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THE CHALLENGES TO SUCCESSFUL LESBIAN ASYLUM CLAIMS



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Introduction

Although persecution on account of sexual orientation has been grounds for asylum in the United States since 1990,[2] and even though many lesbians throughout the world suffer discrimination and violence, lesbians account for only a small fraction of all applications for asylum based on sexual orientation.[3] Several factors limit the number of asylum applications filed by lesbians. Cultural, social, and economic constraints affecting women generally impede lesbians' ability to flee from their home countries. Those who never arrive in the U.S. cannot apply for asylum, since asylum-seekers, unlike refugees, must apply from within the United States. If a lesbian who is persecuted in her home country makes it to the United States, the legal standard for asylum presents challenges to the adjudication of her claim due to the unique characteristics of such claims. The purpose of this paper is to explain the factors that complicate lesbian applications for asylum based on sexual orientation and to provide a greater understanding of the complex and multiple issues inherent to lesbian asylum claims.

The first part of this paper discusses the difficulties of flight or migration by lesbians suffering persecution in their home country. The second introduces the legal standard for asylum and explains the challenges lesbians face in satisfying different elements of this standard. The third part addresses additional grounds for asylum applicable to lesbian asylum claims. Finally, the Appendix provides case citations and summaries relevant to the adjudication of lesbian asylum claims.

I. Barriers to Lesbian Flight or Migration From Their Home Country

Frequently, systemic forces limit the choices women, including lesbians, enjoy in their daily lives. Often times women who are "unprotected" by a marriage to a man are marginalized in their community and are consequently the targets of violence and rape. These restrictions are closely linked to women's lack of economic autonomy. Indeed, the UN Special Rapporteur on Violence Against Women has stated that for women "to strive to live and work outside the watchful gaze of the family and community is to risk becoming a target for male violent behavior."[3] In many circumstances, having a lesbian sexual orientation further compounds the restraints on women's mobility.

A. Cultural and Social Barriers

Societal expectations of female behavior may prevent or delay lesbians from fleeing their home country. As women, lesbians face the same gender-based challenges to mobility as their heterosexual counterparts. Pressures of family responsibility, including childcare, discourage some lesbians from leaving their countries. Whereas men generally are not expected to provide daily supervision and care to children or other family members, women are. Thus, women who leave their homes often fear burdening their families with an immediately felt loss of support.

Additionally, when a woman is a lesbian, her family may seek to control her even further, either as punishment or in a misinformed attempt to "cure" her lesbianism. To prevent a lesbian from developing a more independent life or to act on her attraction to other women, her family may restrict her movement,

either by denying her permission to leave the house or simply by assigning her greater domestic responsibilities. Such a restricted life not only places practical limits on a lesbian's financial resources and support network outside of the home, but also may limit her awareness of ways to end or escape the persecution she currently suffers.

B. Economic and Financial Burdens

For women who often have restricted access to employment and education, travel may be beyond their limited means. Even those women who are permitted to work likely face a significant lack of economic opportunity as compared to male wage-earners (a gender gap that affects not only those in developing nations, of course, but women in the United States, Canada, and Europe as well).[5] In some traditions, men may exclusively control family finances, giving women little or no access to their own assets or to their families' financial means.[6] At the same time, family decisions (often made by the father or husband) may favor sending men abroad to study or work, while women stay closer to home. Often, in order to flee, a woman must hide money on the side—a dangerous and slow means of accumulating travel funds.

This economic stratification is even more severe for low-income women, women living in less developed countries, and those from racial, ethnic, religious, or sexual minority groups.[7] These financial barriers may slow a woman's flight and further discourage her from leaving; and, if she is a lesbian, the financial barriers expose her to more protracted persecution. Because women as a group travel internationally less often, they are also less likely than men to reach a country where they can claim asylum.

C. Legal Risks and Physical Vulnerabilities

In some countries, particularly those in the Middle East or with a strong Muslim influence, socially imposed gender norms or patriarchal laws may prohibit women from traveling alone within or outside the country. Lesbians are thus unable to escape because they need governmental permission to travel or must be accompanied by a male, spouse, parent, or sibling. For example, Islamic law forbids a wife from leaving the marital home without her husband's permission, and male relatives may prevent unmarried girls or women from leaving the family home.[8] In countries where women are not allowed to travel alone, they could face government persecution for their independent movement.

Fleeing across national borders may present its own dangers for lesbians and other women. In volatile border regions and areas with large numbers of migrants, laws may be inconsistently enforced, and women who travel alone or without male companions may be especially vulnerable to sexual violence, extortion, robbery, and murder. Lesbians who fear legal sanctions for or the dangers of traveling alone might decide against fleeing or migrating from their home countries.

II. The Legal Challenges to Lesbian Asylum Claims

Upon coming to the United States, lesbians face myriad challenges to a successful asylum claim. In general, asylum applicants must file an application for asylum within one year of entering the United States, although there are limited exceptions to this rule.[9] Thus, the initial challenge is that lesbians, like other applicants, must be aware of this deadline. The U.S. Attorney General may grant asylum to non-citizens who have suffered and/or will suffer persecution in their home country on account one of five internationally recognized grounds: race, religion, nationality, political opinion, or membership in a particular social group.[10]

The persecution must be carried out by state actors (including but not limited to government officials, police officers, military personnel) and/or non-state actors (including but not limited to family members, society, employers) whom the state is unwilling or unable to control.[11]

The particular experiences of lesbians facing persecution based on their sexual orientation complicate each of these requirements. The purpose of this section is to describe these challenges.

A. Proof of Membership in the Lesbian Social Group: The Parameters of the Lesbian Social Group Can Be Under-Estimated

One basis for asylum is to prove that one has suffered persecution on account of membership in a particular social group.[12] Since 1994, gay persons have constituted a particular social group under U.S. immigration law. In the groundbreaking case *In the Matter of Toboso-Alfonso*, the Board of Immigration Appeals (BIA) held that a gay asylum applicant from Cuba had established membership in a particular social group defined by the status of being homosexual.[13] In 1994, Attorney General Reno gave the decision precedential weight "in all proceedings involving the same issue or issues."[14] Two years later, in 1996, the Immigration and Naturalization Service (INS) formally adopted the position that "homosexuals do constitute a particular social group." Since then, other cases and various circuit courts have affirmed the position that homosexuality constitutes membership in a particular social group.[15] Some courts have granted asylum to subgroups within those who identify as homosexual, notably "gay men with female sexual identities"[16] and to men to whom homosexual identity is imputed on them because of homosexual acts.[17] In 2005 the Ninth Circuit clearly stated that "all alien homosexuals are members of a 'particular social group.'"[18]

However, despite this positive affirmation, nearly all the precedential homosexual asylum cases, including all of those mentioned, have involved homosexual men.[19] These cases have created a framework for decisions based primarily on the homosexual male identity and experience. This construction presents two challenges. First, what is the scope of the particular social group when it applies to lesbians? Second, how does an applicant prove that she is a member of that social group? Although these questions linger about the gay male identity as well, prior cases have fleshed out some guidelines of analysis for asylum officers and immigration judges to use in making decisions concerning gay men.[20] Those guidelines, unfortunately, may be misleading and unhelpful when used to assess a lesbians' claim for asylum.

While the guidelines applied by courts in assessing gay men's risk for persecution may be flawed even as applied to some gay male applicants, they can be extremely detrimental when it comes to assessing lesbian asylum applicants. In addition to constructions shaped by precedent, common but ill-informed assumptions about lesbians tend to underestimate the breadth of the lesbian population and the diversity of their life experiences. This section of the paper addresses the difficulties associated with proving that an applicant is a lesbian.

i. The Experiences of Lesbian Asylum Applicants May Not Reflect American Notions of Lesbian Life

Lesbian experiences and communities abroad—like other aspects of foreign cultures—often look very different from American notions and norms of identity. An immigration official unfamiliar with the different ways that lesbians live may fail to accept an applicant's self-identification as a lesbian when her particular experiences stray too far from stereotypical American ideas of lesbians.[21]

For example, a common perception of lesbians in the United States is that they are young, unmarried, childless, and independent of their families, and that they tend to challenge gender norms, particularly in their physical self-presentation. Of course, these stereotypes represent only a narrow segment of lesbians in the United States and do not begin to encompass the full range of lesbian experience around the globe. For a host of reasons discussed below in greater detail, these U.S.-centered expectations are misguided for lesbians living in other countries, especially in countries where lesbians face the real threat of persecution based on their sexuality.

ii. Not All Lesbian Applicants Will Be Out

An immigration official may doubt an applicant's lesbian identity if she has not lived openly as a lesbian in her home country or since her arrival to the United States. A lesbian's formerly closeted life, however, does not indicate the absence of persecution on account of sexual orientation. Rather, it may in fact substantiate persecution or a well-founded fear of persecution. Violence or threats of violence based on lesbian sexual identity may compel a lesbian to suppress her orientation for same-sex relationships. If, to avoid marginalization or violence, a lesbian is motivated to suppress a fundamental part of her self and conceal her sexual identity, her closeted status itself can demonstrate that she lived with a deep fear of persecution.

A lesbian who leads a closeted life is far less likely to participate in a gay or lesbian community, further reducing the available proof of her lesbian identity. For example, she may not attend LGBT Pride parades, if there are any, because she does not want to be seen publicly as a lesbian. She might not join an LGBT group or visit places commonly frequented by lesbians and gay men, for fear of outing herself. Withdrawal from LGBT communities and related activities does not mean that the applicant is not a lesbian; it means that she is especially fearful that she will become the target of persecution based on her sexual orientation if it becomes publicly known.

