



# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

### *RAIO Combined Training Course*

# INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION

## TRAINING MODULE

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## **INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA) AND RELIGIOUS PERSECUTION**

### **Training Module**

#### **MODULE DESCRIPTION:**

This module introduces you to the International Religious Freedom Act (IRFA) and the responsibilities that the Act creates for adjudicating protection claims. The training you receive will also be useful in adjudicating immigration benefits, petitions, and other immigration-related requests. Through reading and discussing country conditions information, you will increase your awareness of religious freedom issues around the world. Through discussion and practical exercises, you will learn how to conduct an interview and adjudicate a claim with a religious freedom issue.

#### **TERMINAL PERFORMANCE OBJECTIVE(S)**

Given a request for protection (an asylum or refugee application, or a reasonable fear or credible fear screening<sup>1</sup>) with a religious freedom issue, you will apply IRFA and case law.

#### **ENABLING LEARNING OBJECTIVES**

1. Summarize the IRFA requirements for RAIO officers.
2. Explain the statutory and regulatory requirements for consideration of protection claims and benefits requests involving religious freedom and religious persecution.
3. Summarize legal rulings that must be followed or that provide guidance when making decisions based on religious freedom or religious persecution.
4. Distinguish between appropriate and inappropriate interview questions involving religious freedom issues

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<sup>1</sup> Reasonable fear and credible fear screenings are processes in which an Asylum Pre-screening Officer determines if an applicant, who is subject to expedited removal, re-instatement of removal, or administrative removal, and who expresses a fear or concern of being removed, has a credible or reasonable fear of persecution or torture.

5. Explain the broad interpretation of “religion” as a protected ground under IRFA and the refugee definition.

## **INSTRUCTIONAL METHODS**

- Lecture
- Discussion
- Practical exercises

## **METHOD(S) OF EVALUATION**

Written test

## **REQUIRED READING**

1. U.S. Department of State, International Religious Freedom Report for 2013 (July 28, 2014), [Executive Summary](#).
2. *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).
3. *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011).

[Division-Specific Required Reading - Refugee Division](#)

[Division-Specific Required Reading - Asylum Division](#)

[Division-Specific Required Reading - International Operations Division](#)

## **ADDITIONAL RESOURCES**

1. U.S. Department of State, International Religious Freedom Reports.
2. U.S. Commission on International Religious Freedom, Annual Reports.
3. [International Religious Freedom Act of 1998](#), P.L. 105-292, 112 Stat. 2787 (Oct. 27, 1998).
4. UNHCR, [Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A\(2\) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees](#) (28 April 2004).

5. Lawyers Committee for Human Rights. [Testing the Faithful: Religion and Asylum Summary Results of Survey, A Briefing Paper Prepared for the Roundtable on Religion-based Persecution Claims](#) (New York: November 2002).

**[Division-Specific Additional Resources - Refugee Division](#)**

**[Division-Specific Additional Resources - Asylum Division](#)**

**[Division-Specific Additional Resources - International Operations Division](#)**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
IRL7	Knowledge of International Religious Freedom Act (3)
IRL14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
ILR22	Knowledge of criteria for establishing credibility (4)
ITK6	Knowledge of principles of cross-cultural communications (e.g., obstacles, sensitivity, techniques for communication) (4)
OK11	Knowledge of Department functions and responsibilities, as they relate to RAIO (2)
RI1	Skill in identifying issues of claim (4)
RI3	Skill in conducting research (e.g., legal, background, country conditions) (4)
RI4	Skill in integrating information and materials from multiple sources (4)
IR3	Skill in responding to cultural behavior in an appropriate way (e.g., respectful, accepting of cultural differences) (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM4	Skill in determining applicant's credibility (5)
DM5	Skill in analyzing complex issues to identify appropriate responses or decisions (5)
ITS3	Skill in framing interview questions and requests for information (4)
ITS6	Skill in conducting non-adversarial interviews
C3	Skill in tailoring communications to diverse audiences (3)

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>
1/28/15	Throughout document	Fixed links and citations; added new case law; deleted references to 2011-2012 COI materials	RAIO Trng
03/24/2017	Throughout document	Updated links; added citation; updated TOC; changed indentations for consistency.	RAIO Training

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

## **1 INTRODUCTION**

The purpose of this module is to introduce you to the International Religious Freedom Act (IRFA) and the proper way to analyze protection claims involving religious freedom issues with the goal of ensuring that religious freedom is respected during the course of interviews and throughout the adjudication process.

