




# BASICS OF U.S. ASYLUM LAW

Sarah Brenes, Director, Refugee and Immigrant Program

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Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 14 of the Universal Declaration of Human Rights

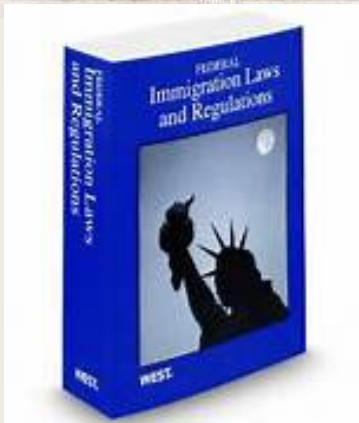
# Sources of U.S. Asylum Law



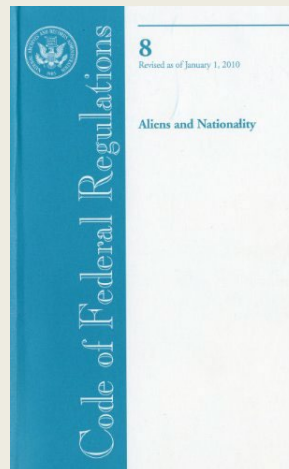
1967 Refugee Protocol



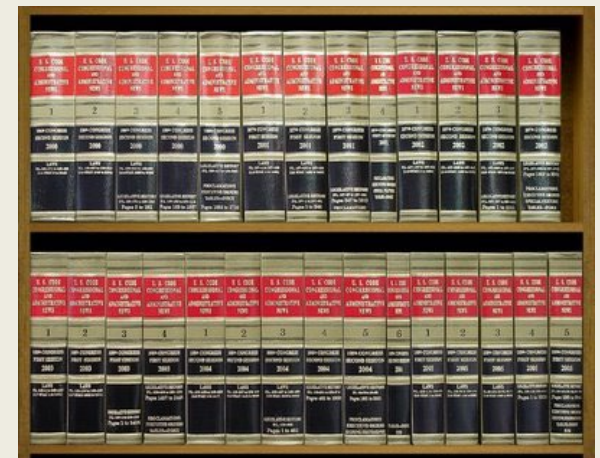
Refugee Act of 1980



INA § 208 (USC §1158)

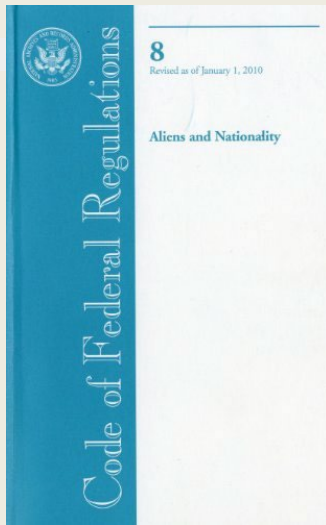


8 C.F.R. § 208



Board of Immigration Appeals

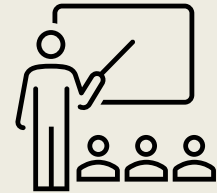
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8 C.F.R. § 208