For U.S. officials to decide whether or not an asylum applicant is in fact a lesbian, based on whether or not she is out or involved in the LGBT community in her home country puts persecuted women abroad in an untenable position: to avoid persecution at home, they must hide their lesbian identity, but, when they flee, these same efforts at self-preservation undermine their asylum pleas by making it more difficult to prove they are lesbians. Although racial, ethnic, religious, and political asylum-seekers may have similarly needed to deny aspects of their identities to escape persecution, they may carry cultural, linguistic, or even physical markers that make it easier to show they belong to a given persecuted community after they have fled. Only in the case of stigmatized sexual minorities does the persecution or threat of persecution itself prevent individuals from ever finding a community of peers.

Even upon arrival in the United States, a woman may be unwilling to live openly as a lesbian. The persecution or threat of persecution in her home country may leave her traumatized and unable to openly express her sexuality. In addition, she may live in an immigrant community in the United States that reflects the social views of the home country she fled, and may therefore not be able to freely express her homosexuality without fear of ostracism in the United States. That a woman is not living openly as a lesbian in the United States does not mean that she is not a lesbian, nor that she will never live openly. It does mean, however, that she may face difficulties in establishing her membership in a particular social group.

iii. Many Lesbian Applicants May Be Married Or May Have Been Married In The Past

Some lesbian applicants may have been married in their home countries. When presented with the information that a female applicant was or is married, however, an immigration official interviewing the applicant for asylum may doubt whether she is truly a lesbian.

Even in the United States, of course, many lesbians have previously been married to men or have children from earlier heterosexual relationships.[22] In countries where the societal, familial, or economic controls on women and women's sexuality are greater, even more lesbians may marry and have children. A lesbian may even hope that her status as a wife and mother will help her conceal her sexual orientation and so avoid persecution. Even when a husband becomes abusive—whether because he discovers her same-sex attractions or for some other reason—a lesbian may stay in the marriage for the sake of her children, for fear of being rejected by her culture or extended family, or of government persecution. Finally, a lesbian may have been forced into marriage by a family or community that hoped that the marriage would "cure" her of her homosexuality or would at least shelter the family from the shame it would bring upon the family.

iv. Not All Lesbians Have Had Sexual Relations With Women. Some Lesbians Have Had Sex With Men

Some immigration officials might ask about an applicant's sexual history in an attempt to determine whether or not she is a "real" lesbian. However, some lesbian asylum applicants—especially those who have not come out or been involved in an LGBT community in their home countries or the U.S.—may not yet have had sex or an intimate relationship with a woman. If an applicant has been isolated from other lesbians or feared outing herself, she may not have been able or willing to act on her same-sex orientation. The mere fact that the applicant has not yet had the opportunity, or felt secure enough, to act on her sexual orientation toward other women does not mean that she is not a lesbian.

An immigration official might also attempt to verify an applicant's lesbian identity by asking whether she has ever had sex with a man. This type of question is an unreliable means for identifying a lesbian because a variety of circumstances explain why some lesbians have sex with men. Many women have consensual sex with men before coming out as lesbian. But even if a woman discovers her sexuality before she has sex with men, she may still have been forced into sex. There is an extremely high prevalence of sexual violence against lesbians in countries throughout the world. Assessing the authenticity of an applicant's lesbian identity by asking whether she has had sex with a man ignores the prevalence of rape, sexual assault, and sexual coercion. A woman who is asked whether she has had sex with a man may answer yes without drawing a distinction between rape and sex, particularly if she has been socialized in a country that does not allow women control over their own sexuality. In sum, inquiring about an applicant's sexual history may not be a reliable means to determine whether she is a member of the lesbian social group. If a lesbian applicant's sexual history demonstrates sexual activity with men, it is appropriate to consider the circumstances surrounding such relations.

v. Final Words on Proof of Membership in the Lesbian Social Group

In order to win asylum based on sexual orientation a lesbian applicant must prove that she is truly a lesbian. The immigration officials reviewing her case must verify that she is a member of the lesbian social group protected by United States asylum law. Misinformed assumptions about lesbians complicate an applicant's efforts to satisfy this part of the legal standard for asylum. If the applicant's personal story does not follow

conventional American notions about how lesbians live, it is important to explain why the applicant's experiences are different but also very much consistent with or indicative of her lesbian identity.

B. Proof of Past Persecution

To win asylum based on sexual orientation, a lesbian applicant must prove that she has suffered persecution or has a well-founded fear of persecution on account of her sexual orientation.[23] Lesbians attempting to construct a claim of asylum face numerous challenges in proving the existence of such persecution or proving that their fears of persecution, if returned home, are well-founded.

i. State-Sponsored Violence Against Lesbians

In approximately forty countries, sexual activity between members of the same sex, whether men or women, is still illegal.[24] As such, gay men and lesbians may be subject to state-sanctioned punitive measures designed to "correct" their sexual orientation and make them heterosexual.[25] In general, however, for a variety of cultural, economic, and social reasons, state violence against lesbians generally differs markedly from the open and public force used against gay men. Some lesbian and bisexual women may marry and have children to meet cultural expectations or to hide their same-sex attractions or relationships. Lesbians' daily lives may be more closely bound to the home, and many lesbians do not have the financial resources to leave home, travel, or participate in social activities where their homosexuality would be outwardly expressed.[26] For these reasons it is less common for lesbians to experience violence in bar raids or in the streets, as gay men too often do.

Instead, violence against lesbians most often is part of broader government efforts to control women's sexuality. Many countries have laws that explicitly regulate women's reproductive capacity and sexual expression, from denying access to contraception or other health care to imposing restrictions on how women dress and where they go in public. Where there are strict taboos around women's sexuality in general, lesbian sexuality may be less likely to be named explicitly in laws, regulations, or public documents. Restrictions on lesbian sexuality may remain implicit and therefore invisible.

Lesbians can also experience police persecution upon arrest; they may suffer abuse in detention, including rape.[27] Even if a lesbian is arrested for an offense unrelated to her sexual orientation, once the police discover that she is a lesbian, rape can become part of the discipline and punishment she experiences. The police may consider the lesbian arrestee's sexuality a sort of collateral offense, a crime in addition to her underlying charge. Lesbians who appear more masculine are doubly at risk for police abuse because they encroach upon the male domain both in terms of their sexual practices and their gender presentation. As primary agents of law enforcement, the police may abuse their power and punish lesbians' refusal to abide by social norms.

ii. State Actor's Willful Neglect or Inability to Protect

A substantial amount of the persecution lesbians suffer results from governments' unwillingness and inability to protect them from abuse by private actors. While women may experience state-sponsored persecution in the same way that homosexual men are targeted, often homosexual women are subject to more discrete types of abuse. The primary threat to the safety and survival of many lesbians does not come from criminal statutes or state-perpetrated violence, but from non-state actors, including husbands and relatives, community members, and employers. In many cultures, the most important instrument of societal control over women is the family. Lesbians are especially susceptible to this control, as lesbianism may be seen as

diametrically opposed to the traditional social roles of wives and mothers. As a result, lesbians may provoke unusually strong hostility from family members. When the government is unwilling or unable to protect them from this abuse, it can be grounds for an asylum claim.[28]

In order to make a claim of persecution based on abuse by non-state actors, an asylum applicant must first prove that she has been persecuted, and second that the government was "unwilling or unable to control those elements of its society responsible for targeting" a particular class of individuals.[29] Each step presents particular challenges. Proving that such abuse has occurred may be particularly difficult for a woman seeking asylum in the United States. The nature of persecution by non-state actors, specifically, that it often occurs at home and outside of public view, makes it difficult for lesbians to provide corroborating evidence that would strengthen their asylum claims. Historically, many societies have viewed the home, traditional women's activities, and the treatment of women in general as private matters, unsuitable for public scrutiny. The sense of privacy surrounding the home and familial relationships discourages public discussion of the very violence motivating a lesbian to flee her country. As a result there may be less public awareness of lesbian abuse.

In addition to these cultural barriers to documenting violence against lesbians, the walls of the home literally make it difficult to see what is going on inside. Since lesbians are more likely to experience abuse at home, other individuals are less likely to witness their persecution: neighbors and friends cannot report what they do not see. Furthermore, a lesbian might not consider violence within the home to be a matter of systemic abuse and persecution; she may consider the violence stemming from her sexual orientation to be merely a matter of "private" disagreements.

The invisibility of violence and discrimination against lesbians can undermine an applicant's ability to demonstrate the existence of persecution. Proving that persecution has occurred often requires documentation or reports of the violent incident, or at least awareness by human rights organizations or immigration officials that systematic or frequent persecution aimed at lesbians exists in the country. Because much of the persecution against lesbians occurs at the hands of non-state actors, it is often less visible, under-reported, and under-documented. Even when state-actors target lesbians, the nature of the persecution can render it less apparent to the public.

Even if a woman is able to prove that such abuse occurred, she must then prove that the government was complicit in the abuse or was unable to prevent it.[30] However, the claimant may never have attempted to seek state intervention. Lesbians might decide against going to the police because they know the police will not protect them or they fear that reporting the harm will make matters worse. Even if the police do arrest the abuser, they may not prosecute him or keep him in custody long enough. The abuser may retaliate against the woman who reported him. In some cases lesbians may forgo reporting their abuse to the police because violence against women, including honor killings and genital mutilation, may be legal or accepted under the laws or social and religious codes of their countries. If the laws do not proscribe such treatment, there is no basis upon which to complain to the police. In addition, laws that make homosexuality a crime may prevent lesbians experiencing abuse based on homosexuality to come forward out of fear, often reasonably held, that the police will prosecute her, as opposed to the abuser.

