

# Lesson Plan Overview

<b>Course</b>	Asylum Officer Basic Training
<b>Lesson</b>	<b><i>Credible Fear</i></b>
<b>Rev. Date</b>	April 14, 2006
<b>Lesson Description</b>	The purpose of this lesson is to explain how to determine whether an alien subject to expedited removal or an arriving stowaway has a credible fear of persecution or torture using the credible fear standard.
<b>Field Performance Objective</b>	When a case is referred to an asylum officer to make a “credible fear” determination, the asylum officer will correctly determine whether the applicant has established a credible fear of persecution or a credible fear of torture.
<b>Academy Training Performance Objective</b>	Given a written scenario, the trainee will correctly determine whether a credible fear screening interview will be conducted and properly apply the credible fear standard.
<b>Interim Performance Objectives</b>	<ol style="list-style-type: none"> <li>1. Identify who is subject to expedited removal.</li> <li>2. Identify the function of credible fear screening.</li> <li>3. Identify the standard of proof required to establish a credible fear of persecution.</li> <li>4. Identify the elements of “torture” as defined in the <i>Convention Against Torture</i> and the regulations.</li> <li>5. Identify the types of harms that constitute “torture” as defined in the <i>Convention Against Torture</i> and the regulations.</li> <li>6. Identify the standard of proof required to establish a credible fear of torture.</li> <li>7. Identify the applicability of bars to asylum and withholding of removal in the credible fear context.</li> </ol>
<b>Instructional Methods</b>	Lecture, practical exercises
<b>Student Materials/References</b>	<p>Participant Workbook; INA Sections 235(b)(1)(A)(i) and (ii), and 235(b)(1)(B)-(F); 8 C.F.R. § 208.30; <i>Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act</i>, (Aliens illegally arriving by sea), 67 Fed. Reg. 68924 (Nov. 13, 2002); <i>Notice Designating Aliens For Expedited Removal</i> (Apprehensions between ports of entry), 69 Fed. Reg. 48877 (Aug. 11, 2004).</p> <p>Credible Fear Forms: <b>Form I-860</b>: Notice and Order of Expedited Removal; <b>Form I-867-A&amp;B</b>: Record of Sworn Statement...; <b>Form I-</b></p>

**869:** Record of Negative Credible Fear Finding and Request for Review by Immigration Judge; **Form I-870:** Record of Determination/Credible Fear Worksheet; **Form M-444:** Information about Credible Fear Interview (all attached)

**Method of Evaluation**

Written test

**Background Reading**

1. Brian R. Perryman. Office of Field Operations. *Security and Privacy Provisions for Credible Fear Interviews Under Expedited Removal*, Memorandum to Regional Directors, District Directors, Assistant District Directors for Detention and Deportation, Asylum Office Directors (Washington, DC: 1 July 1997), 2 p. plus attachment. (attached)
2. Joseph E. Langlois. INS Office of International Affairs. *Role of Consultants in the Credible Fear Interview*, Memorandum to Asylum Directors, Supervisory Asylum Officers, Asylum Officers (Washington, DC: 14 November 1997), 2 p. (attached)
3. Paul Virtue. Office of Programs. *Withdrawal of Application for Admission (IN 98-05)*, Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, ODTF Glyncro, ODTF Artesia (Washington, DC: 22 December 1997), 5 p. (attached)
4. Joseph E. Langlois. INS Office of International Affairs. *Implementation of Amendments to Asylum and Withholding of Removal Regulations, Effective March 22, 1999*, (Washington, DC: 18 March 1999) 17 p. and attachments. (included in lesson, *Reasonable Fear of Persecution and Torture Determinations*)
5. Michael A. Pearson. Executive Associate Commissioner, Office of Field Operations. *Visa Waiver Permanent Program; Revised Processing Procedures*, Action Wire (Washington, DC: 31 October 2000) 5 p. (attached)
6. INS Office of International Affairs. *Procedures Manual - Credible Fear Process, Draft* (Washington, DC: April 2002) 40p. and Appendices. (not attached)
7. Joseph E. Langlois. Asylum Division, Office of International Affairs. *Streamlining the Credible Fear Process*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 8 December 2000), 4 p. (attached)
8. Joseph E. Langlois. Asylum Division, Office of International Affairs.

*Mentally Incompetent Aliens in the Credible Fear Process*,  
Memorandum to Asylum Office Directors, et al. (Washington, DC:  
20 September 2001), 2 p. (attached)

9. Office of the Assistant Commissioner, Office of Field Operations,  
US Customs and Border Protection. *Treatment of Cuban Asylum  
Seekers at Land Border Ports of Entry*, Memorandum for Directors,  
Field Operations. (Washington, DC: 10 June 2005), 6pp. (attached)

**CRITICAL TASKS****SOURCE: Asylum Officer Validation of Basic Training Final Report (Phase One), Oct. 2001**

<b>Task/ Skill #</b>	<b>Task Description</b>
001	Read and apply all relevant laws, regulations, procedures, and policy guidance.
002	Maintain a working knowledge of the history of the Asylum program and the organization of the INS.
005	Determine jurisdiction.
007	Determine date, place and manner of entry and current immigration status.
012	Identify issues of claim.
054	Determine whether applicant has established credible fear of persecution or torture and serve documents in accordance with current Service policies, procedure and guidelines.
065	Identify if any bars may apply.
SS 8	Ability to read and interpret statutes, precedent decisions and regulations.
SS 13	Ability to analyze complex issues.

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**Presentation****References****I. INTRODUCTION**

The purpose of this lesson is to explain how to determine whether an alien seeking admission to the U.S., who is subject to expedited removal or is an arriving stowaway, has a credible fear of persecution or torture using the credible fear standard defined in the Immigration and Nationality Act (INA), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and implementing regulations.

**II. BACKGROUND**

The expedited removal provisions of the INA, were added by section 302 of IIRIRA, and became effective April 1, 1997. Certain aliens seeking admission to the United States are subject to these provisions.

INA § 235(b)(1), 8 U.S.C. § 1225(b)(1); INA § 235(a)(2), 8 U.S.C. § 1225(a)(2) (stowaways).

Note: Aliens who are present in the U.S., and who have not been admitted, are treated as applicants for admission. INA § 235(a)(1).

Under INA section 235 and its implementing regulations, arriving stowaways, certain arriving aliens at ports of entry who are inadmissible under INA section 212(a)(6)(C) (because they have presented fraudulent documents or made a false claim to U.S. citizenship or other material misrepresentations to gain admission or other immigration benefits) or 212(a)(7) (because they lack proper documents to gain admission), and certain designated aliens who have not been admitted or paroled into the U.S., are immediately removable from the United States by the Department of Homeland Security, unless they indicate an intention to apply for asylum or indicate a fear of return to their home country.