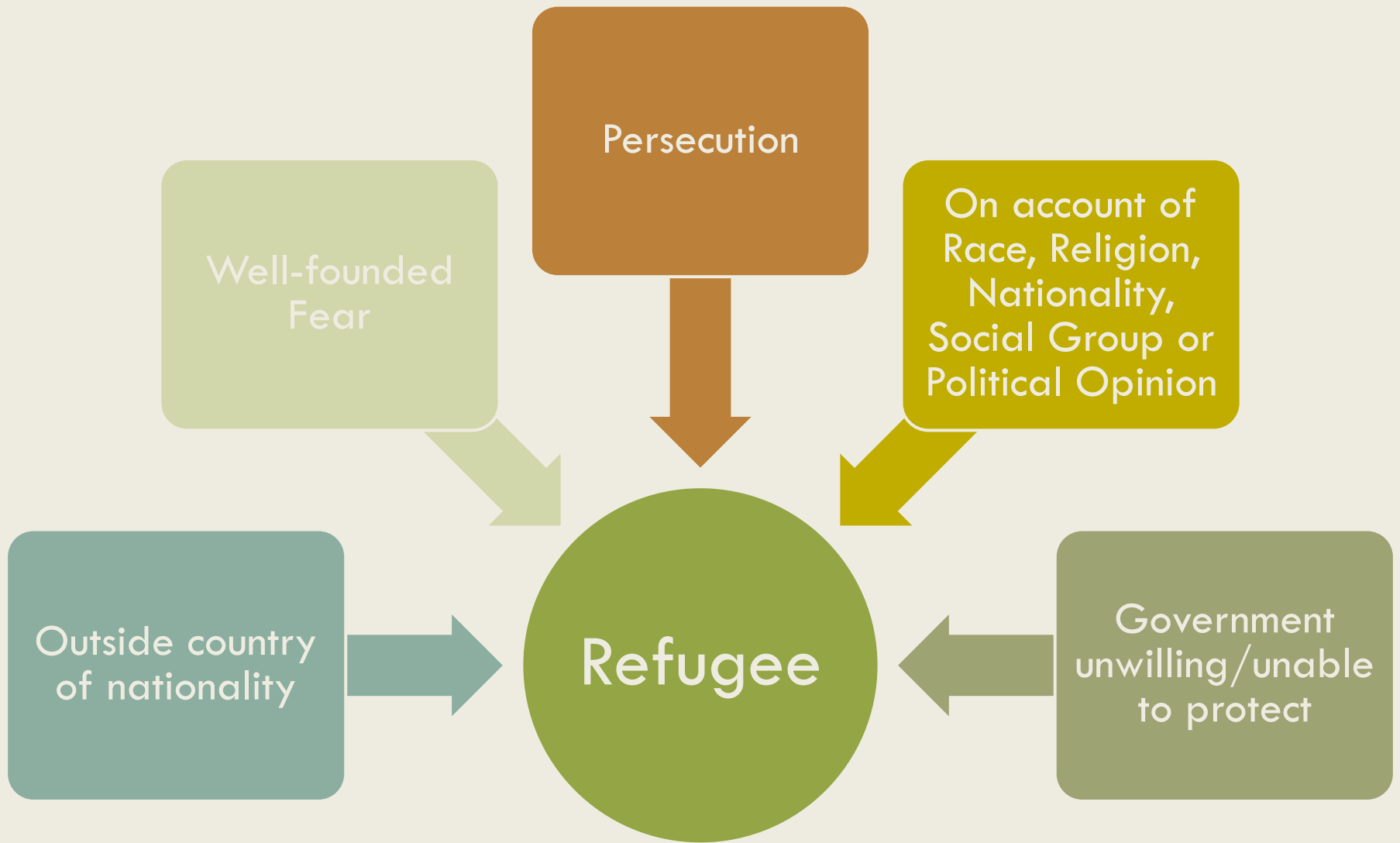
Affirmative Asylum  
Procedure Manual



Asylum Officer Basic  
Training Course



RAIO Training Materials





# Refugee

“[A]ny person who is **outside any country of such person’s nationality** or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is **unable or unwilling to return** to, and is unable or unwilling to avail himself or herself of the protection of, that country **because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion**”

Definition of a “refugee” as codified at

8 U.S.C. § 1101(a)(42)(A), INA § 101(a)(42)(A)



# Persecution

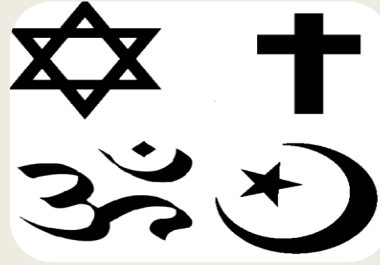
No Statutory Definition	“The infliction of death, torture or injury to one’s person or freedom”	More than harassment or discrimination.	Cumulative Harm	Past Persecution OR Well-Founded Fear of Future Persecution
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...on account of...