Even if laws prohibit domestic violence or abuse of lesbians, such crimes may not particularly concern law enforcement or government officials, who may continue to regard women's sexuality as a private matter or

even believe that men have the right to control "their" women. These attitudes can lead to the following patterns of persecution by willful neglect or inability to protect:

- Countries refuse to prosecute male family members who seek to punish and control lesbian women through sexual and physical violence.[31]
- Countries provide no protection to lesbians who are raped by men in an attempt to "fix" their lesbianism.[32]
- Countries offer no protection to lesbians forced into heterosexual marriage, either through physical violence, economic and social coercion, or religious and cultural laws.[34]
- Countries allow lesbians to be incarcerated in psychiatric institutions or forced to undergo "treatment" because of their sexual orientation.[34]
- Countries allow doctors and mental health professionals to punish lesbianism as a form of social and political deviance under the cover of medical or psychiatric care.[35]
- Countries collaborate in the removal of children from lesbian mothers solely because of the mother's sexual orientation.[36]
- Countries tolerate or promote severe discrimination against lesbians in education, employment, housing, health care, and social services.[37]

The state's willful neglect or inability to protect lesbians from violence may spawn a vicious circle in which lesbians do not report abuse. Lesbians may be especially targeted for violence because they are not likely to pursue their rights by calling attention to themselves or their sexual orientation. Often lesbians do not want to report the domestic abuse because they fear social stigma or retribution from the abusers or from officials. Some women may be inhibited from reporting persecution because of the embarrassment and shame involved in discussing this socially accepted violence.

Furthermore, in some countries, women lack legal status outside of their role within the family. They do not enjoy the legal protections afforded to men and therefore cannot officially challenge the mistreatment inflicted upon them.[38] This renders women's experiences of certain violations invisible. Lesbians thus may feel, often correctly, that their claims will not be taken seriously and that an official report will make matters worse for them. As a result, lesbians experiencing the most severe forms of persecution may never make a report to local or state authorities.

iii. Final Words on State and Non-State Persecution

State and non-state actors direct violence toward women and lesbians with the (too often correct) assumption that they will not be punished. The impunity with which state actors and non-state actors are able to abuse lesbians may very well increase the frequency and severity of lesbian persecution; it also may discourage reporting and publicizing the problem. The private nature of the domestic violence–and the veneer of legitimacy underlying state regulation and police (in)action–render the problem largely invisible. Consequently, most lesbian applicants will not have documentation of their own personal abuse. Often a lesbian applicant must prove her own direct experience of persecution through testimony alone. The lack of physical documentation will require a lesbian applicant to show that her home government was unwilling or unable to control the violence. Applicants will need to focus their efforts on describing their home country's conditions through general reports, news articles, and affidavits addressing both state action and inaction toward lesbians, but also towards women more generally. The primary challenge facing a lesbian asylum

applicant is proving her persecution or well-founded fear of persecution in a world that denies her visibility as a lesbian and the visibility of her abuse.

C. Fear of Future Persecution

In addition to proving past abuse, a successful claimant for asylum must show that she has a "well-founded fear of persecution" if she is returned home.[39] Fear of future persecution is an important part of any asylum claim. In the event that a person is able to prove past persecution, such persecution creates a rebuttable presumption of fear of persecution upon return to one's home country.[40] It is possible however to make a claim based on fear of persecution alone, in instances in which circumstances have changed in such a way that would now make the claimant particularly exposed to persecution if she were returned to her home country.[41] For lesbians, this can be relevant if the woman was not out in her home country, either for fear of persecution or because she did not identify as lesbian before coming to the United States. These cases may be substantially more difficult to prove, and for these women, the role of country conditions in proving the likelihood of future abuse is paramount.

However, both because of and in spite of the oppressive state of women's roles in countries from which many lesbians seeking asylum flee, there is often very little in the way of country condition information that is necessary to mount a successful asylum claim. While women's rights have gained increased visibility and recognition within the international human rights community, women's advocates have rarely included more than a cursory review of lesbian issues in their analyses of human rights law or in their documentation of the status of women. Similarly, despite increasing acknowledgement that lesbian and gay issues implicate fundamental human rights, efforts to redress human rights violations against lesbians and gay men have concentrated on forms of persecution characteristically targeted at gay men.[42]

Most of the existing resources that document country conditions for homosexuals, for example, focus on criminal statutes and state-sponsored violence, and include little, if any, information specific to lesbians. Often, anti-sodomy statutes and statutes that expressly forbid homosexual conduct only forbid conduct between men while remaining silent on the question of sex between women.[43] While the existence of statutes forbidding homosexual conduct is not necessarily enough to establish a case for asylum based on country conditions,[44] the lack of inclusion of women in statutes forbidding homosexuality may give investigators from the Department of Homeland Security (DHS) a sense that homosexuality between women is more socially acceptable than it is for men. Such statutory analysis overlooks key points about claims by women based on the fear of future persecution.

First, individual judges in countries that forbid only homosexuality between men have significant discretion in interpreting and applying these laws, and lesbians are often targeted and prosecuted even where the legal codes do not specifically proscribe sexual relations between women.[45] Despite this persecution, the fact that the law does not specifically target lesbians can be erroneously interpreted by DHS to indicate that lesbians are not persecuted by state actors. This conclusion overlooks the fact that judges do prosecute women under these laws, even if sex between two women is not expressly prohibited, and that women are targeted by police even if they are not prosecuted under anti-homosexuality laws.

Second, the absence of expressed statutory prohibition does not preclude legal prohibition in other parts of the state's code. In many states with oppressive anti-homosexuality statutes, women's sexuality is already severely limited by general statutes that forbid adultery by women and limit women's sexuality to marriage.

Because women are forbidden to marry other women, an outright ban on women's sexuality outside of marriage would preclude any legal sexual intimacy between women without an express statutory prohibition. Additionly, homosexual activity may be regulated and penalized by other legal measures against "anti-social" behavior, causing "public scandal," "hooliganism" and "loitering."[46] These laws, under the heading of general morality laws, are also used by state actors to persecute lesbians.[47]

Finally, because persecution of women is often not at the hands of state actors, but instead is at the hands of private actors with the consent of state actors who fail to protect them, an analysis of a country's laws regarding homosexuality will do little to aid an asylum case based on fear of persecution. Although statutory prohibitions are often seen as an indication of a country's hostility towards homosexuals, such prohibitions are often neither necessary nor sufficient for establishing a claim of asylum based on hostile country conditions.[48] However, other forms of evidence of a country's hostility towards lesbians may prove challenging for a candidate for asylum to establish. The lack of visible persecution described above will have a significant impact on petitions by women claiming fear of persecution as grounds for asylum. If the persecution faced by other members of a particular social group is invisible, a member of that group will face even greater challenges demonstrating to the asylum adjudicators that the threat of persecution is in fact real. The lack of documentation harms not only those directly abused, but also those who know they will be subjected to the abuse if they are forced to return.

D. Establishing a Nexus Between the Persecution and the Applicant's Sexual Identity

The U.S. standard for asylum relief requires applicants to prove that their persecution or well-founded fear of persecution was *on account of* one of the five protected bases: race, religion, nationality, membership in a particular social group, or political opinion.[49] That is, they must demonstrate that they would not have been persecuted (or feared persecution) if it were not for their political views or their racial, religious, national, or other social identity. This but-for causation element is often referred to as the "nexus requirement." The Real ID Act of 2005 strengthened this requirement so that asylum applicants must now prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be the *central* reason for their persecution.[50] Lesbians applying for asylum based on their sexual orientation must establish a nexus between their persecution, or well-founded fear of persecution, and their sexual identity.

The mixed motives that underlie much of the persecution faced by lesbians complicate their ability to satisfy the nexus requirement. As we have seen, much persecution of lesbians takes place in the context of social, religious, and familial controls on women and women's sexuality in general. Consequently, it may be difficult to explain clearly to an immigration official the driving factors behind the violence and abuse an applicant suffered or feared.

For example, consider a hypothetical situation in which an applicant was beaten and raped after leaving a gay bar. During the course of the crime, the gang of rapists called her several derogatory names referring to her lesbian sexuality. Did the thugs beat and rape her because she was woman or because she was a lesbian? On one hand, they beat her because they assumed her to be lesbian since she was patronizing a gay bar. On the other hand, their hate also stemmed from the fact that, as a lesbian, she refused to conform to gendered norms about women's sexuality–namely that women should only express their sexuality with men. Similarly, if the police refused to arrest and prosecute the rapists, was it because they refused to confront sexual violence against women in general, or because they believed lesbians should be punished for their transgressions?

Consider another example where a husband beat his wife because he believed she was in love with another woman. Did he beat her because she was a lesbian, because she is a woman acting outside of gendered norms of sexual desire, or because as her husband he believed that he had the authority to control her sexuality? What if the police refused to intervene because they were a married couple and considered the incident a private domestic dispute? In this scenario, the factors motivating the persecution by private and state actors include gender, sexuality and familial status.

For some lesbian applicants, their sexuality and their political opinions may be intertwined. An applicant who challenges gender norms and espouses feminist beliefs—including the right to control of her own reproductive system and sexuality—likely embraces a political ideology that could trigger persecution. In all such cases of multi-dimensional persecution, it is important for asylum applicants and those who represent them to explain that the nexus requirement can still be satisfied: multiple motivations may coexist—and even reinforce each other—without undermining an applicant's claim of persecution on account of sexual orientation.

E. Proof of Inability to Relocate

An applicant for asylum must show that the threat of persecution exists throughout the country from which she is seeking asylum.[51] Although the existence of a country-wide threat of persecution is not relevant in determining asylum eligibility under 8 C.F.R. § 208.13(b)(1) or withholding of deportation eligibility, under 8 C.F.R. § 208.16(b)(2), the reasonableness of an applicant's ability to relocate in his or her country may be considered by the BIA in granting or denying asylum as a form of relief.[52]

In cases in which the persecution comes from a state actor, evidence to support the likelihood of persecution country-wide may be readily available. When the persecution of homosexuals comes at the hands of the police, as part of a national directive or in response to a national law, the existence of such a law or policy on a national level may meet this requirement. In addition, the Ninth Circuit has held that "[in] a case of persecution by a governmental body such as a national police force, the government has the ability to persecute the applicant throughout the country."[53]

While many lesbians are persecuted by state actors, a large proportion of lesbian asylum claims rest on private actor persecution. Since the actions come at the hands of individuals, and with the implicit or explicit support of individual government actors who refuse to prevent the abuse, asylum adjudicators may find that the persecution is individualized and therefore limited to the specific reach of the individuals or jurisdictions of the complacent governmental officials. The asylum adjudicators may underestimate a family or spouse's willingness to travel to other parts of the country to track down and detain their daughter or wife who either shames the family by exerting her sexual orientation or who has fled violent and often forced relationships.

