



Defining Nexus

**Safe Passage Project
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Nexus

A Refugee is....

Any person outside their country of nationality, or if none the country of last habitual residence, who is unable or unwilling to return ... because of persecution or a well-founded fear of persecution **on account of race, religion, nationality, membership in a particular social group, or political opinion**

INA §101(a)(42)

RULES OF THUMB

Generalized violence is not a basis for political asylum (In The Matter of Chicas, 19 I&N Dec. 114 (BIA 1984))

Criminal activity is not a basis for political asylum (Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014))

General recruitment not a basis for political asylum (INS v. Elias-Zacarias, 502 U.S. 478 (1992))

The Good News: Recognized Particular Social Groups

- PSG's based on **SEXUALITY** (*Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990))
- PSG's based on **KINSHIP TIES** (*Vumi v. Gonzalez*, 502 F.3d 150 (2d Cir. 2007); *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011))
- PSG's comprised of **WITNESSES** against criminal organizations or individuals (*Gashi v. Holder*, 702 F.3d 130 (2nd Cir. 12-18-2012))
- **VICTIMS OF DOMESTIC VIOLENCE**, Matter of A-R-C-G-, et al., 26 I&N Dec. 388 (BIA 2014), "Married Guatemalan women in relationships they are unable to leave"



Defining a cognizable Particular Social Group

Is your PSG based on a common immutable characteristic?

Does your Particular Social Group have “well defined boundaries”?

Is your PSG sufficiently “distinct”? *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014)

Defining a cognizable Particular Social Group (cont'd)

- Is your PSG impermissibly “circular”?
(defined by the persecution feared)
- Is this PSG defined by characteristics that the persecutor is trying to punish or overcome, not just take advantage of? Persecution is harm inflicted upon someone who differs “in a way regarded as offensive.” (*Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996))

Witnesses as a PSG: An evolving concept



U.S. Marshals Service depiction of witness protection

Image Credit: [United States Marshals Service](#)

1. What level of cooperation with law enforcement is required?
2. What about imputed PSG?
3. Does cooperation need to be public?
What about protected witnesses? (See *Matter of C-A-*, 23 I&N 951 (BIA 2006))

Political Opinion: Beyond Electoral Politics

The power of resistance: Did your client, through words or actions, telegraph an opinion that is antithetical to the agenda of the Transnational Criminal Organization? *Delgado v. Mukasey*, 508 F.3d 702 (2nd Cir. 2007)

Examining Political Context: Does the TCO have an overtly or implicitly ideological or political agenda? Does the TCO compete with or exercise *de facto* governing authority in your client's community? *Castro v. Holder*, 597 F.3d 93 (2nd Cir. 2010)

Manifesting an opinion

- Participation in a community, religious, or political organization
- Statements made publicly or to the persecutor
- Cooperation with Law Enforcement to quell TCO activities
- Refusal to cooperate with demands (“Renta”, “Impuestos de Guerra”, Recruitment)
- Relationship to family members who have manifested such opinions
- Journalism- either through opinions expressed in content or through subjects covered

Recruitment v. Punishment for Resistance

- Know *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (see *Lukwago v. Ashcroft*, 329 F.3d 157 (3rd Cir. 2003) for excellent discussion of limits of Elias-Zacarias)
- The Recruitment is NOT the persecution
- Look to statements made by the TCO members, country conditions and escalation of punishment over time that suggest other motives.
- Does the punishment fit the crime? *Long v. Holder*, 620 F.3d 162 (2nd Cir. 2010), *Vumi v. Gonzales*, 502 F.3d 150 (2d Cir. 2007), *Islami v. Gonzales*, 412 F.3d 391 (2d Cir. 2005)
- Apply these principals to other forms of resistance as well