

IMMIGRATION JUSTICE CAMPAIGN



Statutory Bars to Asylum

There are several bars to asylum, which can preclude an otherwise eligible applicant from being granted asylum. This practice guide provides a general overview of the bars you are most likely to encounter and the situations in which they most commonly arise. If you believe your client might be subject to one of these bars, please reach out to your IJC Mentor for additional guidance.

Some of these bars are bars to asylum only; others bar both asylum and withholding of removal. None of them bars relief under the Convention Against Torture.

I. Persecutors of others

What this means

A non-citizen is barred from both asylum and withholding of removal if he or she “ordered, incited, assisted, or otherwise participated in the persecution of any person” on account of any of the five protected grounds.

When this might come up

- Client served in his or her country’s military, police, or other armed forces.
- Client served in his or her country’s government.
- Client served in a gang or armed rebel/guerilla group – note that this will very likely also trigger the following ground, terrorism related grounds of inadmissibility.

The fact that your client did any of the above does not in and of itself mean that he or she is subject to the persecutor bar, but in each case, you will want to consider this issue and whether or not your client might be subject to the bar.

II. Terrorism-related grounds of inadmissibility (TRIG)

What this means

Anyone who has provided any kind of support to “terrorists” or “terrorist organizations” -- whether or not the support was provided willingly – is barred from asylum. “Terrorist” and “terrorist organization” are in quotation marks because the Immigration and Nationality Act (INA) has a specific definition for these terms, in a section known as the “terrorism-related grounds of inadmissibility.” The definitions are very broad and may encompass people and activities that you might not think of as terrorists or terrorism. A “terrorist organization,” for instance, encompasses both organizations specifically named and listed by the State Department, as well as a vaguer category of “any group of two or more individuals, whether organized or not,” which “engages in terrorist activity,” or has a sub-group that does so.

“Terrorist activity” has a complex definition that includes actions that might be widely understood as terrorism, such as hijacking vehicles, kidnapping, assassinations, and use of chemical, nuclear, or biological weapons.” It also includes use of “any explosive, firearm, or other weapon. . . for more than “mere personal monetary gain” with intent to endanger one or more individuals or to cause substantial damage to property.

One of the terrorism-related grounds attaches when one has provided “material support” to a terrorist, terrorist activity, or terrorist organization. There is no minimal amount as to what constitutes “material support,” and it does not have to be monetary.

One of the most difficult aspects of this bar to understand is that there are no exceptions for support provided under duress – even under the threat of death, nor are there exceptions for “terrorist organizations” that were pursuing goals shared by the United States, or which were supported by the United States.

Note that these are summary overviews of the relevant definitions, which are far more complex.

When this might come up

- Client provided any support or assistance to an armed group, or took part in any kind of armed resistance or uprising.
- Client was a member of, or supported an organization, that had a branch or wing which engaged in the use of force – even if the client had no involvement with the wing of the organization that used force.
- Client was forced to provide any help of any kind (monetary or non-monetary) to an armed individual or group.

The fact that your client did any of the above does not in and of itself mean that he or she is subject to the terrorism-related bar, but in each case, you will want to consider this issue and explore whether or not your client might be subject to the bar.

III. Firm resettlement

What this means

A person who has the right to live permanently in a third country (not the country of feared persecution, and not the United States) is barred from asylum. The right to live permanently includes citizenship in a third country, as well as a status akin to lawful permanent residence in that country – the ability to live and work there permanently.

When this might come up

- Your client lived in another country before coming to the U.S. Generally, the longer a person lived in another country before coming to the U.S., the greater the likelihood that there could be a firm resettlement issue.
- Your client had a visa which allowed them to enter another country before coming to the U.S. The fact that someone visited, lived or worked in another country does not in and of itself mean that there was firm resettlement, but indicates that it could be an issue.
- Your client has citizenship in a third country. If your client is a citizen of a country other than their country of feared persecution, they can be removed there unless they also have a fear of returning there.

IV. One-year filing deadline

What this means

Asylum applicants are required to file their applications for asylum within one year of their last entry into the U.S. or they are barred from asylum. There are exceptions to this, including exceptions for people who were unable to file their applications due to exceptional circumstances.

When this might come up

- Your client is filing his or her asylum application more than one year from the last time he or she entered the U.S.

V. Committed a serious non-political crime outside the U.S.

What this means

Anyone whom the U.S. has “serious reason to believe” committed a “serious non-political crime” outside the U.S. is barred from asylum. Note that this bar does not require a conviction, only a “serious reason to believe” the person has committed the crime. Note as well that there is no statutory definition of a “serious non-political crime,” which is defined by caselaw.

When this might come up

- If any of the evidence in your client’s case suggests that he or she engaged in conduct that would be considered criminal in the U.S., even if he or she was never prosecuted or convicted.

VI. Convicted of a particularly serious crime

What this means

Anyone convicted of a “particularly serious crime” is barred from asylum. The definition includes conviction for an “aggravated felony,” as well as other crimes in the U.S.

When this might come up

- If your client has any criminal history in the U.S., you will need to find out whether he or she was ever convicted, and if that conviction or convictions constitute a “particularly serious crime.”

Note that both “conviction” and “aggravated felony” have specific immigration law definitions, and that the intersection of criminal and immigration law is quite complex. If your client has any criminal history in the U.S., it is very important to seek expert help in analyzing it.