Sections 2 and 3 of this module provide an overview of IRFA and a detailed analysis of Title VI, the section of IRFA that is most relevant to you. Sections 4, 5, 6, and 7 of this module discuss the nature of religion and violations of religious freedom, and explore the issues that you should consider when interviewing, analyzing and adjudicating a protection claim or benefit request where religion may be a factor. Finally, Section 8 of this module lists resources you may find useful when deciding claims based on religious freedom.

## **2 OVERVIEW OF IRFA**

In 1998, Congress adopted the International Religious Freedom Act (IRFA) in response to growing concerns about the persecution of various religious groups throughout the world. IRFA was signed into law on October 27, 1998.

While IRFA specifically noted Congressional concern for Christians in the Sudan and China, Tibetan Buddhists and Baha'is in Iran, Congress recognized the importance of protecting religious freedom throughout the world. In its findings, Congress cited, among other reasons, the following as a basis for adopting the Act:

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established a law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its

birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.<sup>2</sup>

IRFA seeks to address two different though equally important issues. First, IRFA addresses the issues of religious freedom and religious persecution directly, including a series of diplomatic and foreign policy provisions designed to enhance the ability of the United States to promote religious freedom around the globe. Second, IRFA addresses perceived problems within the Department of State (DOS), the Department of Justice (DOJ), and the former Immigration and Naturalization Service (INS) that may lead to diminished attention to the problems of religious persecution. These latter provisions now apply to the relevant components of the Department of Homeland Security (DHS).

IRFA is divided into seven titles. For this training, Title VI is the most important and will be the focus of this lesson. It is helpful, however, to briefly review the scope of the entire law. The following are the highlights of the provisions in each Title of IRFA. You should read the entire law for a complete understanding of all its provisions.

## **2.1 Title I – Department of State (DOS) Activities**

- Establishes within DOS an Office on International Religious Freedom and an Ambassador-at-Large for International Religious Freedom
- Requires DOS to provide specific training and outreach to Foreign Service Officers, including instruction on internationally recognized human rights and religious freedoms
- Requires DOS to set up a [website](#) for religious freedom and to maintain country-by-country lists of prisoners of conscience
- Requires DOS to publish various papers on religious freedom and an annual report that documents religious persecution throughout the world<sup>3</sup>

## **2.2 Title II – Commission on International Religious Freedom**

- Creates a Commission on International Religious Freedom ([USCIRF](#)) comprised of nine members from outside the U.S. Government, to monitor religious freedom in other countries, and to advise the U.S. Government on how best to promote religious freedom

## **2.3 Title III – National Security Council (NSC)**

- Creates an NSC Special Advisor to the President on International Religious Freedom

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<sup>2</sup> [22 U.S.C. § 6401\(a\)\(1\)](#) (1999).

<sup>3</sup> The annual report may be found on the DOS [website](#) for international religious freedom

- Special Advisor serves as a resource for executive branch officials and makes policy recommendations

## **2.4 Title IV – Presidential Actions**

- Provides the President with the power to sanction violators of religious freedom
- Requires the President to designate “countr[ies] of particular concern for religious freedom” if the countries have engaged in or tolerated certain violations of religious freedom<sup>4</sup>

## **2.5 Title V – Promotion of Religious Freedom**

- Requires the United States to promote religious freedom through broadcasts, international exchanges, and foreign service awards

## **2.6 Title VI – Refugee, Asylum, and Consular Matters**

This Title is discussed in detail below in Refugee, Asylum, and Consular Matters under IRFA.<sup>5</sup>

## **2.7 Title VII – Miscellaneous Provisions**

These provisions note that it is the “sense of Congress that transnational corporations operating overseas” should adopt codes of conduct that encourage respect of employees’ religious beliefs and practices.