Those aliens subject to expedited removal who indicate an intention to apply for asylum or indicate a fear of return to their home country are referred to asylum officers to determine whether they have a credible fear of persecution or torture. After interviewing the applicant, an asylum officer will determine whether such an alien has a credible fear of persecution. Pursuant to regulation implementing the Convention Against Torture and the Foreign Affairs Reform and Restructuring Act of 1998, if an alien does not establish a credible fear of persecution, the asylum officer will determine whether the alien has a credible fear of torture.

INA § 235(b)(1)(A); 8 C.F.R. § 208.30.

Sec. 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105-277, Div. G, October 21, 1998) and 8 C.F.R. § 208.30(e)(3).

## A. Aliens Subject to Expedited Removal

The following categories of aliens may be subject to expedited removal:

1. Arriving aliens coming or attempting to come into the United States at a port of entry or an alien seeking transit through the United States at a port of entry.
 

8 CFR. § 235.3(b)(1)(i); *see* 8 CFR § 1.1(q) for the definition of an “arriving alien”

Aliens attempting to enter the United States at a land border port of entry with Canada must first establish eligibility for an exception to the Safe Third Country Agreement, through a Threshold Screening interview, in order to receive a credible fear interview.

8 CFR § 208.30(e)(6). *See* the lesson, *Safe Third Country Threshold Screening*.
2. Aliens who are interdicted in international or United States waters and brought to the United States by any means, whether or not at a port of entry.
 

8 CFR § 1.1(q); *see also* 67 Fed. Reg. 68924 (Nov. 13, 2002).

This category does not include aliens interdicted at sea who are never brought to the United States.
3. Aliens who have been paroled under INA section 212(d)(5) on or after April 1, 1997, are subject to expedited removal upon termination of their parole.
 

This provision encompasses those aliens paroled for urgent humanitarian or significant public benefit reasons, including those paroled in between May 1, 2000 and October 29, 2000 pursuant to the Visa Waiver Pilot Program Contingency Plan.

This category does not include those who were given advance parole as described in Subsection B (6) below.
4. Aliens who have arrived in the United States by sea (either by boat or by other means) who have not been admitted or paroled, and who have not been present in the U.S. for two years prior to the inadmissibility determination.
 

67 Fed. Reg. 68924 (Nov. 13, 2002).
5. Aliens who have been apprehended within 100 air miles of any U.S. international land border, who have not been admitted or paroled, and who have not established to the satisfaction of an immigration officer (typically a Border Patrol Agent) that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter.
 

69 Fed. Reg. 48877 (Aug. 11, 2004).

## B. Aliens Seeking Admission Who are Exempt from Expedited Removal

The following categories of aliens are exempt from expedited removal:

### 1. Stowaways

Stowaways are not eligible to apply for admission to the U.S., and therefore they are not subject to the expedited removal program under INA section 235(b)(1)(A)(i). They are also not eligible for a full immigration hearing under INA section 240. However, if a stowaway expresses a fear, an asylum officer will conduct a credible fear interview and refer the case to an immigration judge for an asylum and/or Convention Against Torture hearing if the stowaway meets the credible fear standard.

INA § 235(a)(2).

### 2. Cubans citizens or nationals

INA § 235(b)(1)(F) (Cubans arriving at a POE by air); 67 Fed. Reg. 68924 (Cubans arriving by sea); 69 Fed. Reg. 48877 (Cubans apprehended within 100 air miles of the border); Office of the Assistant Commissioner, Office of Field Operations, US Customs and Border Protection. *Treatment of Cuban Asylum Seekers at Land Border Ports of Entry*, Memorandum for Directors, Field Operations. (Washington, DC: 10 June 2005), 6 pp (Cubans arriving at a land border port of entry).

### 3. Persons granted asylum status under INA Section 208

8 CFR § 235.3(b)(5)(iii).

### 4. Persons admitted to the United States as refugees under INA Section 207

8 CFR § 235.3(b)(5)(iii).

### 5. Persons admitted to the United States as lawful permanent residents

8 CFR § 235.3(b)(5)(ii).

### 6. Persons paroled into the United States prior to April 1, 1997

### 7. Persons paroled into the United States pursuant to a grant



of advance parole that the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States

8. Persons denied admission on charges other than or in addition to INA Section 212(a)(6)(C) or 212(a)(7)
9. Persons applying for admission under INA Section 217, Visa Waiver Permanent Program (VWPP) (effective October 30, 2000) and those who applied for admission under the Visa Waiver *Pilot* Program (also known as VWPP, which expired April 30, 1999)

This exemption includes nationals of non-VWPP countries who attempt entry by posing as nationals of VWPP countries.

However, individuals seeking admission under the expired Visa Waiver Pilot Program under the Contingency Plan from May 1, 2000 through October 29, 2000 were paroled into the United States and *are* subject to expedited removal.

See, *Matter of Kanagasundram*, 22 I&N Dec. 963 (BIA 1999); See also, Procedures Manual, Credible Fear Process (Draft, Nov., 2003), sec. IV.L., "Visa Waiver Permanent Program"; and Pearson, Michael A. Executive Associate Commissioner, Office of Field Operations. Visa Waiver Pilot Program (VWPP) Contingency Plan, Wire #2 (Washington DC: April 28, 2000).

10. Asylum seekers attempting to enter the United States at a land border port of entry with Canada must first establish eligibility for an exception to the Safe Third Country Agreement, through a Threshold Screening interview, in order to receive a credible fear interview.

8 CFR § 208.30(e)(6).

### C. Historical Background

1. In 1991, the Immigration and Naturalization Service developed the credible fear of persecution standard to screen for possible refugees the large number of Haitian migrants who were interdicted at sea during the mass exodus following a coup d'etat in Haiti.
2. Prior to implementation of the expedited removal provisions of IIRIRA, credible fear interviews were first conducted by INS trial attorneys and later by asylum officers, to assist the district director in making parole determinations for detained aliens.
3. In 1996, the INA was amended to allow for the expedited removal of certain inadmissible aliens, who would not be entitled to an immigration hearing or further review unless they were able to establish a credible fear of persecution. At the outset, expedited removal was mandatory for "arriving aliens," and the Attorney General was given the

The credible fear standard as it is applied to interdicted migrants outside the United States is beyond the scope of this lesson plan.