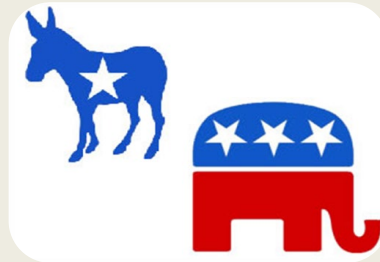
Race



Religion



Nationality



Political  
Opinion



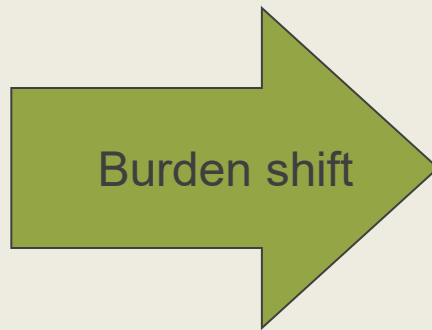
Social Group





# Past Persecution

Applicant  
Establishes  
**Past  
Persecution**

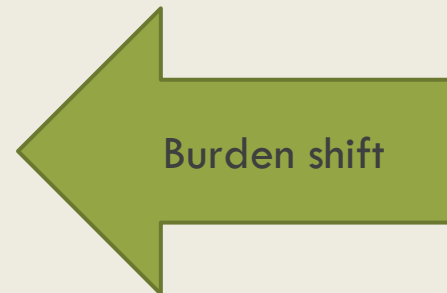


**Government rebuttal:**

- A. Changed circumstances; *or*
- B. Reasonable Relocation

Applicant establishes:

- A. Severe past persecution; *or*
- B. Other serious harm





# Future Persecution

**No Past  
Persecution**

Burden stays with  
applicant

## **Well-founded fear:**

- A. Fear of persecution
- B. Reasonable possibility of persecution;
  - i. Singled out, *OR*
  - ii. Pattern/practice
- C. Unable/willing to return due to fear; *AND*
- D. Relocation unreasonable.

# Government Protection





# Government Protection

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## Government Persecutor

- Persecuted applicant
- Pattern or practice of persecution of protected group

## Non-Government Persecutor

- Refused request for help
- Inadequate laws/policies
- Inadequate enforcement



# Asylum Benefits

## Legal Status

- Green Card after 1 Year
- Citizenship after 6 Years
- Ability to travel outside the U.S.

## Economic Security

- Unrestricted Employment
- Access to Public Benefits

## Family Reunification

- Can Apply to Bring Spouse and Children to the U.S.



# Bars to Asylum

Refugee  
Convention

US Law

War Crime /  
Crime v  
Humanity

Serious Non-  
Political  
Crime

Fails to File  
for Asylum  
within 1 year

## Bars to asylum in the U.S.

- ❑ Persecutor of others
- ❑ Firmly resettled
- ❑ Previously denied asylum by IJ/BIA
- ❑ Failed to apply within 1 year of arrival in US
- ❑ Convicted of aggravated felony/particularly serious crime
- ❑ Danger to security of US
- ❑ Serious nonpolitical crime outside the United States
- ❑ Terrorist activities or material support of terrorism

