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| **Law** | Application |
| Summary:  CLIENT is eligible for and deserving of asylum based on past persecution she has suffered on account of her religious beliefs, immediate family relationship, and imputed political opinion in addition to her well-founded fear of future persecution on the same bases. |  |
| Persecution:  case law has defined persecution as a “threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive,” or to overcome a characteristic of the victim. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); *Matter of Kasinga,* 21 I&N Dec. 357, 365 (BIA 1996).  One severe beating is sufficient to establish persecution. *See Bracic v. Holder*, 603 F.3d 1027, 1035-36 (8th Cir. 2010) (overturning an IJ’s holding that past persecution was not present, holding that any reasonable fact finder would find persecution had occurred where an asylum applicant was beaten until he lost consciousness on one occasion).  Factors to consider in determining whether detention rises to the level of persecution include: the length of persecution; the legitimacy of the government action; any mistreatment of the applicant during detention and; whether the applicant was ever accorded any due process rights, such as access to counsel, a trial before a judge, and others. AOBTC Workbook, pt. I, at 26-27. Harm to a third party done with the intent to cause emotional or psychological harm to the applicant can constitute direct persecution of the applicant him or herself. *See Matter of A-K-,* 24 I&N Dec. 275 (BIA 2007). | CLIENT’s brother-in-law was imprisoned and beaten to death after the COUNTRY government found a picture of him in military uniform.  CLIENT’S HUSBAND returned two weeks later and informed CLIENT that he had been detained in a forced labor camp. Aff. ¶ 7. CLIENT’S HUSBAND recounted that he, along with the other prisoners, were starved and beaten if he did not perform the hard labor assigned. Aff. ¶ 7. During this time, the Communists specifically demanded that CLIENT’S HUSBAND renounce his Christian faith and return to the faith of his culture. Aff. ¶ 8. Shortly thereafter, CLIENT’S HUSBAND was arrested once again; however, CLIENT never saw him again. Aff. ¶ 6  the Communists burnt down the bamboo church and prohibited anyone from Christian worship.  CLIENT was detained in NAME Prison, a forced labor camp, from 1996 until September 2005 where she was made to do hard labor. Aff. ¶ 15. CLIENT was kept in a small room with cement walls, no furniture, and little light. Aff. ¶ 20. As such, CLIENT was forced to sleep on a dirt floor with only a thin blanket. *Id*. Further, the prisoners were fed on a poor diet consisting of contaminated offal mixed with vegetables and undercooked rice. Aff. ¶ 16. If the water supply ran out, the prisoners were forced to drink bath water which, in turn, made a number of the prisoners seriously ill with diarrhea.  The guards would wake CLIENT at 7am to begin her day’s hard labor which would include scrubbing floors, hand-sowing uniforms for the guards, and chopping wood. Aff. ¶¶ 16, 17. Every day, CLIENT carried out this hard labor with only a short break until 4pm, at which time she would be returned to her cell for the evening. Aff. ¶ 16. If CLIENT refused to work, or if she did not complete the assigned labor quickly enough, the guards beat her with long canes across her shoulders and back. *Id*. Twice the guards kicked CLIENT in the lower back which CLIENT believes caused a gallstone she later had surgically removed. Aff. ¶ 25. CLIENT was also beaten whenever she was caught praying in her cell. Aff. ¶ 19. During the beatings, the guards told CLIENT that they hated Christians and would refer to the bat with which they beat her as “her God.”  Further, the guards also withheld food as punishment and to coerce CLIENT’s obedience.  While in detention, CLIENT learned that the local leader of the Christian and Missionary Alliance, NAME, had been arrested and the church was forced to close.  Physical:  Psychological: |
| Religious beliefs | CLIENT openly and publically expressed her Christian faith while residing in COUNTRY. Consequently, the COUNTRY government had numerous opportunities to learn of her religious beliefs.  CLIENT was interrogated by Communist forces after the existence of the bamboo church and its small congregation was discovered |