- discretion to designate applicability to certain other aliens who have not been admitted or paroled and who have not established to the satisfaction of an immigration officer continuous physical presence in the United States for the two-year period immediately following the inadmissibility determination. Initially, expedited removal was only applied to “arriving aliens.” 62 Fed. Reg. 10312, 10313 (Mar. 6, 1997).
4. The credible fear screening process was expanded to include the credible fear of torture standard with the promulgation of the Regulations Concerning the Convention Against Torture that were published in the Federal Register on February 19, 1999, and became effective March 22, 1999. 64 Fed. Reg. 8478 (Feb. 19, 1999); 8 CFR § 208.30(e)(3).
5. Designation of other groups of aliens for expedited removal
- a. In November 2002, the Department of Justice published a notice in the Federal Register, as required by regulation, to expand the application of the expedited removal provisions of the INA to aliens who arrived in the United States by sea and who have not been present in the United States for two years prior to the inadmissibility determination. 67 Fed. Reg. 68924 (Nov. 13, 2002).
- b. On August 11, 2004 the DHS further expanded the application of expedited removal to aliens apprehended within 100 air miles of the land border, and who have not established to the satisfaction of an immigration officer that they have been physically present in the U.S. continuously for the fourteen-day (14-day) period immediately prior to the apprehension. 69 Fed. Reg. 48877 (Aug. 11, 2004).
6. The expedited removal provisions of the INA require that all aliens subject to expedited removal be detained through the credible fear determination and, if found not to have a credible fear, until removal. After a positive credible fear determination, the ICE Special Agent-in-Charge (SAC) may exercise discretion to parole the alien out of detention. Therefore, the credible fear interview process also provides a mechanism for DHS to gather information that may be used by the ICE SAC to make parole determinations. INA § 235(b)(1)(B)(iii)(IV).

### III. FUNCTION OF CREDIBLE FEAR SCREENING

In applying the credible fear standard, it is critical to understand the function for which the standard was developed. According to a member of the Conference Committee that crafted the standard, "[t]he standard...is intended to be a low screening standard for admission into the usual full asylum process." Similarly, the credible fear of torture standard was designed to "ensure that no alien is removed from the United States under circumstances that would violate Article 3 [of the Convention Against Torture] without unduly disrupting the issuance and execution of removal orders consistent with Article 3."

142 Cong. Rec. S11491-02  
(statement of Sen. Hatch)

Regulations Concerning the  
Convention Against Torture;  
Interim Rule, 64 Fed. Reg.  
8479 (Feb. 19, 1999)  
(effective Mar. 22, 1999).

It may be helpful to think of the standard as a net that will capture all potential refugees and individuals who would be subject to torture if returned to their country of feared persecution or harm. Such a protective net may also capture non-refugees and individuals who may not be subject to torture. When regulations were issued to implement the credible fear screening process, the Department of Justice described the nature of the credible fear standard as a screening mechanism that sets: "a low threshold of proof of potential entitlement to asylum; many aliens who have passed the credible fear standard will not ultimately be granted asylum." The purpose of the credible fear screening is to ensure access to a full hearing for all individuals who qualify under the standard.

62 Fed. Reg. 10312 (Mar. 6,  
1997).

### IV. DEFINITION OF CREDIBLE FEAR OF PERSECUTION AND CREDIBLE FEAR OF TORTURE

#### A. Definition of Credible Fear of Persecution

According to statute, the term credible fear of persecution means that "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of his or her claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208" of the INA.

INA § 235(b)(1)(B)(v).

#### B. Definition of Credible Fear of Torture

Regulations provide that the applicant will be found to have a credible fear of torture if the applicant establishes that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture.

8 C.F.R. § 208.30(e)(3).

## V. STANDARD OF PROOF FOR CREDIBLE FEAR DETERMINATIONS

### A. Standards of Proof Generally

Recall that the party who bears the burden of proof must persuade the adjudicator of the existence of certain factual elements according to a specified “standard of proof,” or degree of certainty. The relevant standard of proof specifies how convincing or probative the applicant’s evidence must be.

*See, lesson, Eligibility Part IV: Burden of Proof, Standards of Proof, and Evidence*

A number of different standards of proof are relevant in the immigration context, and more than one standard may be applied to evaluate the evidence in different stages of a single case, or to discrete issues in a single proceeding. It may be useful to think of these standards as falling along a continuum, ranging from a very low standard requiring little probative evidence, to a higher standard requiring highly probative evidence.

### B. Credible Fear Standard of Proof

In order to establish a credible fear of persecution or torture, the applicant must show a “significant possibility” that he or she could establish eligibility for asylum, withholding of removal, or deferral of removal, in a full hearing. The “significant possibility” standard of proof required to establish a credible fear of persecution or torture, must be applied in conjunction with the standard of proof required for the ultimate determination on eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. For example, in order to establish a credible fear of torture, an applicant must show a “significant possibility” that he or she could establish eligibility for protection under the Convention Against Torture, i.e. a “significant possibility” that he or she could show a “clear probability” of future torture.

*See INA § 235 (b)(1)(B)(v); 8 C.F.R. § 208.30(e)(2) & (3).*

Neither the statute nor the immigration regulations define the “significant possibility” standard of proof, and the standard has not yet been discussed in immigration case law. The legislative history indicates that the standard “is intended to be a low screening standard for admission into the usual full asylum process.”

*See 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch).*

The showing required to meet a “significant possibility of success” is higher than the “not manifestly unfounded” screening standard favored by the UNHCR. A claim that has “no possibility of success,” or only a “minimal or mere

*See U.S. Committee on International Religious Freedom, Study on Asylum Seekers in Expedited*

possibility of success,” would not meet the “significant possibility” standard.

While a mere possibility of success is insufficient to meet the credible fear standard, the “significant possibility of success” standard does not require the applicant to demonstrate that the chances of success are more likely than not.

In a non-immigration context, the “significant possibility” standard of proof has been described to require the person bearing the burden of proof to “demonstrate a *substantial and realistic possibility* of succeeding.” While this articulation of the “significant possibility” standard was provided in a non-immigration context, the “*substantial and realistic possibility*” of success description is a helpful articulation of the “significant possibility” standard as applied in the credible fear process.

The Court of Appeals for the D.C. Circuit found that the showing required to meet a “substantial and realistic possibility of success” is lower than the “preponderance of the evidence standard.”

In sum, an applicant will be able to show a significant possibility that he or she could establish eligibility for asylum, withholding of removal, or protection under the Convention Against Torture if the evidence indicates that there is a substantial and realistic possibility of success on the merits before an immigration judge. However, the applicant need not show that she has a greater than 50 percent chance that she could establish eligibility for relief in a full hearing before the immigration court.