Asylum officers who assess an asylum-seeker's inability to relocate may also not take into consideration the often insurmountable challenges to fleeing an oppressive family situation and remaining in the country. Conditions in many countries are such that women cannot easily exist as single females without the protection of male family members.[54] In countries where a woman's identity exists only as an extension of her male protector's, escaping an oppressive situation based on her sexual orientation by fleeing to another part of the country would compel her to take on another equally oppressive situation: that of a single woman in a society where single women often have no status.[55] Because of these conditions a woman may not have

the economic ability to flee an oppressive family situation and remain in the country.

In addition, assessments about the national climate may take evidence into consideration that focuses on the existence of areas of the country that are gay-friendly. In *Salkeld v. Gonzales*,[56] in assessing the potential for future persecution of a gay man in Peru, the court noted the existence of gay pride parades, gay clubs and gay rights organizations in determining that parts of the country could be safer for the asylum applicant.

While these types of bars and activities can create a sense of community, unfortunately the very existence of such organizations can actually increase the likelihood of persecution, both by giving law enforcement an open and obvious target at which to aim their hostilities, as well as by infuriating members of the community who are hostile towards homosexuality and especially the open expression of homosexuality. And while it is true that, in some instances, such clubs and organizations can provide safe havens for homosexuals and mark a more friendly community, these clubs are often only available to gay men, not to lesbians. Asylum adjudicators may not assess their accessibility for women when assessing their existence for gay men.

F. Meeting the one-year deadline

In addition to meeting the requirements for asylum, the claim must be made within one year of arrival in the United States. This deadline presents difficulties for lesbian asylum-seekers. In general, as women and as immigrants, lesbians often face tremendous social and economic hardships upon entering the United States. However, in addition to those challenges faced by most women immigrating to the United States, lesbians face particular challenges.

First, a lesbian may not be out to herself. She may discover her sexual identity only after the one-year deadline has passed. While it may be possible to argue a change in circumstances in those situations as a basis for waiving the one year deadline, this is still an additional obstacle that must be overcome by a lesbian seeking asylum. There is also no guarantee that such a waiver will be granted.

Second, a lesbian asylum-seeker may not be out in her community. Because many immigrant communities in the United States mirror the social and cultural mores of the home country, a lesbian who faced oppression and persecution by her family and community in her home country may realistically fear that she will face the same type of response if she were to disclose her identity in the United States. Because immigrants are often economically or socially dependent on family or community members in the United States, lesbians may be deterred from disclosing their sexual orientation out of a realistic fear that such a disclosure will isolate them from much needed support.

Remaining in the closet may have the effect not only of deterring a lesbian from applying for asylum, but also may preclude her from even discovering that asylum may be an option. Many asylum-seekers learn about the availability of asylum and construct their claims after getting advice or following the experience of others in a similar position within their community groups. If a lesbian asylum seeker is not out, then she may not know from her community that asylum based on sexual orientation is an option.[57] Attorneys serving these communities may not know to ask about a client's sexual orientation, and a client may be unwilling to openly disclose it, either because she does not know that it is relevant to the asylum claim or because she fears her community response. Referrals often come from within ethnic communities to attorneys who serve those communities. That sort of insular referral network may make it difficult for lesbians to disclose their sexual

orientation for fear that it will become known throughout the community.

Even if a lesbian client were to disclose her identity to her attorney, the attorney may be ill-equipped to address the asylum claim, either because of the attorney's own thoughts about homosexuality or because of a lack of knowledge about asylum claims based on sexual orientation. As a relatively new basis for asylum and with very few precedents, providers that do not mainly serve the gay community may not know about these options.

If a woman is out in the United States, she may be involved in the gay community, but isolated from her ethnic community or any other immigrant communities. In such a community, she may be as equally isolated for adequate information about the availability of asylum based on sexual orientation. There is often little overlap between services available to the gay community and services for immigrant communities; because of such gaps, lesbians who are eligible for asylum may not find out about the option within the one-year deadline, if they find out about it at all.

Finally, lesbians may be discouraged or deterred from applying for asylum because of the real or perceived likelihood of rejection and forcible removal to the country of origin due to the difficulties of proving the case. She may be faced with the challenges mentioned above (lack of documentation, no sexual history with women, previous marriages) and be unwilling to expose herself to the potential of deportation. In addition, she may believe, based on experiences in her home country or in the United States, that she will be denied immigration status because of her sexual orientation. Many women seeking asylum based on sexual orientation have experienced persecution by government agencies in their home countries, which may cause them to be traumatized and distrustful of public officials. Because this abuse came from or with the acquiescence of governmental officials, an otherwise closeted lesbian may be unwilling to expose her sexual orientation to authority figures out of fear that she will face deportation. In addition, because of the often hostile or discriminatory attitudes of local police and governments in the United States and because of discriminatory policies towards LGBT people in other areas of immigration, a lesbian may realistically fear that her homosexuality may not be grounds for asylum, but rather grounds for deportation.[58]

III. Other bases for Asylum Claims

Homosexuality has become at once a well-established ground for asylum, and, as seen above, a particularly challenging basis for lesbians to stake a claim. A claim for asylum based on persecution on account of one's status as a lesbian does not necessarily fit the mold laid out by previous successful asylum cases on behalf of gay men. Instead, a claim for asylum based on lesbian identity will often require other bases for asylum in order to fully explain the persecution faced by lesbians around the world.

A. Other classifications under Particular Social Group

Asylum claims based on a "particular social group" are by far the most amorphous of the five grounds for asylum. The INS does not include a definition of "particular social group" and the case law surrounding the definition of "particular social group" "is not wholly consistent."[59] The result of this is that "particular social group" has been expanded to include a wide range of both broad and narrow groups under the law. In determining the appropriate language to define the "particular social group" on which the asylum claim will be based, there is a distinct benefit to broadening the social group to include as many classifications as possible.

i. Gender

Gender cannot be neglected as an important element in lesbian persecution. In fact, gender and sexual orientation rarely function as independent bases of persecution. More typically, they intersect in ways that expose lesbians to unique vulnerabilities and unique harms that cannot be accounted for fully on the basis of either status in isolation.

In itself, for example, sexual orientation cannot account for lesbians' unique vulnerability to persecution as a distinct group of women whose very existence is widely perceived to violate socially imposed gender norms. Sexual orientation also fails to account for lesbians' subordinated status as women, or for the fact that lesbians are less vulnerable to acts perpetrated by the state than to violence and coercion by family members and other non-state actors. Conversely, gender cannot fully account for the specific vulnerability of a woman who is beaten or raped not simply because she is a woman, but because she is a lesbian.

Similarly, while sexual orientation fails to address the vulnerability of lesbians to rape and other gender-specific harms because of their female gender, gender is also inadequate to capture the full scope of the damage inflicted on lesbians through harms that incorporate and seek to enforce compulsory heterosexuality. Socially imposed gender norms maintain women in a subordinated economic and political status, control women's sexuality and reproductive capacity, and generally deny women the full and free exercise of basic human rights. For a lesbian, this denial of sexual and social freedom is the denial of her very existence as a lesbian. Women's sexual autonomy cannot be separated from the material conditions of their lives. Violence and harassment are often targeted toward women because of their sexuality, particularly in terms of their physical attributions (for instance, looking "too masculine"), or affirmative claims of lesbian identity. Women also suffer adverse discrimination because they challenge gender norms or male dominance within their societies.

ii. Forced Marriage

The courts and immigration authorities have found that forced marriage may constitute grounds for asylum. This may be helpful in establishing a basis for asylum for lesbian clients. The INS, in its 1995 gender guidelines, recognized forced marriage as a gender-specific form of harm.[60] Numerous international human rights instruments and international organizations, including the United Nations, have concluded that the harm caused by forced marriage constitutes a human rights violation.[61] In *Gao v. Gonzales*, the Second Circuit found that women who were forced into marriage in countries that accepted those forced marriages constituted a particular social group under the standard set forth by the BIA in *Matter of Acosta*.[62] In addition to the United States, numerous other countries, including Canada, Australia and Belgium have recognized forced marriage as a basis for asylum.[63]

Forced marriage is a reality in a large number of communities where women have little autonomy, particularly little sexual autonomy.[64] In these communities, where sexuality is particularly tightly regulated, forced marriage is often a form of control necessarily used by men to enforce those regulations.

The threat or reality of forced marriage is particularly prevalent among lesbians. It is often believed that women who are attracted to other women can be "cured" through forced sexual intercourse and marriage to men.[65] Marriage may also be seen as a way to overcome the shame brought upon families in these communities by lesbian daughters, or as a way to cover up the lesbian's true identity from the community.

Forced marriages, while always harmful, may implicate an additional line of justification for a lesbian asylum claim. Forced heterosexual marriage is not only a denial of a lesbian's human rights to personal liberty and autonomy, it is also an assault on her sexual identity as a lesbian, and thus an assault on one of the most deeply felt and central aspects of her personal identity. For a lesbian, a heterosexual marriage will force her to adopt a lifestyle that is abhorrent to her identity, a notion which has long been seen as a harm for which asylum can be granted.[66]

iii. Family

Federal courts have recognized that a family constitutes a particular social group, confirming that an individual's status within a domestic relationship is within the realm of characteristics that may define a social group.[67] The Ninth Circuit found that a Mexican woman violently abused by her father was persecuted on account of her membership in a particular social group: her immediate family. In particular, the Court found that "family membership is clearly an immutable characteristic, fundamental to one's identity."[68] Women are often subjected to gender specific violence inflicted by male partners, siblings, and/or fathers within the context of their immediate family.