# **3 REFUGEE, ASYLUM, AND CONSULAR MATTERS UNDER IRFA**

Title VI contains five sections, which you must know in order to adjudicate refugee and asylum claims. A description of each section follows.

## **3.1 Section 601 -Use of Annual Report**

This section specifically mandates Asylum Officers, Immigration Judges, and Refugee and Consular Officers use the DOS Annual Report on Religious Freedom and other country of origin information when analyzing claims for asylum or refugee status on account of religion.<sup>6</sup>

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<sup>4</sup> The President has delegated this authority to the Secretary of State and the countries of particular concern are found on the DOS [website](#).

<sup>5</sup> [22 U.S.C. §§ 6471-6474](#) (1999). You should read Title VI for the complete provisions in each section. These are just the highlights.

<sup>6</sup> Publication of the annual report is a requirement under Title I.

Furthermore, this section specifically prohibits the denial of a refugee or asylum claim solely because the conditions of religious persecution as stated by an applicant do not appear in the DOS annual report.<sup>7</sup> [[ASM Supplement – Use of DOS Annual Report](#)].

### **3.2 Section 602 - Reform of Refugee Policy**

This section<sup>8</sup> contains four important components:

1. Mandates training for Refugee Adjudicators that is the same as Asylum Adjudicators' training and that includes country conditions information and information on religious persecution.
2. Mandates training for Consular Officers on refugee law and adjudication, and religious persecution.
3. Requires DOS and DHS to jointly create guidelines to ensure that interpreters and other foreign personnel who come into contact with refugee applicants do not show improper bias on account of an individual's religion, race, nationality, membership in a particular social group, or political opinion.
4. Requires greater scrutiny of the manner in which refugee cases are screened and prepared and interviews are conducted to ensure that the files contain information that is unbiased and accurate.

### **3.3 Section 603 - Reform of Asylum Policy**

This section<sup>9</sup> contains three important components:

1. Requires DOS and DHS to jointly create guidelines to ensure that individuals possibly biased against a person's race, religion, nationality, membership in a particular social group, or political opinion are not permitted to act as interpreters between aliens and Inspection or Asylum Officers. This includes interpreters and employees of airlines owned by governments known for persecutory actions.
2. Requires Asylum Officers and any Immigration Officers working in the expedited removal<sup>10</sup> context to receive training on "the nature of religious persecution abroad, including country-specific conditions, instruction on the internationally recognized

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<sup>7</sup> See also [Gaksakuman v. U.S. Att'y Gen.](#), 767 F.3d 1164 (11th Cir. 2014) (holding that State Department reports cannot be found to undercut evidence presented by an applicant simply because they fail to comment on the facts of an individual application).

<sup>8</sup> [22 U.S.C. § 6472](#) (1999).

<sup>9</sup> [22 U.S.C. § 6473](#) (1999).

<sup>10</sup> Persons who are in expedited removal proceedings and express a fear or concern of being removed to the country DHS has designated for removal, must be referred to an Asylum Pre-screening Officer for a credible fear determination.

right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country in the treatment of various religious practices and believers.”<sup>11</sup>

3. Under Section 602, all training mandated for Asylum Officers, must also be provided to officials adjudicating refugee cases.<sup>12</sup>

### **3.4 Section 604 - Inadmissibility of Foreign Government Officials who Have Engaged in Particularly Serious Violations of Religious Freedom**

This section<sup>13</sup> creates a new ground of inadmissibility to prevent religious persecutors from entering the United States. This ground, codified in Section 212(a)(2)(G) of the INA, [8 U.S.C. § 1182\(a\)\(2\)\(G\)](#), and later amended by the Intelligence Reform Act of 2004, makes inadmissible any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section three of IRFA. This inadmissibility ground also includes the spouse and children of any such individual. The inadmissibility ground applies only to aliens seeking admission on or after October 27, 1998, the date of the enactment of IRFA. However, note that refugee applicants may apply for a waiver of this ground of inadmissibility pursuant to INA § 207(c)(3).