*Removal – Report on Credible Fear Determinations*, pg. 170 (Feb. 2005); 142 Cong. Rec. S11491-02 (Sept. 27, 1996) (statement of Sen. Hatch) (noting that the rejected Senate bill provided for a “manifestly unfounded” credible fear standard). “Manifestly unfounded” claims are (1) “clearly fraudulent” or (2) “not related to the criteria for the granting of refugee status.”

142 Cong. Rec. H11071-02 (Sept. 25, 1996) (statement of Rep. Hyde) (noting that the credible fear standard was “redrafted in the conference document to address fully concerns that the ‘more probable than not’ language in the original House version was too restrictive”).

*See Holmes v. Amerex Rent-a-Car*, 180 F.3d 294, 297 (DC Cir. 1999) (quoting *Holmes v. Amerex Rent-a-Car*, 710 A.2d 846, 852 (D.C. 1998) (emphasis added)).

*Id.* (stating that the significant possibility” standard “need not cross the threshold of demonstrating that such success was more likely than not”).

### C. General Considerations

1. Questions as to how the standard is applied should be considered in light of the nature of the standard as a screening standard to identify all persons who could qualify for asylum or protection under the Convention Against Torture.
2. When there is reasonable doubt regarding an issue, that issue should be decided in favor of the applicant. When there is reasonable doubt regarding the decision, the applicant should be determined to have a credible fear of persecution. Such doubts can be addressed in a full hearing before an immigration judge.
3. In determining whether the alien has a credible fear of persecution, the asylum officer shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge. 8 C.F.R. § 208.30(e)(4).
4. Similarly, where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue, or where the claim otherwise raises an unresolved issue of law, generally the interpretation most favorable to the applicant is used when determining whether the applicant meets the credible fear standard.

### D. Credibility

1. The officer must make a determination whether there is a significant possibility that the applicant would be found credible in a full asylum and withholding hearing before an immigration judge.
2. Credibility is discussed in greater detail in Section VI of the lesson, below.

### E. Identity

1. An applicant must establish his or her identity with a reasonable degree of certainty. Credible testimony alone can establish identity.

*See, lesson, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution, Section III.A., Definition of Nationality; Section III.B., Identifying Nationality; Section III.B.1., Passports;*

and Section III.D.,  
*Statelessness*.

2. In many cases, an applicant will not have documentary proof of identity or nationality. The officer must elicit information in order to establish that there is a significant possibility that the applicant will be able to credibly establish his or her identity in a full asylum or withholding of removal hearing. Documents such as birth certificates and passports are accepted into evidence if available.
3. After the credible fear interview, the information obtained by the asylum officer may be used by the ICE SAC to determine whether to parole a detained alien. The ICE authorities in charge of detaining the alien must be satisfied that identity is established before granting parole.

**Note:** Although asylum officers and immigration judges may determine that an asylum applicant has established identity solely on the basis of credible testimony, ICE may require documentary evidence for the purpose of granting parole.

## VI. CREDIBILITY

### A. Credibility Standard

To meet the credible fear standard, an applicant must establish that there is a significant possibility that the assertions underlying his or her claim could be found credible in a full asylum or withholding of removal hearing. This means that there is “a substantial and realistic possibility” that the applicant will be found credible in a full hearing. The applicant *does not* need to establish a “clear probability” (i.e., that it is “more likely than not,”) that his or her testimony will be found credible in a full hearing. The significant possibility standard is higher than the “not clearly fraudulent” or “not manifestly unfounded” standard favored by UNHCR.

Refer to section V., above, on the standard of proof in credible fear determinations

### B. Evaluating Credibility in a Credible Fear Interview

1. Guidelines
  - a. The screening function of the credible fear determination is important to remember when evaluating credibility.
  - b. Because the credible fear determination is a screening process, the asylum officer does not make the final determination as to whether the applicant is credible. The immigration judge makes that determination in the full hearing on the merits of the claim.

- c. As long as there is a significant possibility that the applicant could establish in a full hearing that the claim is credible, unresolved questions regarding an applicant's credibility should not be the basis of a negative credible fear determination.
- d. The asylum officer must gather sufficient information to determine whether the alien has a credible fear of persecution or torture. This includes the identifying and evaluating issues related to the applicant's credibility. The applicant's credibility should be evaluated only after all information relevant to the claim is elicited.
- e. The purpose of evaluating an applicant's credibility is solely to determine eligibility for a full asylum and withholding hearing. The asylum officer's personal opinions or moral views regarding an applicant should not affect the officer's decision.

## 2. Factors to Consider

The same factors that are considered when determining credibility in an asylum or withholding of removal adjudication are evaluated in the credible fear determination. However, the applicant in the credible fear process only needs to establish that there is a significant possibility that the assertions underlying his or her claim could be found credible in a full asylum or withholding of removal hearing.

See, lesson, *Credibility*.

- a. The asylum officer, considering the totality of the circumstances and all relevant factors, may base a credibility determination on:
  - (i) the demeanor, candor, or responsiveness of the applicant,
  - (ii) the inherent plausibility of the applicant's account,
  - (iii) the consistency between the applicant's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made),

INA § 208(b)(1)(B)(iii).

INA § 208(b)(1)(B)(iii); *See also*, lesson, *Credibility*, for a more detailed discussion of these factors as they are considered in asylum adjudications.



- (iv) the internal consistency of each such statement,
  - (v) the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and
  - (vi) any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.
- b. When considering the totality of the circumstances in determining whether there is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing, keep in mind the following factors, which may impact an applicant's ability to present his or her claim:

- (i) trauma the applicant has endured;
- (ii) passage of a significant amount of time since the described events occurred;
- (iii) certain cultural factors, and the challenges inherent in cross-cultural communication;
- (iv) detention of the applicant;
- (v) problems between the interpreter and the applicant, including problems resulting from differences in dialect or accent, ethnic or class differences, or other difference that may affect the objectivity of the interpreter or the applicant's comfort level; and/
- (vi) unfamiliarity with speakerphone technology, the use of an interpreter the applicant cannot see, or the use of an interpreter that the applicant does not know personally.

*See also, lesson, Interviewing Part V: Interviewing Survivors.*

Detention can especially affect applicants who were detained and mistreated in the past, triggering memories of past trauma.

*See, lesson, Interviewing Part VI: Working with an Interpreter.*

Asylum officers must ensure that persons with potential biases against applicants on the grounds of race, religion, nationality, membership in a particular social group, or political opinion are not used as interpreters. *See International Religious Freedom Act of 1998, 22 U.S.C. § 6473(a) (1999); lesson, IRFA and Religious Persecution Claims.*

The considerations listed above, and any other factors relevant to the applicant's ability to recall and relate events, must be considered when evaluating whether

there is a significant possibility the applicant's testimony could be found credible in a full asylum or withholding hearing.