This "particular social group" classification is particularly relevant for lesbians who experience violence at the hands of their immediate family members. In many instances, lesbians are abused on account of their status as a wife or daughter in a family. These women are often viewed as having brought shame or dishonor to the family unit. If not for their affiliation in that family, the lesbian would not have been subject to the abuse at the hands of her family member.

The membership in the particular social group will be considered immutable if the person claiming it cannot change it. In the case of a family unit, if the lesbian was born into the family, then it is immutable. In the event that the family unit responsible for her persecution is created through marriage (i.e., the abuse is at the hands of her husband or her in-laws), it may still be possible that this is an immutable characteristic. A woman's marital status may be considered immutable when circumstances disallow a change in the relationship to occur. For many women around the world, separation is not a possibility due to religious, cultural, or legal constraints, or because evidence indicates that her boyfriend or husband would not recognize a separation as ending the relationship.[69] This is particularly relevant to women who fear that they will be "outed" in a society that is hostile towards homosexuality or who have been threatened with exposure as lesbians by their husbands or family members if they leave.

B. Asylum On Account of Political Opinion

In addition to establishing a case for asylum under persecution on account of a particular social group, lesbians may qualify for asylum based on persecution on account of their political opinions. Because lesbian identity may fly in the face of commonly held social constructions in the countries where oppression based on sexual orientation is most prevalent, one's very existence as a lesbian may be contrary to the dominant political structure. In a society that holds women as subservient to men, the government often imposes tight controls over women's sexuality. Lesbian identity may be seen as subversive and a disruption to the government-enforced social structure. Additionally, many lesbians are engaged in the struggle for women's right and gay rights. Their identities as lesbians and women may feed into their political action and they may be compelled to fight on behalf of their communities. Many women who face persecution because of their lesbian identity may face that persecution not only because they are lesbian, but also because of activism related to their identity.[70]

Even if a woman does not hold political leanings contrary to her government, it is possible that her identity as a lesbian may lead the government to impute such beliefs to her. Because she is lesbian, it may be assumed that she seeks to subvert the dominant male structure. She may not have any subversive political leanings, but in a particularly repressive regime, a lesbian identity may be enough for the government to assume she does. In such a situation, a woman may still be able to claim asylum on the basis of persecution on account of an imputed political opinion.[71]

Conclusion

Since 1994, persecution on the basis of sexual orientation has been recognized as a basis for establishing asylum. However, because that construction is formulated primarily around a male homosexual identity, lesbians who experience persecution on account of their sexual orientations face many challenges in securing their asylum. The constructions of precedent and statute regarding both asylum law and specifically particular social groups based on sexual orientation have too often deprived lesbians of much-needed protections from persecution in their home countries. While strides have been made, and more women are being granted asylum based on sexual orientation, practitioners representing clients who have been persecuted on account of their lesbian identity must be aware of the specific challenges presented by the lesbian experience as it relates to asylum law. Equally important is the understanding of the specific challenges faced by lesbians within the context of non-traditional homosexual asylum laws. A claim based solely on sexual orientation is challenging, unless there is a broader understanding of the intersections of gender, family, and sexual orientation in constructing those claims.

Endnotes

[1] This document is intended to provide general information regarding legal rights. Because laws and legal procedures are subject to frequent change and differing interpretations, the National Center for Lesbian Rights (NCLR) cannot ensure the information in this document is current, nor can NCLR be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency. NCLR thanks its law clerks, Lisa Cicneros, Shayla Myers, Quita St. John and Naomi Metz, for their invaluable assistance in writing this publication.

[2] Matter of Toboso-Alfonso, 20 I. & N. Dec. 819, 822-23 (B.I.A. 1990). *See infra* note 13 and surrounding text.

[3] Eur. Parl. Ass., Comm. on Migration, Refugees and Demography, *Report on the Situation of Gays and Lesbians and Their Partners in Respect to Asylum and Immigration in the Member States of the Council of Europe*, ¶ 27, Doc. No. 8654 (Feb. 25, 2000). http://assembly.coe.int/Documents/WorkingDocs/doc00/EDOC8654.htm. The committee has since changed its name to Committee on Migration, Refugees and Population. See Eur. Parl. Ass., *Change of Name of the Committee on Migration, Refugees and Demography to Committee on Migration, Refugees and Population, Draft Resolution*, Doc. No. 9863 (June 25 2003), http://assembly.coe.int/Documents/WorkingDocs/doc03/EDOC9863.htm.

[4] Radhika Coomaraswamy, Special Rapporteur, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, ¶ 9, delivered to the U.N. Econ. & Soc. Council [ECOSOC] Comm. On Human Rights*, U.N. Doc. E/CN.4/1997/47 (Feb. 12, 1997), available at http://www.ohchr.org/english/issues/women/rapporteur/annual.htm (follow "E/CN.4/1997/47" hyperlink).

[5] See AUGUSTO LOPEZ-CLAROS & SAADIA ZAHIDI, WORLD ECONOMIC FORUM, WOMEN'S EMPOWERMENT: MEASURING THE WORLDWIDE GENDER GAP (2005), *available at* http://www.weforum.org/pdf/Global_Competitiveness_Reports/Reports/gender_gap.pdf

[6] See HUMAN RIGHTS WATCH, WOMEN'S RIGHTS IN ASIA (2006), www.hrw.org/women/overview-asia.html ("Women [in Asian countries] often receive less pay than men for equal work."); HUMAN RIGHTS WATCH, WOMEN'S RIGHTS IN LATIN AMERICA AND THE CARIBBEAN (2006), www.hrw.org/women/overview-lac.html (citing numerous forms of discrimination in the workplace as a major force behind gender inequality in the region).

[7] *See supra* note 4.

[8] HUMAN RIGHTS WATCH, WOMEN'S RIGHTS IN MIDDLE EAST AND NORTH AFRICA (2006), http://www.hrw.org/women/overview-mena.html.

[9] In limited circumstances, an applicant may be able to overcome the one year filing deadline by "demonstrat[ing] to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application" within one year of the applicant's last entry into the United States. 8 U.S.C. § 1158(a)(2)(D) (2006) (codifying Immigration and Naturalization Act [hereinafter I.N.A.] § 208(a)(2)(D)).

[10] I.N.A. § 101(a)(42), 8 U.S.C. § 1101(a)(42)(A) (2006); INS v. Cardoza-Fonseca, 480 U.S. 421, 449 (1987).

[11] Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000); Castellon v. INS, 16 F.3d 1093 (10th Cir. 1994); McMullen v. INS 658 F.2d 1312 (9th Cir. 1981); Matter of Villalta, 20 I. & N. Dec. 142 (B.I.A. 1990).

[12] *Supra* note 10. The term "particular social group" has been defined as a group that shares a "common, immutable characteristic." Matter of Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985). The definition of "particular social group" varies widely depending on the circuits. The Ninth Circuit defines "particular social group" as "one united by a voluntary association, including a former association, or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it." Hernandez-Montiel v. INS, 225 F.3d 1088, 1093 (9th Cir. 2000). A recent BIA decision, In re C.A. suggests that the characteristic defining the group must be "highly visible and recognizable by others in the country in question." In re C.A., 23 I. & N. Dec. 951, 960 (B.I.A. 2006).

[13] Matter of Toboso-Alfonso, 20 I. & N. Dec. 819, 822-823 (B.I.A. 1990).

[14] Attorney General Order No. 1895 (June 19, 1994).

[15] *See e.g.*, Matter of Toboso-Alfonso 20 I. & N. Dec. 819 (B.I.A. 1990); Pitcherskaia v. INS 118 F.3d 641, 645 (9th Cir. 1997); Hernandez-Montiel v. INS 225 F.3d 1088 (9th Cir. 2000); Amanfi v. Ashcroft 328 F.3d 719 (3d Cir. 2003); Reyes-Reyes v. Ashcroft 384 F.3d 782 (9th Cir. 2004); Molathwa v. Ashcroft 390 F.3d 551 (8th Cir. 2004); Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005); Boer-Sedano v. Gonzales, 418 F.3d 1082 (9th Cir. 2005).

[16] Hernandez-Montiel v. INS, 225 F.3d 1084, 1091, 1094-95 (9th Cir. 2000).

[17] Amanfi v. Ashcroft, 328 F.3d 719 (3d Cir. 2003).

[18] Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005).

[19] To date, there is only one precedential asylum claim involving lesbians: Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997), *infra* note 25.

[20] Hernandez-Montiel, 225 F.3d at 1163.

[21] Even in the United States, there are varying views on what constitutes a true lesbian identity. *See generally* Sonia Katyal, *Exporting Identity*, 14 Yale J.L. & Feminism 97 (2002) (discussing the ways in which homosexual identity is constructed around the world).

[22] According to the latest census figures, lesbians and gay men are raising more than one quarter of a million children in the United States. The majority of children raised in these households were conceived in heterosexual relationships. Ellen C. Perrin, MD. & Am. Acad.of Pediatrics Comm. on Psychosocial Aspects of Child and Family Health, *Technical Report: Co-parent or Second Parent Adoption by Same Sex Parent* 109 Pediatrics 341 (Feb. 2, 2002).

[23] *Supra* note 10.

[24] Daniel Ottosson, *Legal Wrap Up on the Laws over the World Affecting LGBT-persons* www.ilga.org/statehomophobia/worldLegalWrapUpSurvey_Daniel_Ottoson.pdf (last accessed on 6/5/06). For a list of countries and the implications on lesbian asylum claims of laws that forbid sexual contact between two people, see *infra* note 43 and surrounding text.

[25] See SCOTT LONG, HUMAN RIGHTS WATCH, MORE THAN A NAME: STATE-SPONSORED HOMOPHOBIA AND ITS CONSEQUENCES IN SOUTHERN AFRICA 175 (2003), *available at* http://www.hrw.org/reports/2003/safrica/safriglhrc0303.pdf, (quoting Ian Schwartz). *See also* Pitcherskaia v. INS, 118 F.3d 641, 644 (9th Cir. 1997) (involving asylee, a Russian lesbian, who was detained, interrogated, and ordered to undergo "treatment" at a local clinic, where a psychiatrist attempted to hypnotize her and prescribed drugs to "cure" her lesbianism).