| Imputed political opinion  ***DeBrenner v. Ashcroft***, **388 F.3d 629 (8th Cir. 2004)**(Court found persecution due to political opinions imputed to petitioner by the guerillas and the government where Peruvian Shining Path guerillas expressly named petitioner as a member and supporter of APRA (political party), accused her family of supporting the government, and mistakenly singled her out as an actual worker for the APR |  |
| Family Relationship  Matter of LEA |  |
| Nexus  INA 208(b)(1)(B)  BIA: S-P-  In situations involving general civil unrest, the motive for harm should be determined by considering the statements or actions of the perpetrators; abuse or punishment out of proportion to nonpolitical ends; treatment of others similarly situated | Nexus w/ religious beliefs:  Communist forces immediately took CLIENT’S HUSBAND into custody where he was ordered to renounce his Christian faith. Shortly after CLIENT’s husband was detained, Communist forces burnt the small makeshift church to the ground and prohibited CLIENT and other local Christians from practicing their faith. The government’s active repression of Christianity and political dissidence forced CLIENT and others to worship in secret. Even then, when the government doubted the efficacy of this policy, Communist forces raided CLIENT’s village arresting the local Mayor for his alleged failure to control the local Christian population along with two other men. While detained, prison guards would beat and torture CLIENT whenever she was caught praying. |
| Government Unable/Unwilling to Protect | The pattern of repression of religious minorities and political opponents by the COUNTRY government has continued since the only legal political party, PARTY assumed control in 1975  The communist government also targeted Christians because it is considered to be a Western, specifically American import. Supp. Aff. ¶ 3  Today, the COUNTRY government continues to view the ETHNIC GROUP with suspicion and antagonism.[[1]](#footnote-1) This hostility is exacerbated by the fact that many are also Christian. Christianity is often perceived as a Western, particularly American religion, and because the United States opposed the Communist government, as an imperialist religion. Individuals who congregate in homes or other facilities for religious purposes without a permit are subject to expulsion, detention, imprisonment, and fines.[[2]](#footnote-2) Further, Christians are often coerced into renouncing their faith and, in some instances, proving the renunciation of their beliefs by participating in animist rituals. |
| One Year Deadline Exception  An applicant may demonstrate, to the satisfaction of the Attorney General that he qualifies for an exception to the one-year deadline. 8 C.F.R § 208.4(a)(2)(B). The evidentiary standard “to the satisfaction of the A.G.” is lower than that of clear and convincing evidence. *Matter of Bufalino*, 12 I&N Dec. 277, 282 (BIA 1967).  Courts have reversed adverse credibility findings where the adjudicator failed to recognize the effects of mental health disorders or incompetency. See e.g. *Fiadjoe v. Att’y Gen*., 411 F.3d 135, 149-60 (3rd. Cir. 2005)  *See Asylum Officer Basic Training Manual section on One Year Deadline Exception* | CLIENT belongs to an ethnic group that has long been one of the most educationally disadvantaged groups in COUNTRY. For centuries, the ETHNIC GROUP were without any written communication or recorded education. As a result, education among the ETHNIC GROUP primarily relied on oral learning. Further, the ETHNIC GROUP in COUNTRY live in mountainous areas with little access to schools and, in the twentieth century, COUNTRY was slow to develop widespread public education for all within its borders. A survey conducted of ETHNIC GROUP refugees shortly after the end of the COUNTRY Civil War showed that approximately 73% had never attended public school in COUNTRY and as many as 90% of ETHNIC GROUP people in certain regions were illiterate. Further, ETHNIC GROUP families are traditionally patriarchal and women of CLIENT’s age were rarely permitted to receive a formal education. Instead, girls are kept at home where they are expected to cook and clean in addition to raising children. This patriarchal way of thinking is exemplified in CLIENT’s family’s repeated demand that she marry again in the United States. The same survey found that approximately 92% of ETHNIC GROUP women had no formal education as compared to 46% of men.  