### C. Making a Credibility Determination

1. In making a credibility determination, the officer must evaluate whether there is a significant possibility that the applicant's testimony could be found credible in a full hearing before an immigration judge. The officer must consider the totality of the circumstances and all relevant factors when evaluating credibility.
  2. The testimony should be evaluated in terms of its internal consistency, its consistency with prior statements, and its consistency with known country conditions. A positive credibility finding means that the officer has determined that there is a significant possibility the testimony could be found credible in a full hearing. A negative credibility finding means that the officer has determined that there is not a significant possibility that the applicant's testimony could be found credible in a full hearing before an immigration judge.
  3. An applicant who presents inconsistent information must be given an opportunity to address and explain any inconsistencies during the credible fear interview. The asylum officer must follow up on all inconsistencies, by notifying the applicant of each portion of the testimony that raises credibility concerns, and the reasons the applicant's testimony is in question. The applicant must also be given an opportunity to explain any claims the officer deems implausible or lacking in detail.
    - a. Minor inconsistencies and inconsistencies that are not material to the claim will not be sufficient to find an applicant not credible in the credible fear context. These inconsistencies will be explored by the immigration judge in the full asylum and withholding hearing.
    - b. Material or significant inconsistencies that have not been adequately resolved during the credible fear interview may be sufficient to support a negative credible fear determination.
  4. Inconsistencies between the applicant's initial statement to the Customs and Border Protection (CBP) officer and his or
- See 8 C.F.R. § 235.3(b)(4)*  
(stating that if an applicant requests asylum or expresses

her testimony before the asylum officer must be probed. Such inconsistencies may form the basis of a negative credibility determination if, taking into account an explanation offered by the applicant, there is not a significant possibility that the applicant could establish in a full hearing that the claim is credible.

Note, however, that the sworn statement completed by CBP (Form I-867B) is not intended to record detailed information about any fear of persecution or torture. The interview statement is intended to record whether or not the individual has a fear, not the nature or details surrounding that fear.

A number of federal courts have cautioned adjudicators to keep in mind the circumstances under which an alien's statement to an inspector is taken when considering whether an applicant's later testimony is consistent with the earlier statement. Factors to keep in mind include: 1) whether the questions posed in the airport interview were designed to elicit the details of an asylum claim, and whether the immigration officer asked relevant follow-up questions; 2) whether the alien was reluctant or afraid to reveal information during the first meeting with U.S. officials because of past abuse; and 3) whether the airport interview was conducted in a language other than the applicant's native language.

a fear of return, the "examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern," and should then refer the alien for a credible fear interview).

*See Balasubramaniam v. INS*, 143 F.3d 157 (3d Cir. 1998); *cf. Ramsameachire v. Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004) (discussing in detail the limitations inherent in the initial interview process, and holding that the BIA was entitled to rely on fundamental inconsistencies between the applicant's airport interview statements and his hearing testimony where the applicant was provided with an interpreter, and given ample opportunity to explain his fear of persecution in a careful and non-coercive interview).

5. All reasonable explanations must be considered in reaching a determination on the applicant's credibility. The asylum officer need not credit an unreasonable explanation.

If, after providing the applicant with an opportunity to explain or resolve any inconsistencies, the officer finds that there is a significant possibility the applicant could establish in a full hearing that there is a reasonable explanation for the inconsistencies, a positive credibility determination will generally be appropriate.

If, however, the applicant fails to provide an explanation for a substantial or material inconsistency, or the officer finds that there is not a significant possibility that the applicant could establish a reasonable explanation for the inconsistencies in a full hearing, a negative credible fear determination will generally be appropriate.

## D. Documenting a Credibility Determination

1. The asylum officer must clearly record in the interview notes the questions used to inform the applicant of any relevant credibility issues, and the applicant's responses to those questions.
2. The officer must specify in the written case analysis the basis for the negative credibility finding. In the negative credibility context, the officer would note any portions of the testimony found credible, as well as the specific inconsistencies, lack of detail or other factors, along with the applicant's failure to provide a reasonable explanation.
3. If information that impugns the applicant's testimony becomes available after the interview but prior to the credible fear determination, a re-interview must be scheduled to confront the applicant with the derogatory information and to provide the applicant with an opportunity to address the adverse information.
4. Note-taking procedures for credible fear interviews, as described in the Credible Fear Procedures Manual, must be followed.

*See, Procedures Manual, Credible Fear Process (Draft, Nov., 2003), sec. III.E.8., "Note-Taking by the APSO During a Credible Fear Interview."*

## VII. ESTABLISHING A CREDIBLE FEAR OF PERSECUTION

### A. Persecution on Account of a Protected Ground

1. Persecution on account of a protected ground is serious harm or suffering inflicted upon an individual on account of race, religion, nationality, membership in a particular social group, or political opinion. The agent of persecution may be either the government or a non-governmental entity that the government is unwilling or unable to control.
2. A determination whether the harm suffered or feared is persecution on account of a protected ground has two components:
  - a. The harm or suffering must be serious, identifiable, and assessed on individual circumstances.
  - b. The harm must be on account of race, religion, nationality, membership in a particular social group, or political opinion.

*See, lesson, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution, Section VI., Persecution, for a more complete discussion of persecution.*

3. For an applicant to establish a credible fear, there must be a significant possibility that the applicant could establish in a full asylum hearing that the harm the applicant suffered or fears constitutes persecution on account of a protected ground.
  - a. There must be a significant possibility that the applicant could establish in a full hearing before an immigration judge that the past or feared harm is serious enough to constitute persecution.
  - b. There must be a significant possibility that the applicant could establish in a full hearing before an immigration judge that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one of the central reasons for persecuting the applicant.
4. The following are examples of past or feared harm serious enough in some instances to be deemed persecution:
  - a. Certain violations of an individual's core or fundamental human rights, such as:
    - (i) genocide;
    - (ii) slavery;
    - (iii) torture and other cruel, inhuman, or degrading treatment;
    - (iv) prolonged detention without notice of an opportunity to contest the grounds for detention; and
    - (v) rape and other severe sexual violence, such as forced female circumcision and other forced genital mutilation.
  - b. Cumulative acts of discrimination or harassment, if the adverse practices or treatment accumulates or increases in severity to the extent that it leads to consequences of a substantially prejudicial nature, such as;
    - (i) serious restrictions on right to earn a livelihood;
    - (ii) serious restrictions on the access to normally available educational facilities;