[26] *Supra* note 4.

[27] *See* International Human Rights Equity Resolution, H.R. Con. Res. 173, 107th Cong. (2001)(enacted) (finding that homosexuals are often raped while in prison for crimes related to homosexual conduct); Aditya Bondyopadhyay, State-Sponsored Oppression and Persecution of Sexual Minorities in India: NGO Briefing, United Nations Commission on Human Rights (April 8, 2002), http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=67.

[28] *See* Gao v. Ashcroft, 299 F.3d 266, 272 (3d Cir. 2002); Navas v. INS, 217 F.3d 646, 656 (9th Cir. 2000)("Government action is not necessarily required; instead, police inaction in the face of [ ] persecution can suffice to make out a claim")(internal citations omitted).

[29] Avetova-Elisseva v. INS, 213 F.3d 1192, 1196 (9th Cir. 2000)(internal citations omitted).

[30] *Id*.

[31] *See* HUMAN RIGHTS WATCH, *supra* note 25.

[32] *See id* (observing that "some of [the interviewed lesbians' families] honestly believe forcing their daughter to have sex will 'fix' them"); AMNESTY INT'L, CRIMES OF HATE, CONSPIRACY OF SILENCE: TORTURE AND ILL-TREATMENT BASED ON SEXUAL ORIENTATION (2001), http://www.ai-lgbt.org/ai_report_torture.htm#chap4.

[33] *See* HUMAN RIGHTS WATCH, *supra* note 25 at 175-176.

[34] Pitcherskaia v. INS, 118 F.3d 641, 645 (9th Cir. 1997); AMNESTY INT'L, *supra* note 32.

[35] AMNESTY INT'L, *supra* note 32.

[36] Brief for Human Rights Watch, Nat'l Ctr. for Lesbian Rights, et al. as Amici Curiae Supporting Petitioner at 3, In re Karen Atala Riffo, Case P-1271-04, Inter-Am. C.H.R., 2006 (asserting that the denial of a woman's custody of her children by the Chilean Supreme Court entirely on the basis of her lesbian identity constituted a human rights violation).

[37] *See* HUMAN RIGHTS WATCH, *supra* note 25 at 176-177.

[38] *Supra* note 8.

[39] INS v. Cardoza-Fonseca, 480 U.S. 421, 439 (1987).

[40] 8 C.F.R. §§ 208.13(b)(1); See also Begzatowski v. INS, 278 F.3d 665, 669 (7th Cir. 2002); Tarubac v. INS, 182 F.3d 1114, 1118 (9th Cir. 1999); Fergiste v. INS, 138 F.3d 14 (1st Cir. 1998); Kapcia v. INS, 944 F.2d 702 (10th Cir. 1991).

[41] *See* Cordero-Trejo v. INS, 40 F.3d 482, 488 (1st Cir. 1994) (stating that "it is well-established that the [past persecution][is not a] prerequisite[ ] to qualify for asylum under the statute"); Sotelo-Aquije v. Slattery, 17 F.3d 33, 37 (2nd Cir. 1994) (holding that the fact that the asylee had not yet been harmed by the potential persecutors was not determinative of his asylum claim).

[42] Cf AMNESTY INT'L, LESBIANS, HUMAN RIGHTS AND ORGANIZING ON GENDER WITHIN AI AND ITS LGBT NETWORK www.ai-lgbt.org/lesbian_issue.htm, (last accessed July 14, 2006)("[L]esbians are less likely than gay men to have a public presence that could lead to their being adopted as [Amnesty Int'l] [prisoners of conscience]").

[43] As of February, 2006, the following 38 countries have statutes that bar homosexual acts between men, but do not bar consensual homosexual acts between women: Bahrain, Bangladesh, Brunei, Burma (Myanmar), Cook Islands, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Kuwait, Lesotho, Malaysia, Namibia, Nauru, Nigeria, Niue, Palau, Papa New Guinea, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Singapore, Sri Lanka, Tanzania, Tokelau, Tonga, Tuvalu, Turkemenistan, Uganda, Uzbekistan, Western Samoa, Zambia, Zimbabwe. In addition, in ten countries, it is unclear whether the anti-sodomy statute bars sex between women or is limited to sex between two men: Grenada, Malawi, Mauritius, Palua, Qatar, Seychelles, Swaziland, Syria, United Arab Emirates and Chechen Republic in Russia. Ottosson, *supra* note 24.

[44] In *Kimumwe v. Gonzales*, 431 F.3d 319 (8th Cir. 2005), the court held that a gay man from Zimbabwe who was held for two months

after having sex with another man in college, had not established his claim of persecution because he had been jailed because of sexual misconduct, not for being homosexual. The Appeals court noted that Zimbabwe had an anti-homosexual policy and espoused anti-homosexual views, but that Kimumwe's treatment was not enough to establish persecution.

45 In India for example, § 377 of the Indian Penal Code forbids carnal knowledge between men, but remains silent about lesbian sex. However, despite the status of the laws, § 377 is routinely used against women. Aditya Bondyopadhya, State-Supported Oppression and Persecution of Sexual Minorities in India, NGO Briefing, United Nations Commission on Human Rights (April 8, 2002), http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=67.

46 In Egypt, homosexuality is theoretically allowed, but LGBT persons have been prosecuted under laws prohibiting promiscuity, prostitution and immorality. Ottosson, supra note 24 at 1. A 2004 Human Rights Watch report documented the prosecution of homosexuals under "debauchery and prostitution" laws. The documentation focused exclusively on prosecution of homosexual men. HUMAN RIGHTS WATCH, IN A TIME OF TORTURE: THE ASSAULT ON JUSTICE IN EGYPT'S CRACKDOWN ON HOMOSEXUAL CONDUCT (March, 2004), *available at* http://www.hrw.org/reports/2004/egypt0304/egypt0304.pdf.

47 For example, Argentina, Brazil, the Dominican Republic, and the Philippines have laws that have been used to prosecute people for engaging in homosexual conduct. INT'L GAY AND LESBIAN HUMAN RIGHTS COMM'N, WHERE HAVING SEX IS A CRIME: CRIMINALIZATION AND DECRIMINALIZATION OF HOMOSEXUAL ACTS (2003), *available at* http://www.iglhrc.org/site/iglhrc/content.php?type=1&id=77. Costa Rica has a law prohibiting "scandalous homosexuality." Ottosson, *supra* note 24.

48 *See* Kimumwe, 431 F.3d at 323; Amanfi v. Ashcroft, 328 F.3d 719, 725 (3d Cir, 2003)(finding that although homosexuality is illegal in Ghana, the fact that it is illegal does not, in itself, constitute persecution).

49 INS v. Cardoza-Fonseca, 480 U.S. 421, 437 (1987); 8 U.S.C. § 208.13(b)(1)(2006).

50 REAL ID Act of 2005 § 101(a)(3), 8 U.S.C. 1158(b)(1)(B)(i)(2006).

51 Matter of Acosta, 19 I. & N. Dec. 211,235 (B.I.A. 1985).

52 Singh v. Ilchert, 63 F.3d 1501, 1511 (9th Cir. 1995).

53 Singh v. Ilchert, 63 F.3d 1501, 1511 (9th Cir. 1995).

54 For example, in many Middle Eastern countries, including Iran, Egypt, Israel, Lebanon and Saudi Arabia, religion-based personal status codes treat women "essentially as legal minors under the eternal guardianship of their male family members." HUMAN RIGHTS WATCH *supra* note 8.

55 For example, in refugee camps in Nepal, rations were based on male heads of households, which left many single women without their share of rations. *Id*.

56 420 F.3d 804, 807-808 (8th Cir. 2005).

57 Declaration from Dusty Aráujo, Asylum Documentation Program Coordinator, International Gay and Lesbian Human Rights Commission (IGLHRC) (Apr. 5, 2005)(on file with author).

58 This fear is not unrealistic, given the history of US immigration law. Prior to 1990, people with a variety of mental illnesses were excluded from immigrating to the United States. This provision was interpreted to include homosexuality and was a ground for denial of status. Shannon Minter, *Sodomy and Public Morality Offenses Under U.S. Immigration Law: Penalizing Lesbian and Gay Identity*, 26 Cornell Int'l L.J. 771, 771 (1993). This provision was used to keep homosexuals out of the United States until it was removed in its entirety in 1990 by the Immigration Act of 1990 §601. Immigration Act of 1990, Pub. L. No. 101-649, 104. Stat. 4978, (codified at 8 U.S.C. § 1182(a)(2006)). Even after the INA was enacted, homosexual conduct, which was banned in a number of U.S. states, was used into the 1990s as the basis to deny immigration status under the guise of "good moral conduct." Minter, *supra* at 778.

59 *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1091 (9th Cir. 2000) (stating that the term "particular social group" was adopted directly from the United Nations Protocol Relating to the Status for Refugees).

60 Memorandum from Phyllis Coven, U.S. Dep't of Justice Office of Int'l Affairs, Considerations for Asylum Officers Adjudicating Asylum Claims from Women (1995).