## Common U.S. Asylum issues in Canada

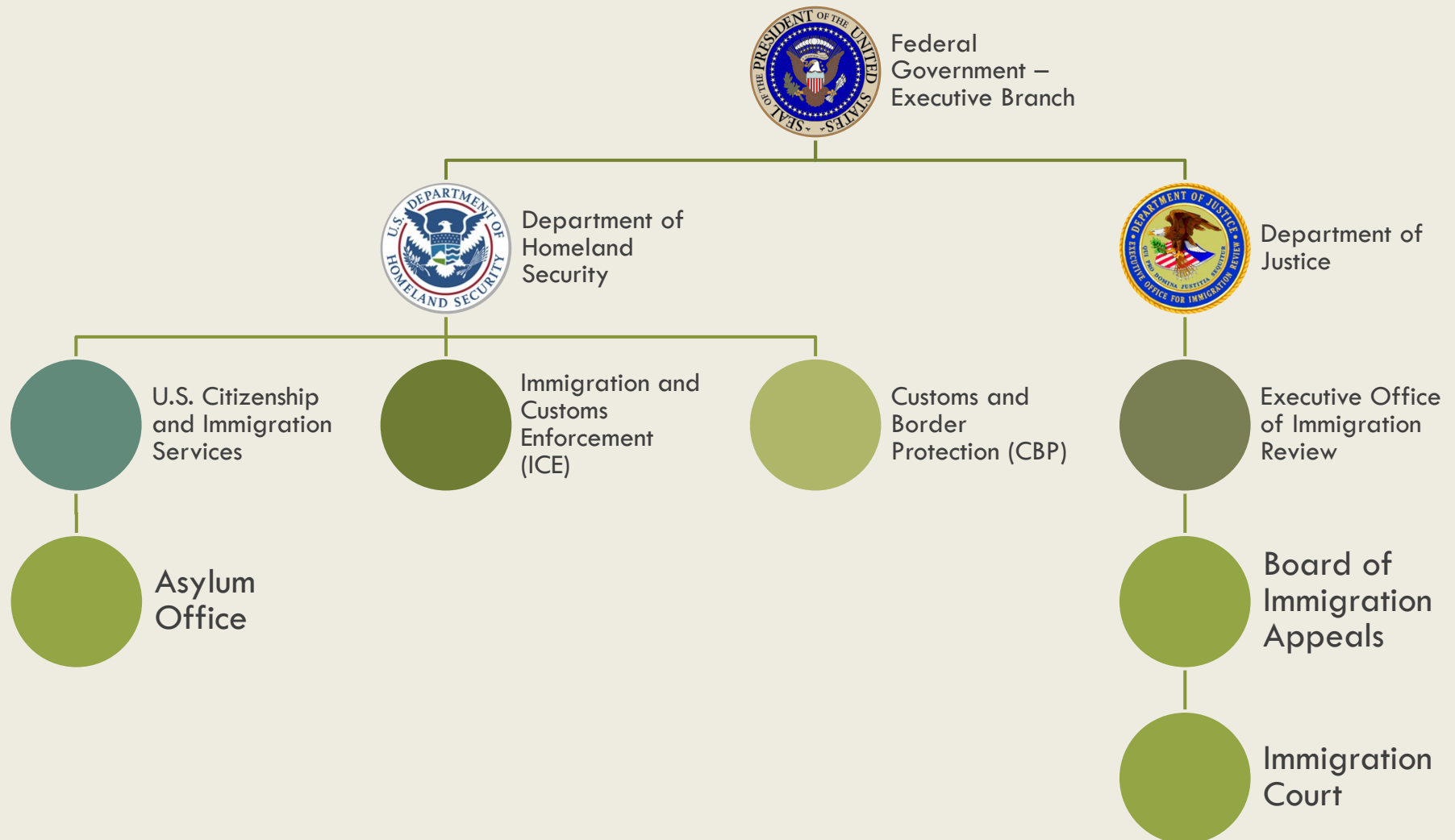
- Safe Third Country Agreement
  - Exhaustion of remedies
  - Child
  - Family in Canada
- Abandonment of Affirmative Asylum Claim
- Self-deportation if in Removal Proceedings
- Family separation
- U.S. Refugees in Canada
- U.S. Asylees in Canada



## Alternative Forms of Relief

- Withholding of Removal, Convention against Torture (CAT)
  - ▣ Only available in removal proceedings
  - ▣ Fewer bars than asylum
  - ▣ Mandatory, not discretionary
  - ▣ Must demonstrate persecution/torture is more likely than not (>50% chance)
  - ▣ Fewer benefits.

# Overview of U.S. Immigration System





The Advocates

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