*See, lesson, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution, VI. Persecution*

- (iii) arbitrary interference with privacy;
  - (iv) relegation to substandard dwellings;
  - (v) enforced social or civil inactivity;
  - (vi) passport denial;
  - (vii) constant surveillance;
  - (viii) pressure to become an informer;
  - (ix) confiscation of property; and
  - (x) arrests and detentions based on illegitimate government action or marked by mistreatment or excessive duration.
- c. Other forms of harm, including physical abuse, may amount to persecution:
- (i) Substantial economic harm
  - (ii) Serious psychological harm
  - (iii) Forced abortion or sterilization
  - (iv) Serious harm to family members

## **B. Past Harm**

1. In general, a finding that there is a significant possibility that harm experienced in the past could be considered persecution on account of a protected ground in a full asylum hearing is sufficient to satisfy the credible fear standard. This is because the applicant in such a case has shown a significant possibility of establishing in a full hearing that he or she is a refugee and a full asylum hearing provides the better mechanism to evaluate whether or not the applicant merits a favorable exercise of discretion to grant asylum.
2. However, if there is evidence so substantial that there is no significant possibility of future persecution or other serious harm or that there are no reasons to grant asylum based on the severity of the past persecution, a negative credible fear determination may be appropriate.

3. Factors such as the applicant's risk of future harm, changed conditions in the applicant's country or in the applicant's circumstances, and the applicant's ability to safely relocate within the country are generally not relevant to the credible fear determination, if the applicant has shown a significant possibility of establishing in a full hearing that he or she is a refugee based on past persecution on account of a protected ground. However, if the evidence that an applicant could reasonably relocate within the country is so substantial that there is no significant possibility that the applicant could establish eligibility for asylum in a full hearing, a negative credible fear determination may be appropriate.

### C. Future Harm

1. When an applicant does not claim to have suffered any past harm, the asylum officer must determine whether there is a significant possibility the applicant could establish a well-founded fear of persecution in a full asylum hearing.
2. The applicant will meet the credible fear standard based on a fear of future harm if there is a significant possibility that he or she could establish in a full hearing that there is reasonable possibility that he or she will be persecuted on account of a protected characteristic. Asylum officers should elicit and consider information relating to the four prongs of the modified *Mogharrabi* test for well-foundedness: possession, awareness, capability, and inclination.
3. The applicant does not need to show that he or she may be singled out individually for persecution. A credible fear of persecution is established if there is a significant possibility that the applicant could establish in a full asylum hearing that there is a pattern or practice of persecution of individuals similarly situated to the applicant.

*See, lesson, Asylum Eligibility Part II: Well-Founded Fear.*

*See Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987), as modified by Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996).*

### D. Nexus to One of the Five Grounds Listed in the Refugee Definition

1. The asylum officer must determine whether there is a significant possibility that the applicant can establish in a full asylum hearing that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

*See, lesson, Asylum Eligibility Part III: Nexus and the Five Protected Characteristics.*

2. Both during the interview and when evaluating the case, the officer must explore all possible connections to a protected ground. For cases where no nexus to a protected ground is immediately apparent, the asylum officer should ask questions related to all five grounds to ensure that no nexus issues are missed.
3. The nexus to a protected ground must be identifiable and articulable, and there must be a significant possibility the applicant could establish in a full hearing that it is at least one central reason for persecuting the applicant.
4. Any credible evidence that at least one central reason the persecutor was or is motivated to harm the applicant is on account of a protected ground is sufficient to find a nexus to a protected ground for purposes of the credible fear of persecution screening.
5. The evidence of motive can be either direct or circumstantial, and either from the applicant's testimony or other evidence provided by the applicant or from country conditions information.
6. If there is a significant possibility that the applicant will be able to establish in a full hearing that at least one central reason for the harm relates to his or her possession of a protected characteristic, the officer should find a nexus to a protected ground for the purposes of the credible fear of persecution screening.
7. Officers should be aware of novel issues that have not been completely developed by case law, such as issues surrounding whether harm is on account of membership in a particular social group or whether a political opinion is imputed to the applicant. *See, e.g., lesson, Female Asylum Applicants and Gender-Related Claims, Section VII., Legal Analysis-Nexus.*
8. If the applicant demonstrates a significant possibility that he or she could establish past persecution or a well-founded fear of future persecution, and that at least one central reason for the harm was or will be on account of a protected ground, then the applicant has met the credible fear of persecution standard.



## E. Dual Citizenship

A dual citizen must demonstrate a credible fear of persecution or torture from each country in which he or she is a citizen to be eligible for referral to immigration court for a full asylum or withholding of removal hearing.

See, lesson, *Eligibility Part I: Definition of a Refugee*, for more detailed information about determining an applicant's nationality, dual nationality, and statelessness.

## F. Statelessness/Last Habitual Residence

The asylum officer does not need to make a determination as to whether an applicant is stateless or what the applicant's country of last habitual residence is. The asylum officer should determine whether the applicant has a credible fear of persecution in any country to which the applicant might be returned.

# VIII. ESTABLISHING A CREDIBLE FEAR OF TORTURE

As explained above, a credible fear of torture is defined as a *significant possibility* that the applicant could establish eligibility for withholding of removal or deferral of removal under the *Convention Against Torture* in a full hearing. An individual may be eligible for withholding of removal or deferral of removal to a country if it is more likely than not that the applicant would be tortured in that country. Because in the withholding or deferral of removal hearing the applicant will have to establish that it is more likely than not that he or she will be tortured in the country of removal, a significant possibility of establishing eligibility for withholding is necessarily a greater burden than establishing a significant possibility of eligibility for asylum. In other words, to establish a credible fear of torture, the applicant must show there is a significant possibility that he or she could establish in a full hearing that it is more likely than not he or she would be tortured in that country.

See, lesson, *Reasonable Fear of Persecution and Torture Determinations* for a more detailed discussion of the legal elements of the definition of torture; 64 Fed. Reg. 8478, 8484

## A. Definition of Torture

The Convention Against Torture defines "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not

Article 1, *Convention Against Torture*

See also 8 CFR § 208.18(a); lesson, *Reasonable Fear of Persecution and Torture Determinations*

include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

## B. General Considerations

Although the Convention definition of torture requires that several elements be met before an act may constitute torture, many of those elements are not relevant for the credible fear determination. This is because the purpose of the credible fear determination is to cast a wide net to identify all those who *might* require protection under the Convention, and many elements of the Convention definition of torture require complex legal and factual analyses that may be more appropriately considered in a full hearing before an immigration judge.