61 *See* Committee on the Elimination of All Forms of Discrimination against Women, Gen. Recommendation No. 21, U.N. Doc HRI\GEN\1\Rev 1 (1994); Declaration on the Elimination of All Forms of Discrimination against Women, G.A. Res. 2263, U.N. GAOR, 22nd Sess., U.N. Doc. A/6555 (1966); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), Art. 10, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, 993 U.N.T.S. 3 (1966); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 1763A (XVII), 521 U.N.T.S. 231(1962); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ECOSOC Res. 608 (XXI), Art. 1, 226 U.N.T.S. 3 (1956); Beijing Declaration and Platform for Action, Fourth World Conference on Women, U.N. Doc. A/CONF.177/20/Add.1 (1995); International Conference on Population and Development, Sept. 5-13, 1994, Programme of Action (1994), *available at* http://www.unfpa.org/publications/detail.cfm?ID=275; World Summit for Social Development, March 1995, *Programme of Action*, A/CONF.166/9 (1995), available at http://www.un.org/esa/socdev/wssd/agreements/poachi.htm; IMMIGRATION REFUGEE BD., WOMEN REFUGEE CLAIMANTS FEARING GENDER-RELATED PERSECUTION (2004),

http://www.irb-cisr.gc.ca/en/references/policy/guidelines/women_e.htm; NATHALIA BERKOWITZ & CATRIONA JARVIS, IMMIGRATION APPELLATE AUTHORITY, ASYLUM GENDER GUIDELINES 12 (2000), available at http://www.asylumsupport.info/publications/iaa/gender.pdf. These Guidelines specifically cite to the Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the Elimination of Violence Against Women, both of which recognize forced marriage as a violation of a women's fundamental human rights.

62 "Gao's social group consists of women who have been sold into marriage (whether or not that marriage has yet taken place) and who live in a part of China where forced marriages are considered valid and enforceable." *Gao v. Gonzales*, 440 F.3d 62, 70 (2nd Cir. 2006) *petition for reh'g filed* (2nd Cir. May 17, 2006). In a footnote to the social group, the court chose to limit the reaches of precedent, stating that "[O]ur definition of Gao's social group is tailored to the facts of this case and does not reflect any outer limit of cognizable social groups." *Id*. at 70, note 6.

63 *Vidhani v. Canada*, [1995] 3 F.C. 60; Convention Refugee Determination Division (CRDD) T99-07761, Sept. 27, 2000CRDD T99-14088, June 2, 2000 (reasons signed July 17, 2000)CRDD T99-09887, May 17, 2000 (reasons signed June 5, 2000) Refugee Protection Division (RPD) TA2-00417, Nov. 13, 2002RPD MA1-08227, Aug. 19, 2002 Australia,RRT Reference V 96/04445, July 23, 1996 Belgium, Commission Permanente de Recours des Réfugies, Decision 01-0668/F1356/cd, Mar. 8, 2002.

64 *See supra* note 5.

65 *See supra* note 24 .

66 *Fatin v. INS*, 12 F.3d 1233, 1240 (3d. Cir, 1993)("whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences."); *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1091 (9th Cir. 2000)(holding that homosexuality is considered to be fundamental to a person's identity).

67 *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 ("[A] prototypical example of a 'particular social group' would consist of the immediate members of a certain family, the family being a focus of fundamental affiliational concerns and common interests for most people."); *See also Chen v. Ashcroft*, 289 F.3d 1113, 1115 (9th Cir. 2002)(holding that members of a nuclear family constitute a particular social group); *Ananeh-Firempong v. INS*, 766 F.2d 621, 626 (1st Cir. 1985) (recognizing that family relations can be the basis of a "particular social group"); *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993); *Iliev v. INS*, 127 F3d 638, 642 (7th Cir. 1997); *Thomas v. Gonzales*, 409 F.3d 1177, 1180 (9th Cir. 2005)("[F]amily membership may constitute membership in a "particular social group," and thus confer refugee status on a family member who has been persecuted or who has a well-founded fear of future persecution on account of that familial relationship...we defer to the BIA's view of kinship ties as giving rise to social group membership, expressed in In re Acosta and elsewhere; and we join the univocal view of our sister circuits that a family may make up a particular social group."), *vacated and remanded*, 126 S. Ct. 1613 (2006).

68 *Aguirre-Cervantes v. INS*, 242 F.3d 1169, 1177 (9th Cir. 2001), *reh'g granted*, 270 F.3d 794 (9th Cir. 2001), *vacated per stipulation and remanded*, 273 F.3d 1220 (9th Cir. 2001). Although vacated on other grounds, Aguirre-Cervantes is persuasive and ought to be considered by the Court for its well articulated legal reasoning.

69 *See supra* note 62 and surrounding text for a discussion of forced marriage and asylum law.

70 *Cf. supra* note 22 at ¶11 ("[M]embers of Gays and Lesbians of Zimbabwe (GALZ) have been threatened and brutally assaulted for mobilizing around issues of concern to LGBT individuals"); AMNESTY INT'L, SEXUAL RIGHTS ARE HUMAN RIGHTS: DEFENDING WOMEN DEFENDING RIGHTS (2005), http://www.amnestyusa.org/regions/africa/document.do?id=ENGACT770362005, (describing the persecution of lesbian activists in Uganda, who were assaulted both because of their sexual orientation and because of their political activities related to that identity); *supra* note 32.

71 *Ravindran v. INS*, 976 F.2d 754 (1st Cir. 1992); *Canas-Segovia v. INS*, 970 F.2d 599 (9th Cir. 1992) (persecution based on beliefs the persecutor believes the applicant to have, whether or not the applicant actually possesses that political opinion is grounds for asylum).

Appendix

LGBT Asylum Cases

Matter of Toboso-Alfonso, 20 I&N Dec. 819 (B.I.A. 1990)
The original case, designated as precedent in 1994, which established sexual orientation as "membership in a particular social group" and paved the way for asylum based on sexual orientation. Toboso-Alfonso was a gay man from Cuba who suffered various abuses at the hands of his government, including being forced to participate in a labor camp.

Pitcherskaia v. INSI 118 F.3d 641, 645 (9th Circ. 1997)
Finding that even if the abuser does not intend harm to the victim, if the victim experiences the abuse as harm, this can rise to the level of persecution. In this case, the applicant was a lesbian from Russia who, among other abuses, had been forced to undergo electroshock therapy to "cure" her of her homosexuality.

Hernandez-Montiel v. INS 225 F.3d 1088 (9th Cir. 2000)
Finding that a gay man with a female sexual identity who suffered persecution in Mexico, largely because he was effeminate, qualified for asylum.

Kvartenko v. Ashcroft, 33 Fed.Appx. 262 (9th Cir. 2002)
Fact that private citizen cut homosexual's hair in Ukraine under threat of beating did not constitute persecution sufficient to warrant grant of asylum, absent evidence of government's inability or unwillingness to control such street thugs.

Ford v. Bureau of Immigration and Customs Enforcement's Interim Field Office Director for Detention and Removal for Philadelphia Dist., 294 F.Supp.2d 655 (M.D. Pa. 2003)
In response to a petition for a writ of habeas corpus, the district court found that the Board of Immigration Appeals (BIA) relied on sufficient evidence to support its decision that bisexual alien failed to meet his burden of proof for relief under Convention Against Torture (CAT); while Board acknowledged that the reports were clear evidence that some homosexuals experienced acts of torture in Jamaica, it found that the reports did not establish that a substantial portion of homosexuals in the country fell prey to that fate.

Amanfi v. Ashcroft 328 F.3d 719 (3d Cir. 2003)
Finding that it is possible to proceed with an asylum claim based on persecution on account of imputed membership in a particular social group, in this case sexual orientation, even if the applicant is not actually gay. In this case the applicant, a man from Ghana who feared he would be ritually sacrificed, engaged in a homosexual act with another man, knowing that this would lead to his being spared the sacrifice. After he was spared, however, he was mistreated because the authorities believed he was gay. The Court recognized his imputed membership in a particular social group and remanded the case for further investigation on his claim of persecution.

Parker v. Ashcroft, 112 Fed. Appx. 860 (3d. Cir, 2004)
Substantial evidence supported finding that alien failed to prove government authorities were unwilling or unable to protect him from persecution on account of his status as a homosexual man, and thus was not entitled to asylum; although his home country, Jamaica, had strict views against homosexuality, there was some evidence, including letter from police detective and country report, that officials recognized that violence against gays was unacceptable.

Reyes-Reyes v. Ashcroft 384 F.3d 782 (9th Cir. 2004)
Reaffirming that a "gay man with a female sexual identity" belongs to a particular social group, and finding that if a government willfully turns a blind eye to severe physical abuse inflicted by non-government actors, this can rise to the level of government acquiescence in torture so as to qualify for relief under the Convention against Torture treaty. In this case Reyes-Reyes was a gay man with a female sexual identity from El Salvador who had been kidnapped, beaten and raped by non-government actors because of his sexual orientation. The Court remanded for further proceedings on his CAT and withholding claims.

Molathwa v. Ashcroft 390 F.3d 551 (8th Cir. 2004)
Holding that the federal court lacked jurisdiction to review his claimed exception to the one year filing deadline for asylum and that Molathwa had failed to demonstrate that it was more likely than not that he would be persecuted because of his gay sexual orientation in his native Botswana.

Burog-Perez v. I.N.S., 95 Fed. Appx. 886 (9th Cir. 2004)
Alien's allegations that she would not be able, if she returned to the Philippines, to find a job, given her appearance as a lesbian and the pattern or practice of economic persecution, enforcement of discriminatory dress and conduct rules, and harassment of homosexuals in that country, did not support a reasonable fear of persecution, as required to establish prima facie eligibility for asylum, even though alien's dental practice declined when her clients left for discriminatory reasons, and therefore denial of alien's motion to remand to permit her to file an asylum application was not an abuse of discretion.

Cornejo-Merida v. Ashcroft, 116 Fed.Appx. 900 (9th Cir. 2004)
Although alien's evidence established that there was overt discrimination against gays in Peru, he could not show that it was likely that he would be targeted for persecution or that persecution of gays in Peru was so rampant and severe that his mere membership in group of homosexual men sufficed to establish objective well-founded fear of future persecution, as required to support alien's application for asylum after he failed to establish past persecution.

Galicia v. Ashcroft 396 F.3d 446 (1st Cir. 2005)
Gay Guatemalan man's petition for review was denied because he failed to show government involvement or lack of protection from past mistreatment he suffered by his neighbors.