CLIENT did not learn of the possibility of applying for asylum until this year because, in addition to being illiterate in her native language, she is unable to speak English. Aff. ¶¶ 32, 33. Furthermore, CLIENT was entirely dependent on her relatives in the United States for accommodation, food, and clothing. Supp. Aff. ¶ 13. However, these relatives made no attempt to understand the circumstances in which CLIENT came to the United States. *Id*. Without her family’s assistance, CLIENT had no way of learning about the prospect of asylum or other free legal services.  In addition, while in the United States CLIENT was entirely dependent on her relatives for accommodation, food, and clothing. However, her family took no interest as to CLIENT’s experiences in COUNTRY or inquired into the possibility of legal assistance. Instead, they insisted that she simply remarry in order to gain status to the United States. When CLIENT refused, they reacted with hostility. Isolated from others in her community and focused mainly her own survival, |
| Well-Founded Future Fear  A well-founded fear may be established by as little as a one-in-ten probability. *See INS v. Cardoza-Fonesca*, 480 U.S. 421, 430-31 (1987). |  |
| No Change in Conditions |  |
| Relocation not reasonable under the circumstances  *Reasonableness of internal relocation.*For purposes of determinations under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) of this section, adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate. |  |
| Humanitarian Asylum  Severity of Past Persecution:  *Matter of Chen*, 20 IN Dec. 16 (B.I.A. 1996)  ), the Board of Immigration Appeals found that where the applicant was fearful of being returned, anxious, and suicidal at the thought of being forced to return to China due to the traumatic physical abuse he endured as a child, and because human rights in the country were still being abused, and because the basic government in China had not changed since he experienced persecution, the Board of Immigration Appeals granted the applicant’s claim of humanitarian asylum.  Other Serious Harm:  An asylum applicant who has established past persecution but no longer has a well-founded fear of persecution may nevertheless warrant a discretionary grant of humanitarian asylum based not only on compelling reasons arising out of the severity of the past persecution, but also on a “reasonable possibility that he or she may suffer other serious harm” upon removal to his or her country under 8 C.F.R. § 1208.13(b)(1)(iii)(B) (2011). (2) “Other serious harm” may be wholly unrelated to the applicant’s past harm and need not be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but the harm must be so serious that it equals the severity of persecution. (3) In determining whether an applicant has established a “reasonable possibility” of “other serious harm,” adjudicators should focus on current conditions that could severely affect the applicant, such as civil strife and extreme economic deprivation, | Similar to the applicant in *Matter of B-*, 21 I&N Dec. 66, 72 (BIA 1995), CLIENT endured various forms of psychical torture and psychological abuse, as detailed above. She also endured disappearances of family members and associates, and the danger of persecution has prevented her from returning to COUNTRY to visit her family. In her affidavit, CLIENT stated that she still feels pain from his injuries caused by torture today.  If returned to COUNTRY, CLIENT’s suffering would be severely exacerbated by return to a place where she would be troubled by constant memories of her own torture as well as the constant and pervasive presence of the very groups that tortured her. *Reference psychological evaluation.*  Moreover, country conditions documentation shows that the economic situation in COUNTRY is extremely dire. COUNTRY is one of the poorest countries in southeast Asia and in 2004, 71% of its population lived on less than $2 a day and 23% less than $1.5 a day. The country conditions documentation in the record demonstrate that ETHNIC GROUP suffer pervasive discrimination based on political affiliation. Further, the government does not recognize the ETHNIC GROUP as an indigenous group. Consequently, the ETHNIC GROUP remain unprotected and cannot benefit from mechanisms aimed at addressing uncompensated land confiscation or natural resource exploitation.  Elderly, no means to support herself. |
| Credible  refers to specific facts  Consistency between written and oral statements  Internal Consistency of Each statement  Consistency w/ other evidence in the record  Demeanor, candor, responsiveness of applicant  INA 208(b)(1)(B) |  |

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)