The applicant satisfies the credible fear of torture standard where there is a significant possibility that he or she could establish in a full withholding of removal hearing that:

1. the applicant's claim would be found credible;
2. the applicant would be intentionally subjected to serious physical or mental harm in a country to which the applicant may be removed; and
3. that the person(s) the applicant fears is a government official, someone acting in an official capacity or someone who would act at the instigation of or with the consent or acquiescence of a government official or someone acting in an official capacity.

*See, section VI., Credibility, above, regarding significant possibility of establishing credibility.*

For purposes of the credible fear of torture determination, the asylum officer does not need to take into account other elements of the torture definition, such as whether the individual would be in the offender's custody or control, or whether the feared harm would arise from lawful sanctions. These additional questions will be explored by the immigration judge during the full hearing.

## C. Intent

In evaluating whether an individual has established a credible fear of torture, the asylum officer must determine whether there is a significant possibility that the applicant could establish in a full hearing that he or she would be intentionally harmed. For purposes of the credible fear determination, this does not

necessarily mean that the feared offender intends to inflict serious harm on the applicant, only that the offender intends to take some action that would result in serious harm to the applicant.

**Example:** Applicant credibly testifies that, because he left his country without authorization, he will be forced by his government to undergo prolonged detention with common criminals in notoriously squalid conditions without access to common medications he requires for his heart condition. Although the intention of the government is simply to detain the applicant for violating departure laws, the government's intentional act could result in serious harm – subjecting the applicant to prolonged detention under conditions that could result in serious harm. Therefore, a positive credible fear of torture determination may be appropriate in this case

**Example:** Applicant credibly testifies that she will be subjected to serious harm because of famine in her country, or because a medical procedure she requires is unavailable in her country. Neither scenario would meet the credible fear of torture standard, because the applicant does not fear *intentional* infliction of harm. She has not indicated an action the government intends to inflict on her that could result in serious harm.

**Important Note:** This standard regarding intent is different from the standard that will be applied in eligibility determinations for withholding of removal under the Convention Against Torture. To be eligible for protection under the Convention Against Torture, it would be necessary to show that the offender specifically intends to inflict severe pain or suffering upon the victim. In the screening process, however, the lower standard will be applied so that the screening may serve as a broad net to ensure that all individuals who have a significant possibility of establishing eligibility are permitted to present their claims before the immigration judge.

**Important Note:** There is no requirement that the feared torture be on account of a protected characteristic in the refugee definition.

#### D. Serious Harm

The harm the applicant fears may be physical or mental, but it must be serious enough that there is a significant possibility that the applicant could establish in a full hearing that the feared harm amounts to torture. This does not mean that the harm as

articulated in the credible fear screening must be as severe as that required to meet the Convention definition of torture (“severe pain or suffering”), but it must be more serious than certain types of harm that may be sufficient to meet the credible fear of persecution standard. For example, fear of discrimination or harassment would not be sufficient to meet the credible fear of torture standard.

**Example:** Applicant fears he will be intentionally deprived of the right to education because he left his home country. The feared harm would not be serious enough to meet the credible fear of torture standard.

**Example:** Applicant fears he will be jailed because he broke the law and will be beaten because guards routinely beat inmates. The feared harm would be serious enough to meet the credible fear of torture standard.

**Important Note:** As discussed above, the purpose of the credible fear screening is to cast a broad net to ensure that all individuals who have a significant possibility of establishing eligibility for protection under the Convention Against Torture are permitted to present their claims before an immigration judge. Thus, individuals who later are found not to be eligible for protection under the Convention Against Torture may, nevertheless, meet the credible fear of torture standard.

#### **E. Identity of the Feared Person or Persons**

There must be a significant possibility that the applicant can establish that the harm he or she fears would be inflicted by a person who is a government official, or a person acting in an official capacity, or who would act at the instigation of or with the consent or acquiescence of a public official on either a national or local level. This may include persons who have affiliations, either formal or informal, with the government or government officials on either the national or local level.

#### **F. Past Harm**

Although protection under the Convention Against Torture is based solely on an applicant's fear of future torture, credible evidence of past torture is strong evidence in support of a claim for protection based on fear of future torture. For that reason, an applicant who establishes that he or she suffered past torture will establish a credible fear of torture, unless changes in circumstances are so substantial that the applicant has no significant possibility of future torture as a result of the change.

## G. Internal Relocation

For purposes of the credible fear of torture determination, the applicant does not need to show that there is a significant possibility that the applicant will be able to establish in a full hearing that the threat of serious harm exists throughout the country to which the applicant may be returned. Given that the applicant must establish that the harm he or she fears would be inflicted by a government official or a person acting with the consent or acquiescence of a public official in order to satisfy the credible fear of torture standard, an examination into an internal relocation alternative is not necessary at the credible fear screening stage.

## IX. APPLICABILITY OF BARS TO ASYLUM AND WITHHOLDING OF REMOVAL

### A. No Bars Apply

Pursuant to regulations, evidence that the applicant is, or may be, subject to a bar to asylum or withholding of removal does not have an impact on a credible fear finding.

8 C.F.R. § 208.30(e)(5).

*See also*, lesson, *Mandatory Bars to Asylum and Discretion*, for a discussion of bars to asylum.

### B. Asylum Officer Must Elicit Testimony

Even though the bars to asylum do not apply to the credible fear determination, the interviewing officer must elicit and make note of all information relevant to whether or not a bar to asylum or withholding applies. The immigration judge is responsible for finally adjudicating whether or not the applicant is barred from asylum or withholding of removal.

Procedures Manual, Credible Fear Process (Draft, Nov., 2003), sec. IV.G., "Mandatory Bars." *See also* 8 C.F.R. § 208.30(d).

There are no bars to a grant of deferral of removal to a country where the applicant would be tortured.

8 C.F.R. § 208.17.

Information should be elicited about whether the applicant:

1. participated in the persecution of others;
2. has been convicted by a final judgment of a particularly serious crime (including aggravated felony), and therefore constitutes a danger to the community of the US;
3. is a danger to the security of the US;
4. is subject to the inadmissibility or deportability grounds

relating to terrorist activity as identified in INA section 208(b)(2)(v);

5. has committed a serious non political crime;
6. is a dual or multiple national who can avail himself or herself of the protection of a third state; and,
7. was firmly resettled in another country prior to arriving in the United States.

### C. "Flagging" Potential Bars

The officer must keep in mind that the applicability of these bars requires further evaluation that will take place in the full hearing before an immigration judge if the applicant otherwise has a credible fear of persecution or torture. In such cases, the officer should consult with the supervisory asylum officer in charge and follow procedures on "flagging" such information for the hearing and prepare the appropriate paperwork for a positive credible fear finding.

