

November 2, 2020

Expanded Crime-Related Bars to Obtaining Asylum in the US

Under US laws and treaties, individuals who make it into and are present in the US (lawfully or unlawfully) are entitled to seek asylum where they fear persecution if removed (deported) to their home country. To qualify, they must establish that the persecution is “well-founded” and based upon one of five grounds: race, religion, political opinion, nationality, or membership in a particular social group (narrowly interpreted).¹ Longstanding bars to asylum have included convictions for “particularly serious” crimes and crimes classified as “aggravated felonies.” A person can apply for lawful permanent residence one year after being granted asylum and then citizenship four years after that. Since established in US law in 1980, limiting case law and regulations for granting asylum have often made for a steep climb. Under recent regulations outlined below, that climb just got steeper.

The regulation amendments apply to applicants who filed asylum applications on or after **November 20, 2020**. Only convictions suffered on or after that same date trigger the conviction-based bars, and the new conduct-based bar (which does not require a conviction) is limited to conduct on or after that same date.

Under Trump Administration regulations amending 8 CFR 208.13, a person is disqualified from being granted asylum status in the US if the person has been convicted of:

- ❖ An “alien smuggling” offense;
- ❖ A DUI that resulted in “serious bodily injury or death of another”;
- ❖ Two or more DUIs, whether misdemeanor or felony;
- ❖ A “crime *that involves conduct amounting to* a crime of stalking; or a crime of child abuse, child neglect, or child abandonment; or *that involves conduct amounting to* a domestic assault or battery offense, including a misdemeanor crime of domestic violence”;
- ❖ Any crime “based on *conduct in which* the alien harassed, coerced, intimidated, voluntarily or recklessly used (or threatened to use) force or violence against, or inflicted physical injury or physical pain, however slight, upon a person where the perpetrator has a domestic relationship with the victim”; [NOTE: the adjudicator “is not limited to facts found by the criminal court or provided in the underlying record of conviction” but may consider the “underlying conduct of the crime”; victims of domestic violence are exempted from this provision;]
- ❖ Any felony;
- ❖ Any crime involving possession or use of false ID, unless the ID was used to board a carrier for purposes of fleeing persecution;
- ❖ Any crime involving fraudulent receipt of public benefits;
- ❖ Any crime involving possession or trafficking of a controlled substance or controlled-substance paraphernalia, other than a single offense involving possession 30 grams or less of marijuana.

¹ These are also the requirements to be granted refugee status. Refugees seek protection prior to coming to the US through a US consulate. If granted refugee status, the US government admits them to the US. People request asylum for protection when they have already arrived in the US and fear being sent back.

The person also will be disqualified if there is “Reason to Believe” that:

- ❖ The person has engaged “in acts of battery or extreme cruelty” where the perpetrator has a domestic relationship with the victim or the victim has a protection order against the perpetrator, “even if the acts did not result in a criminal conviction”;
- ❖ There is “reason to believe” the person is involved in a criminal street gang.

Additionally, under the regulations:

- It is “immaterial” to a determination of asylum eligibility whether any “activity or conviction also may constitute a basis for removability.”
- “Criminal offense or criminal conviction” “shall be deemed to include any attempt, conspiracy, or solicitation to commit the offense or any other inchoate form of the offense.”
- No post-conviction relief shall have any effect unless the adjudicator determines “the order was *not* entered for rehabilitative purposes or for purposes of ameliorating the immigration consequences”; the order “*shall be presumed* to be for the purpose of ameliorating immigration consequences” if it “was entered after the initiation of any [removal] proceedings” or the post-conviction relief “was moved for...more than one year after the date of the original order of conviction or sentencing”; and the adjudicator “is authorized to look beyond the face of any [PCR] order...to determine whether the order was done for purposes of ameliorating the immigration consequences.”