Safadi v. Gonzales, 148 Fed.Appx. 372 (6th Cir. 2005)
Substantial evidence supported finding, in asylum proceeding, that alien was not credible as to his claim that he was homosexual and would be persecuted on that basis if returned to Jordan; alien had engaged in a sham marriage with a U.S. citizen to extend his residency, and there were inconsistencies between his asylum application and his own testimony, as well as between his testimony and that of his purported romantic partner.

Ali v. Gonzales, 160 Fed.Appx. 485 (7th Cir. 2005)
Algerian native's public admission that he was homosexual did not create "changed circumstances" in country of origin which would excuse untimely filing of motion to reopen his asylum case.

Salkeld v. Gonzalez 420 F.3d 804 (8th Cir. 2005)
Gay man from Peru who did not personally suffer past persecution and who did not meet a one year filing deadline exception failed to prove a clear probability of future persecution and therefore did not meet the standard for withholding of removal. The Court found it significant that Salkeld himself had never experienced physical violence, there are no laws against homosexuality in Peru, and there are some regions in Peru which are relatively safer for gay people than others.

Kimumwe v. Gonzalez 431 F.3d 319 (8th Cir. 2005)
A gay man from Zimbabwe had not established past persecution although, among other things, he was jailed without charges for two months after having sex with another man at college. The Court found that he was jailed because of sexual misconduct, not homosexual identity. The Court also found that in spite of Mugabe's statements that homosexuals have no rights, and Zimbabwe's poor record on human rights, that Kimumwe had failed to prove a fear of future persecution.

Badalian v. Gonzales, 148 Fed.Appx. 638 (9th Cir. 2005)
Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's application omitted or was inconsistent with his testimony concerning several details that went to heart of his claim, including his intimacy with murdered leader of gay rights association, threats of a sexual nature made by police, six-month period of hiding from police, and continual searches of his parents' home by police, and alien's testimony was internally inconsistent regarding whether or not he was charged by police for being homosexual, whether he was fired from his job for his sexual orientation, and whether he was openly gay.

Boer-Sedano v. Gonzalez 418 F.3d 1082, (9th Cir. 2005)
A gay Mexican man with AIDS who was sexually and physically abused by a Mexican police officer was statutorily eligible for asylum. The case also contains good language about the applicant's HIV status making internal relocation within Mexico impossible, as well as good language that return trips to the home country alone do not render an applicant ineligible for asylum.

Comparan v. Gonzales, 144 Fed.Appx. 673 (9th Cir. 2005)
Alien's status as a homosexual in Mexico established, for asylum purposes, his membership in "particular social group."

Karouni v. Gonzalez 399 F.3d 1163 (9th Cir. 2005)
Court held unequivocally that "all alien homosexuals are members of a "'particular social group'" and finding that Karouni, a gay, HIV-positive man from Lebanon, had established a well-founded fear of future persecution.

Loya-Loya v. Gonzales, 153 Fed.Appx. 441 (9th Cir. 2005)
Failing to address aliens' evidence and arguments regarding treatment of homosexuals in Mexico was abuse of Board of Immigration Appeals' (BIA) discretion in proceeding on applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT).

Pena-Torres v. Gonzales, 128 Fed.Appx. 628 (9th Cir. 2005)
Past persecution criterion was satisfied, in homosexual's asylum application, where police in alien's country of origin had detained him after seeing him leave gay bar, had asked if he was gay, had beaten him severely, and had threatened that they knew where he lived and would harm his family should he report them.

Joaquin-Porras v. Gonzales, 435 F.3d 172 (2nd Cir. 2006)
Detention by police in Costa Rica because he was gay did not establish a threat to life or freedom as required under the Convention Against Torture, because the detention was brief and he was released without harm.

Satkauskas v. Att'y Gen. of U.S., 2006 WL 1004880 (3d Cir. 2006)
Board of Immigration Appeals' (BIA's) determination that alien had not met his burden of showing that he would be persecuted for being a homosexual upon return to Lithuania, so as to be eligible for asylum, was supported by substantial evidence.

Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006)

Pondoc Hernaez v. I.N.S., 244 F.3d 752 (9th Cir. 2001)

Sullivan v. I.N.S., 772 F.2d 609 (9th Cir. 1985)

Maldonado v. Att'y Gen. of U.S., 2006 WL 1995724 (3d Cir. 2006)*

Sewidjaja v. Att'y Gen. of U.S., 2006 WL 2990097 (3rd Cir. 2006)*

Yeoh v. Gonzales, 2006 WL 2846849 (9th Cir. 2006)*

Ugochukwu v. Gonzales, 2006 WL 2457379 (7th Cir. 2006)*

Morett v. Gonzales, 2006 WL 2022009 (2nd Cir. 2006)*

Tavera Lara v. U.S. Att'y Gen., 2006 WL 1827749 (11th Cir. 2006)*

Rezhdo v. Att'y Gen. of U.S., 2006 WL 1795119 (3d Cir. 2006)*

Jean-Pierre v. Att'y Gen. of U.S., 2006 WL 2472197 (3d Cir. 2006)*

Vega v. Gonzales, 183 Fed. Appx. 627 (9th Cir. 2006)*

Kibuuka v. Gonzales, 178 Fed. Appx. 24 (1st Cir. 2006)*

Li v. Gonzales, 163 Fed. Appx. 91 (2d Cir. 2006)*

Pozos v. Gonzales, 141 Fed. Appx. 629 (9th Cir. 2005)*

Rosal-Olavarrieta v. Gonzales, 134 Fed. Appx. 593 (3d Cir. 2005)*

Abdul-Karim v. Ashcroft, 102 Fed. Appx. 613 (9th Cir. 2004)*

Lin v. Ashcroft, 99 Fed. Appx. 810 (9th Cir. 2004)*

Suhardy v. Ashcroft, 263 F.3d 162 (5th Cir. 2001)*

Vassilev v. I.N.S., 110 F.3d 72 (9th Cir. 1997)*

Laguna-Santana v. Robinson, 2005 WL 1630552 (W.D.La. 2005)*

Correa v. Pasquarell, 2004 WL 212935 (W.D. Tex. 2004)*

Gender Based Asylum Case

Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir. 1993)

Family Status Asylum Cases

Bah v. Gonzales, 462 F.3d 637, 647 (6th Cir. 2006) ("Family members, including parents, may persecute each other, and therefore they may be the source 'of a well-founded fear of persecution on account of ... membership in a particular social group.")

Santos Lopez v. Gonzales, 179 Fed. Appx. 992 (9th Cir. 2006)* (remanding to B.I.A. to determine whether applicant's family "presents the kind of 'kinship ties' that constitute a 'particular social group'")

Toma v. Gonzales, 179 Fed. Appx. 320, 325 (6th Cir. 2006)

Lopez-Soto v. Ashcroft, 383 F.3d 228, 235 – 36 (4th Cir. 2004)

Lin v. Ashcroft, 377 F.3d 1014, 1028-29 (9th Cir. 2004)

Aguirre-Cervantes v. INS, 242 F.3d 1169, 1177 (9th Cir. 2001), reh'g granted, 270 F.3d 794 (9th Cir. 2001), vacated per stipulation and remanded to BIA, 273 F.3d 1220 (9th Cir. 2001)

Chen v. Ashcroft, 289 F.3d 1113, 1115 (9th Cir. 2002) members of a nuclear family constitute a particular social group

Ananeh-Firempong v. INS, 766 F.2d 621, 626 (1st Cir. 1985) recognizing that family relations can be the basis of a "particular social group"

Gebremichael v. INS, 10 F.3d 28 (1st Cir. 1993)

Iliev v. INS, 127 F3d 638. 642 (7th Cir. 1997)

Thomas v. Gonzales 409 F.3d 1177, 188 (9th Cir. 2005) *vacated and remanded* to BIA, 126 S. Ct. 1613 ([F]amily membership may constitute membership in a "particular social group," and thus confer refugee status on a family member who has been persecuted or who has a well-founded fear of future persecution on account of that familial relationship...we defer to the BIA's view of kinship ties as giving rise to social group membership, expressed in *In re Acosta* and elsewhere; and we join the univocal view of our sister circuits that a family may make up a particular social group) (internal citations omitted). The Supreme Court ruled in April 2006 to remand the case to the BIA to rule on the issue of whether an individual family constituted a particular social group. *Gonzales v. Thomas*, 126 S.Ct. 1613 (2006).

Forced Marriage Asylum Case

Gao v. Gonzales 440 F.3d 62 (2nd Cir. 2006) petition for reh'g filed (2nd Cir. May 17, 2006)

Chen v. Gonzales, 2006 WL 2990135 (2d Cir. 2006)*

Tang v. Gonzales, 2006 WL 2971796 (2d Cir. 2006)*

Lan Chen v. Gonzales, 2006 WL 1766512 (2d Cir. 2006)*

Chun Hua Weng v. Gonzales, 185 Fed. Appx. 77 (2d Cir. 2006)*

Himanje v. Gonzales, 184 Fed. Appx. 105 (2d Cir. 2006)*

Keita v. Gonzales, 175 Fed. Appx. 711 (6th Cir. 2006)*

Chen v. U.S.D.O.J., 175 Fed. Appx. 492 (2d Cir. 2006)*

Li v. B.I.A., 172 Fed. Appx. 385 (2d Cir. 2006)*

Chen v. Gonzales, 153 Fed. Appx. 49 (2d Cir. 2005)*

Imputed Political Opinion Asylum Cases

I.N.S. v. Elias-Zacarias, 502 U.S. 478 (1992)

Ravindran v. INS 976 F.2d 754 (1st Cir., 1992)

Canas-Segovia v. INS 970 F.2d 599, 601-602 (9th Cir. 1992)

Lazo-Majano v. INS 813 F.2d 1432 (C.A., 9, 1987)

Hernandez-Ortiz v. I.N.S., 777 F.2d 509, 516 (9th Cir. 1985)

Kovac v. I.N.S., 407 F.2d 102 (9th Cir. 1969)