In 1999, INS issued a policy memorandum on how to process applications for admission from individuals who may fall within this section of the INA.<sup>14</sup>

### **3.5 Section 605 - Studies on the Effect of Expedited Removal Provisions on Asylum Claims**

The U.S. Commission on International Religious Freedom has the ability to request from the Attorney General a study by the Comptroller General on certain aspects of the expedited removal process.<sup>15</sup>

- On September 1, 2000, the General Accounting Office (GAO)<sup>16</sup> released a report on the expedited removal process as required under IRFA; however, it did not

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<sup>11</sup> IRFA also requires that immigration judges receive training on religious persecution.

<sup>12</sup> [22 U.S.C. 6472\(a\)](#).

<sup>13</sup> Intelligence Reform and Terrorism Prevention Act of 2004 § 7119, [PL 108-458](#), 118 Stat. 3638 (2004) (removing a restriction that the particularly severe violations of religious freedom must have taken place within the 24-month period prior to the inadmissibility determination).

<sup>14</sup> For specific instructions, see Michael A. Pearson, INS Office of Field Operations, [Amendment to the Immigration and Nationality Act adding section 212\(a\)\(2\)\(G\), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom](#), Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p. Note that if these individuals are in the United States, they are not necessarily precluded from applying for asylum, withholding of removal, or protection under the Convention Against Torture.

<sup>15</sup> [22 U.S.C. § 6474](#) (1999).

specifically address the issue of how the agency handles the religious-based claims of individuals in the expedited removal process. The GAO report found that the agency was generally in compliance with its expedited removal procedures at selected ports of entry and in compliance with the credible fear process at selected asylum offices.

- The U.S. Commission on International Religious Freedom commissioned a study on asylum seekers in expedited removal, and issued its Report in February 2005. The study sought to answer the following four questions:
  1. Are immigration officers, exercising expedited removal authority, improperly encouraging asylum seekers to withdraw applications for admission?
  2. Are immigration officers, exercising expedited removal authority, incorrectly failing to refer asylum seekers for a credible fear interview?
  3. Are immigration officers, exercising expedited removal authority, incorrectly removing asylum seekers to countries where they may face persecution?
  4. Are immigration officers, exercising expedited removal authority, detaining asylum seekers improperly or under inappropriate conditions?

Based on the problems identified in the study, the Report proposed five recommendations to DHS to ensure that asylum seekers are protected under the expedited removal process.<sup>17</sup> The recommendations were:

- Creating an office authorized to address cross cutting issues related to asylum and expedited removal – in response, DHS created a new position of Special Advisor for Refugee and Asylum Affairs in 2006 and appointed Igor Timofeyev to serve.
- Allowing asylum officers to grant asylum at the credible fear stage – in response, after careful consideration DHS rejected this recommendation due to resource constraints and the potential for a negative impact on some asylum-seekers.
- Establishing asylum detention standards – in response, ICE issued a directive in 2007 to its field components designed to ensure transparency, consistency, and quality in parole decisions.
- Facilitating legal assistance to asylum-seekers – in response DHS cited to its collaboration with DOJ on Legal Orientation Programs for detained individuals and

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<sup>16</sup> General Accounting Office. [\*ILLEGAL ALIENS: Opportunities Exist to Improve the Expedited Removal Process\*](#). GAO/GGD-00-176 (Washington, DC: 1 September 2000) 107p. This agency was renamed the Government Accountability Office in 2004.

<sup>17</sup> U.S. Commission on International Religious Freedom, [\*Report on Asylum Seekers in Expedited Removal\*](#) (Washington, DC: 8 Feb. 2005). The USCIRF Report is available on the USCIRF [website](#). Note that the Congress authorized the Commission to examine how expedited removal was affecting asylum seekers, regardless of whether the claim was based on religion, race, nationality, membership in a particular social group, or political opinion.



to its partnerships with NGOs, notably the Capital Area Immigrants' Rights Coalition.

- Implementing quality assurance procedures to ensure asylum-seekers are not turned away in error – in response, DHS implemented robust quality assurance procedures.

