rare exception. It applies, for example, to persons protected by the United Nations Relief and Works for Palestinian Refugees in the Near East.

PART III **OTHER IMPORTANT FACTORS**

As mentioned at the beginning, the purpose of this guidebook is to explain the wide variety of issues related to winning asylum. The above has discussed what the law of asylum requires. There are several issues though that can have a big impact on an asylum case that are not connected to the requirements for asylum themselves. Unlike the above qualification requirements and disqualification bars, there is not a set list of issues written down anywhere. Even still, the following is a list of some of the other biggest things that affect an asylum case.

A. The Decision-Maker

Many people's ideal of the law is one of "blind justice"—that two similar cases will be treated in a similar way. For better or worse, the law of asylum is often not applied in this way. Instead, who the individual decision-maker is in a case can have a large impact on a person's case. Grant rates and denial rates for asylum vary widely by country and by the individual decision-makers within each country—even from over 90% denial to over 90% grant within the same country. Part of the reason for this is that some decision-makers and some countries hear a lot of cases from certain countries. And asylum claims from certain countries are more likely to succeed than others, depending on the conditions in those countries. As noted, a person's fear of persecution must be "well-founded" and there must be a lack of government protection, and this is simply not the case in some countries. Even accounting for the difference in what country asylum seekers come from though, the luck of the draw of who decides your case definitely can affect your chances of winning asylum. Some of this luck is leveled out though by the fact that the vast majority of countries allow for an appeal in the event of a negative decision.

B. SAFE COUNTRY OF ORIGIN

Another factor that can affect whether you will be granted asylum or not is whether the country you seek asylum in has determined that your country of origin is a "safe country of origin." Your country of origin means the country or countries you are a citizen of, or if you are stateless, the country you last habitually resided in. This issue exists almost only for people who seek asylum in Europe, and does not apply in the United States. For people seeking asylum in Europe though it can be an important issue.

In essence, European countries have lists of countries that they consider to be “safe” and if a person comes from one of these countries they cannot get asylum. The “safe” countries are mainly Western countries, but if asylum is being sought in a European country the “safe country of origin” list should be checked.

C. MANDATED RETURN TO A THIRD COUNTRY

Another factor affecting your ability to win asylum in a certain country is whether that country will refuse to hear your claim and instead send you to a third country. A “third country” means a country other than the one you seek asylum in and the one you seek protection from. The “third country” could be one you traveled through or stopped at on the way to the country you seek asylum in, or one that has given you some type of legal status. The issue of being forced to return to a third country is not supposed to change your ability to seek asylum, only *where* you request asylum. Thus, it is less of an important issue. But, if the third country you are sent back to does not protect you, this issue can affect your ability to get asylum at all.

Importantly, if you have already been offered asylum or another form of legal status in a third country, many countries will reject your asylum claim and send you back to that country. Countries including those in the EU, the United States, and Australia are just some of the countries that do this. There are slight differences in approach, for example, some countries will only send you back if you have a permanent status in a third country, while some can send you back even if you only have a temporary status in a third country. In the United States, this is referred to as the “firm resettlement bar,” and it prevents a person from getting asylum who has been offered permanent residency in another country in which they do not fear persecution. Even with these small differences

though, if you already have some form of status or protection in a third country, it is definitely important to figure out with certainty whether the country you intend to seek asylum in will even hear your claim or just send you back. Depending on the situation, it may make the most sense to seek asylum instead in that third country.

D. CREDIBILITY

A final very important thing for whether you are granted asylum is your credibility. This just means whether the decision-maker believes you are telling the truth or not. If the decision-maker believes you, you are credible. If the decision-maker does not find you to be honest, you will have a very difficult time to prove the six requirements of asylum.

Many different factors go into a decision-maker's decision about your honesty. Here are some of the main ones. First, the decision-maker will be looking at whether you are consistent, even in small details. This just means that all the facts in the case line up with each other. If you say you were attacked in the evening at one time, but then later say it was in the morning, that's an inconsistency and would likely make the decision-maker doubt you. There needs to be consistency between the different times you tell your story, between any written statement and any oral testimony, between your testimony and any additional evidence that is submitted, and even between the different pieces of evidence that you submit. Second, if you are vague instead of detailed when asked about your story this could cause the decision-maker to not believe you. Third, how nervous you act during your interview is considered by the decision-maker. Fourth, if you traveled through many different countries without applying for asylum, a decision-maker may find that this shows you are not actually fearful of persecution. If you were truly

fearful, would you not seek asylum at your first chance? As a general rule, there is no legal requirement that you apply at the first country you can. But, without a good excuse, a decision-maker may use this against you. Fifth, the amount of time you took to apply for asylum can affect your credibility. The longer you wait to apply, and especially if you only ask for it after getting caught by authorities, the less credible a decision-maker might find you. Sixth, a decision-maker will be looking at reports from your country and if what you say does not line up with what is happening in your country the decision-maker may conclude you are not telling the truth. These are several of the biggest things that affect credibility, but at the end of the day it is up to each decision-maker to consider whether you are telling the truth or not.

In sum, then, these are some of the most important issues to watch out for in addition to the six requirements of asylum and the disqualification bars. First, who the decision-maker is has a big impact on whether you win or not. Second, if you come from a country that the country you seek asylum in says is safe, your claim will struggle. Third, you may be required to seek asylum in a different country than the one you want to, mainly if you traveled through one of the “Western” countries to another “Western” country. Fourth and finally, your credibility is vital to your claim.

PART IV **CONCLUSION**

By now, you should fully know what the six requirements to win asylum are and have a good understanding of what they mean. To review, they are: 1) being outside your country of nationality (or last country of habitual residence if stateless); 2) having a “well-founded fear,” meaning you feel fear and that your fear is based in reality; 3) your

fear of future harm is harm that counts as “persecution”; 4) the persecution is “for reasons of,” that is, connected to; 5) a protected ground—race, nationality, religion, political opinion, or membership in a particular social group; and 6) your country’s government does not provide adequate protection. Remember especially the fifth requirement, this is likely the one most commonly ignored. But, of course, they are all important and necessary requirements. Although they are interpreted slightly differently, these six requirements are the same no matter what country you apply for asylum in. Even if you could get asylum though, you can be disqualified from asylum if you commit certain crimes, reconnect with your country, if your country’s conditions have a big positive change, and if you do not apply for asylum in time. And, as just talked about, several other factors can affect whether you actually win asylum or not. Although it may not be easy, as mentioned, one of the best pieces of advice you can receive is that having a lawyer does make a big difference for whether or not you win asylum. No book can substitute completely for the advice of an attorney. In conclusion, thank you for reading *The Asylum Guidebook: Understanding What It Takes To Win Asylum*. Hopefully the book was easy to understand, informative, and useful.