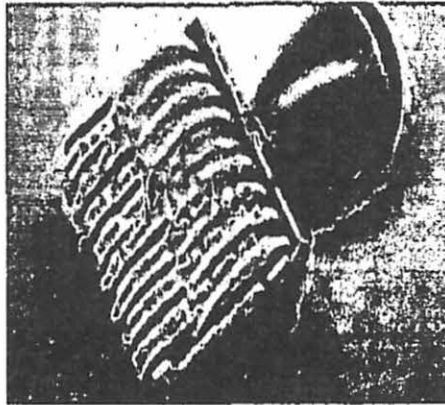


REAL ID ACT

HQ ASYLUM, MARCH 2017





DATE OF ENACTMENT - MAY 11, 2005

ONLY APPLIES TO ASYLUM APPLICATIONS FILED ON OR
AFTER THIS DATE



REAL ID ACT

Most relevant aspects of the law (for Asylum):

- **Codified certain asylum case law provisions re: Nexus, Corroboration, and Credibility**
- Broadened TRIG
- Removed cap on adjustments of status for asylees (had been 10,000/year)
- Removed cap on grants of asylum based on CPC (had been 1,000/year)

CHANGES UNDER REAL ID

3 Main Points

1. **Nexus**

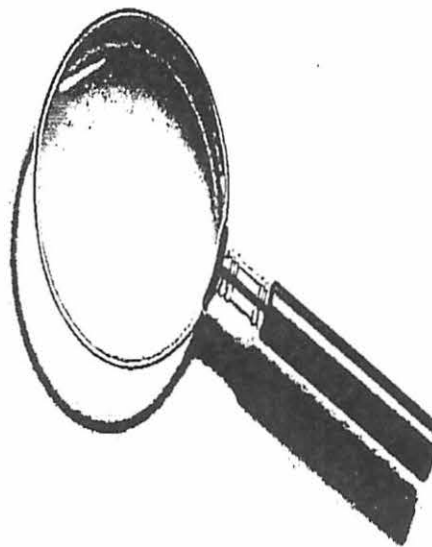
INA § 208(b)(1)(B)(i)

2. **Corroborating Evidence**

INA § 208 (b)(1)(B)(ii)

3. **Credibility**

INA § 208(b)(1)(B)(iii)



1. NEXUS

The grounds remain the same...

- Race
- Religion
- Nationality
- Membership in a Particular Social Group ("PSG")
- Political Opinion

REAL ID did not change any of the grounds but it clarified what an applicant's must demonstrate to establish a nexus.

1. NEXUS

- “[O]ur **standard** in mixed-motive cases has **not been radically altered** by the [REAL ID Act]”
- The protected ground “**cannot play a minor role** in the [applicant's] past mistreatment or fears of future mistreatment.”
- The protected ground **cannot be** “**incidental, tangential, [or] superficial . . . to another reason for harm.**”
- “[M]otivation of the persecutors involves questions of fact, and the burden **can be met by testimonial evidence.**”

Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 214 (BIA 2007)

1. NEXUS: "ONE CENTRAL REASON"

"There is no requirement that the motivation relating to the protected ground be dominant or primary."

Parussimova v. Mukasey, 555 F.3d 734, 741 (9th Cir. 2009).

But it must be "at least one central reason."

INA § 208(b)(1)(B)(i)

1. NEXUS

For Assessment Writing

Identify the nexus and analyze facts to show that at least **one central reason** that the persecutor harmed applicant was on account of a protected ground.

- From the ADOTC Grant Assessment Template (DRAFT)

2. CORROBORATION

“[T]estimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”

INA § 208 (b)(1)(B)(ii).

2. CORROBORATION

"[T]he trier of fact (**YOU**) may weigh the **credible testimony** along **with other evidence of record.**"

§

"Where the trier of fact determines that the applicant should provide evidence that corroborates **otherwise credible testimony**, such evidence **must be provided** unless the applicant **does not have** the evidence and **cannot reasonably obtain** the evidence."

AKA the "Corroboration Rule" - INA § 208 (b)(1)(B)(ii).

3. CREDIBILITY DETERMINATIONS

**“THERE IS NO
PRESUMPTION OF
CREDIBILITY”**

INA § 208 (b)(1)(B)(iii)

3. CREDIBILITY DETERMINATIONS

What is credible testimony?

Testimony is credible if it is "detailed,
consistent, and plausible."

3. CREDIBILITY DETERMINATIONS

Considering the **totality of the circumstances**, and **all relevant factors**, a trier of fact **may** base a credibility determination* on:

- **Demeanor**, candor, responsiveness
- Inherent **plausibility** of the applicant's account
- **Consistency** between the applicant's written and oral statements**
 - internal consistency between all such statements;
 - consistency between such statements and other evidence of record (including DOS Country Conditions reports)
- Any inaccuracies or falsehoods in such statements
 - without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim
- **Any other relevant factor**

INA§208(b)(1)(B)(iii)

*Of any applicant or witness

**Whenever made and whether or not under oath, and considering the circumstances under which the statements were made

REMINDER: THE BASIS WAS IN CASE LAW...