For more on DHS's response, see [Stewart Baker letter to U.S. Commission on International Religious Freedom](#) (Nov. 28, 2008).

## 4 THE NATURE OF RELIGION

### 4.1 Identifying Religious Beliefs and Practices

Religion is explicitly listed as one of the five protected characteristics in the refugee definition, and religion has been broadly understood to include freedom of thought and conscience.<sup>18</sup> In IRFA, Congress invoked the understanding of religion found in international instruments, such as the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, and found that freedom of religious belief and practice is a universal human right and fundamental freedom.<sup>19</sup> Defining “religion” to include an individual’s thought, conscience, and belief requires for a broad interpretation of this protected ground in the asylum and refugee adjudications.

#### Familiar and Unfamiliar Religions

Religion, as a protected ground, is not limited to familiar, or widely accepted religious beliefs and practices. For purposes of establishing asylum and refugee eligibility, persecution suffered or feared on account of a belief system with which you may not be familiar may be considered persecution “on account of religion.” IRFA refers to religious freedom without defining what makes a particular practice or belief a religion, or placing any particular religious group in a position of privilege over any other. While many applicants base their claim to refugee or asylum status on their inclusion in a faith group that is recognizable to the adjudicator (e.g. Hindus, Christians, or Muslims), other individuals may seek protection based upon unfamiliar religious beliefs and practices.<sup>20</sup>

The mere fact that an individual’s faith or faith group is not familiar to an adjudicator, or that a particular practice or belief appears to be unusual, does not mean that the particular faith group or set of practices and beliefs are not “religious.” “Popularity, as well as verity, are inappropriate criteria.”<sup>21</sup> Neither courts nor adjudicators may inquire into the

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<sup>18</sup> *Zhang v. Ashcroft*, 388 F.3d 713, 720 (9th Cir. 2004) (per curiam) (citing [Paragraph 71 of the UNHCR Handbook](#)).

<sup>19</sup> [22 U.S.C. § 6401\(a\)\(1\) - \(3\)](#) (1999).

<sup>20</sup> See [UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#). HCR/GIP/04/06, 28 April 2004, Section II.

<sup>21</sup> *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977)



truth, validity, or reasonableness of a claimant's religious beliefs. Therefore, your role is not to determine whether a belief system may be considered a "religion," but to determine whether the applicant has suffered or might suffer persecution on account of those beliefs.<sup>22</sup>

### **Denial of Religion**

The protected ground of religion also covers an individual's failure or refusal to observe a religion. An individual may also face persecution on account of religion, even if he or she denies that his or her belief, identity or way of life constitutes a "religion."<sup>23</sup>

### **Inability to Practice a Religion**

The definition of religion and religious freedom necessarily includes the ability to worship and to otherwise practice one's religion. Courts have held that "it is virtually the definition of religious persecution that the votaries of a religion are forbidden to practice it."<sup>24</sup> The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook) states that the fundamental right to religious freedom includes "the freedom of a person to . . . manifest it in public or private, in teaching, practice, worship and observance."<sup>25</sup>

### **UNHCR Guidance on Religion-Based Claims**

A useful way to consider this protected ground is to consider the elements UNHCR has identified for claims based on "religion." UNHCR notes that such claims may involve one or more of the following elements:<sup>26</sup>

- religion as a belief (including non-belief)
- religion as identity
- religion as a way of life

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<sup>22</sup> For example, in the First Amendment context, "a religious belief can appear to every other member of the human race as preposterous, yet merit the protections of the Bill of Rights." *Stevens v. Berger*, 428 F. Supp. at 899; *see also Najafi v. INS*, 104 F.3d 943, 949 (7th Cir. 1997) (stating that "determination of a religious faith by a tribunal is fraught with complexity as true belief is not readily justiciable"); *Callahan v. Woods*, 658 F.2d 679, 685 (9th Cir. 1981).

<sup>23</sup> *See UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. HCR/GIP/04/06, 28 April 2004, para. 9. *See Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (per curiam) (holding that Falun Gong practitioner faced persecution on account of his spiritual and religious beliefs, even though Falun Gong does not consider itself a religion).