Procedures Manual, Credible Fear Process (Draft, Nov., 2003), sec. IV.G., "Mandatory Bars."

## X. ROLE OF COUNTRY CONDITIONS INFORMATION

Pursuant to the definition of the credible fear standard, the officer must take account of "such other facts as are known to the officer." Such "other facts" include relevant country conditions information. Similarly, country conditions information should be considered when evaluating a credible fear of torture. The Convention Against Torture and implementing regulations require consideration of "evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable, and other relevant information regarding conditions in the country of removal."

INA § 235(b)(1)(B)(v); 8 CFR § 208.30(e)(2); *see also*, lesson, *Country Conditions Research and the Resource Information Center (RIC)*.

*See also*, 8 C.F.R. §§ 208.1(b) (training of asylum officers); 208.11 (Department of State comments); 208.12(a) (reliance on information compiled by other sources); 208.16(c)(3) (assessing eligibility for withholding of removal under CAT).

*See*, Procedures Manual, Credible Fear Process (Draft, Nov., 2003), sec. III.G., "Researching a Case."

**A. Proper Use of Country Conditions Information in the Credible Fear of Persecution and Torture Processes**

1. Country conditions information may assist the asylum officer in formulating questions that fully develop the applicant's claim.
  - a. An officer who has a good understanding of country conditions can identify the most relevant parts of the testimony more clearly and ask specific questions to develop the relevant issues further.
  - b. A good understanding of country conditions information is especially important when eliciting information from a confused or inarticulate applicant.
2. Country conditions information may add relevant information that can assist the asylum officer's evaluation of the claim and the applicant's eligibility.
  - a. Country conditions information may indicate groups of persons who could be subjected to harm or groups of persons who appear to have no risk of harm.
  - b. Country conditions information may also assist in the identification of applicants who may be persecutors or security risks.
3. Country conditions information may assist the asylum officer in developing a sufficient record to evaluate the applicant's credibility appropriately.
  - a. Knowledge of country conditions information helps the asylum officer to ask appropriate, probing questions to evaluate credibility.
  - b. Knowledge of country conditions can help an officer uncover false claims more effectively and fairly.
  - c. Knowledge and proper use of country conditions information prevents credibility findings erroneously based on the officer's personal experiences, biases, or expectations of how people behave.

## **B. Changed Conditions**

### **1. Credible fear of persecution**

If the applicant has shown a significant possibility that he or she experienced past harm that after a full hearing could be determined to be persecution on account of a protected characteristic, generally the applicant will satisfy the credible fear standard. In most cases, changes in the conditions in the applicant's country or the applicant's circumstances need not be considered in making the credible fear of persecution determination. However, evidence of changed country conditions so substantial that the applicant has no significant possibility of establishing eligibility for asylum may be considered, taking into the account any evidence that the applicant may establish eligibility for asylum based on past persecution alone.

### **2. Credible fear of torture**

Because the credible fear of torture determination looks at prospective harm, changes in conditions in the applicant's country or circumstances could affect the credible fear of torture determination. If an applicant has suffered serious harm inflicted by a government actor, the applicant usually will satisfy the credible fear of torture standard. Changes in the conditions in the applicant's country or circumstances can lead to a negative credible fear of torture decision where the changes, as they affect the applicant, are so substantial that the applicant has no significant possibility of establishing that it is more likely than not that he or she will be tortured in the future.

## **XI. TREATMENT OF DEPENDENTS**

8 C.F.R. § 208.30(b)

A spouse or child of an alien may be included in the alien's credible fear evaluation and determination, if the spouse or child:

- arrived in the United States concurrently with the principal alien; and
- desires to be included in the principal alien's determination.

Any alien also has the right to have his/her credible fear evaluation and determination made separately, and it is important for asylum officers to question each member of the family to be sure that, if any



member of the family has a credible fear, his or her right to apply for asylum or withholding of removal is preserved. When questioning family members, special attention should be paid to the privacy of each family member and to the possibility that victims of domestic abuse, rape and other forms of persecution might not be comfortable speaking in front of other family members.

The regulatory provision that allows a dependent to be included in a principal's determination does not change the statutory rule that any alien subject to expedited removal who has a credible fear has the right to be referred to an immigration judge.

*See, Procedures Manual, Credible Fear Process (Draft, Nov., 2003), for more information.*

## **XII. SUMMARY**

### **A. Function of Credible Fear Screening**

The purpose of the credible fear screening process is to identify all persons subject to expedited removal who might ultimately be eligible for asylum, withholding of removal, or protection under the Convention Against Torture.

### **B. Credibility**

Considerations:

#### **1. Standard**

The applicant must establish that there is a significant possibility, considering the totality of the circumstances and all relevant factors, that the applicant's claim could be found credible in a full hearing.

#### **2. Factors to consider**

The same factors that are considered when determining credibility in an asylum or withholding of removal interview are evaluated in the credible fear interview, but the applicant only needs to establish that there is a significant possibility that the assertions underlying his or her claim could be found credible in a full asylum or withholding of removal hearing.

#### **3. Scope of evidence to be considered**

The totality of the circumstances and all relevant factors must be considered in making a credibility determination in the credible fear process.

4. The applicant must be given an opportunity to explain any inconsistency, implausibility or lack of detail before a credibility determination is made.
5. The asylum officer's personal opinions or moral views may not be considered when making a credibility determination.

**C. Definition of Credible Fear of Persecution**

“Credible fear of persecution” means that there is a significant possibility, taking into account the credibility of the alien’s statements and such other facts as are known to the officer, that the alien could establish eligibility for asylum on account of a protected ground in a full asylum hearing.

**D. Definition of Credible Fear of Torture**

“Credible fear of torture” means that there is a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention Against Torture in a full hearing before an immigration judge.

**E. Establishing a Credible Fear of Persecution**

1. The “significant possibility” standard has been described in the non-immigration context as requiring the person bearing the burden of proof to “demonstrate a *substantial and realistic possibility* of succeeding.” This standard of proof is lower than the “clear probability” standard which requires a determination that success is “more likely than not.”
2. A “significant possibility of establishing eligibility for asylum” is higher than the “not manifestly unfounded” standard.
3. For claims based on past persecution, the standard is met by finding that there is a significant possibility that the applicant could establish in a full hearing that the past harm endured could be found to be persecution on account of a protected ground. The officer need not determine if the harm described constitutes persecution; the officer need only determine if there is a significant possibility that the applicant could establish in a full asylum hearing that the harm would be considered persecution. If there is a significant possibility that the past harm endured could be found to be persecution on account of a protected ground,