The **BIA** has held that the factors listed in the REAL ID Act relevant to credibility determinations were chosen because they were "**identified in case law**" and therefore help provide a "uniform standard for credibility."

Lack of Detail*

Internal Inconsistency

External Inconsistency

Plausibility

Inaccuracies or falsehoods

Candor or Responsiveness

Demeanor

Any other relevant factor

*Not listed in the statute but see: *Matter of Mogharrabi*

REMINDER: TOTALITY OF THE CIRCUMSTANCES

Each specific instance of any credibility concern must be addressed and then afforded the appropriate probative weight given the "**TOTALITY OF THE CIRCUMSTANCES**"

What does it mean?

According to the BIA, it is basically **the context of the entire record.**

3. CREDIBILITY DETERMINATION

TOTALITY OF THE CIRCUMSTANCES

Chinese Christian claim. IJ made adverse credibility determination based on several factors, including:

- applicant said he had to stand outside in the heat during his 2nd day in detention; written statement said 3rd day.
- applicant could not recall date or year of arrest – said it was within “four, five, or six months” of departure from China
- applicant's recitation of Lord's prayer was incorrect – knowledge of Christianity less than basic.

Ren v. Holder, 648 F.3d 1079 (9th Cir. 2011)

3. CREDIBILITY DETERMINATION

TOTALITY OF THE CIRCUMSTANCES

Factors

- Age: 19
- Father's recent death
- Separation from mother
- Put in care of "unsympathetic aunt"
- Long journey to US
- 8 months in detention upon arrival in US
- Applicant's explanations

Outcome

- BIA overturned an immigration judge negative credibility finding – based on the "totality" including these factors
- BIA held the applicant presented a plausible, detailed and internally consistent asylum claim

3. CREDIBILITY DETERMINATIONS

For extended discussions on:

- Demeanor
- Plausibility
- Inconsistencies

Refer to:

- RAIO CT Class "Credibility Determinations"
- RAIO Credibility Lesson Plan
- Asylum Supplement to the LP

3. "ANY OTHER RELEVANT FACTOR"

"Relevant" facts

- Do not have to go to the heart of the claim;
- But still must be logically connected;
- Tend to either prove or disprove a matter at issue (i.e. moves the needle one direction or the other)

REMINDER: ADDRESSING SPECIFIC CREDIBILITY CONCERNS

- Identify the type of credibility concern;
- Inform the applicant of your concern;
- Ask the applicant to explain;
- Assess the reasonableness of the explanation in the totality of the circumstances, given all relevant factors.

This is not a linear process. All these elements are ongoing and can happen before, during, and/or after the interview.

REMINDER: "ELICIT"

"To elicit": VERB

*to call forth or draw out
(as information or a
response)*

More than just asking a list of questions

- Listening
- Thinking
- Responding
- Documenting
- Clarifying
- Repeating
- Pausing
- *What else?*

TIPS FOR ELICITING ON CREDIBILITY

- Ask about biographic information
- Listen carefully
- Ask for the details you need
- Ask questions out of chronological order (when appropriate)
- Ask the applicant to explain again
- Take careful notes
- Review documents carefully
- Remain composed, even when you suspect misrepresentation

REMINDER: FACTORS THAT CAN PRESENT AS CREDIBILITY CONCERNS

Remember factors from the RAIO CT and all the LPs regarding factors such as:

- Incomplete / faulty memory
- Varied impacts/manifestations of trauma
- Cultural / societal barriers
- Dialect / Language Issues
- Limited Access to Counsel or understanding of the System
- Sensitive Topics (sexual violence, FGM, sexual orientation, etc.)

These may be **RELEVANT** factors that you should address in the interview and in your analysis of the **TOTALITY OF THE CIRCUMSTANCES!**

REMINDER: FACTORS THAT ARE NOT
RELEVANT TO CREDIBILITY
DETERMINATIONS

- Your moral or value judgments
- The fact that applicants may make statements that are "self-serving"
- Your speculation as to what is plausible
- AO fatigue with hearing similar claims or dealing with similar populations
- **The legal conclusion that the Applicant's fear is not well-founded**

3. CREDIBILITY DETERMINATION

For Assessment Writing

If positive credibility finding, write:

- **“The applicant's testimony was detailed, consistent, and plausible. Therefore, it is found credible”**

If negative credibility finding:

- Fully analyze the relevant credibility factors

REAL ID ACT RECAP

Take Away Points

1. Nexus → “one central reason”
2. Corroboration Rule
3. Credibility → Any **relevant** factors in the **totality of the circumstances**