<sup>24</sup> *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997).

<sup>25</sup> *See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (2011), ¶ 71.

<sup>26</sup> *See UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (2004), at para. 5.

### *Belief*

According to UNHCR, a person’s “beliefs” may be theistic, non-theistic, and atheistic. They also include a person’s convictions or values about “divine,” “ultimate reality,” or “spiritual destiny.” Because of his or her beliefs, a person may be considered a heretic, apostate or a pagan by members of the same religious group.<sup>27</sup>

### *Identity*

A religious persecution claim may also be based on the applicant’s ancestry, nationality, ethnicity, traditions and rituals and less on the applicant’s actual theological beliefs.<sup>28</sup> Persecutors may target religious groups that are different from theirs because they view such groups as a threat to their own identity.

### *Way of Life*

Religion, for some individuals, may also be a “way of life” characterized by a manner of dress, observance of religious practices and holidays, dietary restrictions, and other requirements. Such practices may be at the core of the religion for the applicant.

### **Resources**

The following sources are useful reference tools for understanding different faith groups around the world:

- CIA World Factbook: [Religions](#)
- Bowker, John (ed.), *The Oxford Dictionary of World Religions*
- Crim, Keith (ed.), *The Perennial Dictionary of World Religions*
- Eederman’s *Handbook to World Religions*
- Hinnells, J.R. (ed.), *Penguin Dictionary of Religions*
- Smith, J.Z., *The Harper Collins Dictionary of Religion*

## **4.2 Credibility Considerations in Religious Persecution Cases**

Credibility determinations can be particularly complex in religious persecution cases. You may need to judge the sincerity of the applicant’s claimed religious beliefs, but you cannot judge the validity of the belief system itself. Additionally, you may have certain assumptions or biases about religious issues, which must be put aside in order to render a legally sufficient and unbiased credibility determination. The following considerations should be taken into account:

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<sup>27</sup> *Id.* at para. 6.

<sup>28</sup> *Id.* at para. 7.

#### 4.2.1 Refrain from Judging the Validity of a Belief System

You should not question the validity of a belief, even if the belief appears to be strange, illogical, or absurd.

##### **Distinguish between the Sincerity of Belief and the Validity of Belief**

You may evaluate whether a belief is sincerely held. In doing so, you should not make disrespectful or disparaging remarks about the belief or about the applicant's adoption of such a belief. If you suspect that an individual adopted a belief system solely for the purposes of trying to obtain asylum or refugee status, you must still evaluate whether the applicant's belief is sincerely held. In your questioning, you may elicit testimony about the sincerity of the belief, but you may not question whether the belief system itself has merit or has merit in comparison to other religions.

##### **Refrain from Judging Credibility based on Knowledge of Religious Tenets**

An individual's lack of knowledge of religious tenets does not necessarily mean the individual does not hold the belief or religious identity in question. Just as no individual's personal religious experience could be summed up in the history of his or her church, the words of a few prayers, or a description of his or her place of worship, a religious identity cannot be verified solely on a test of religious tenets.<sup>29</sup>

Furthermore, any inquiry into the applicant's knowledge of the tenets of his or her religion must take into account "individual circumstances, particularly since knowledge of a religion may vary considerably depending on the individual's social, economic or educational background and/or his or her age or sex."<sup>30</sup> In *Ren v. Holder*, for example, the

<sup>29</sup> See *Iao v. Gonzales*, 400 F.3d 530, 534 (7th Cir. 2005) ("many deeply religious people know very little about the origins, doctrines, or even observances of their faith"); *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006) (reversing an adverse credibility finding based solely on the applicant's lack of detailed knowledge of Christian doctrine where the IJ failed to consider the applicant's self-identification as a religious adherent, his religious activities, and that other Indonesians perceived him to be Christian); *Cosa v. Mukasey*, 543 F.3d 1066, 1069-1070 (9th Cir. 2008) (vacated IJ decision, in part because IJ incorrectly faulted applicant for her inability to explain relationship between Millenism and similar religions, and set up Bible quiz and academic trivia contest); see also David Landau, Chief Appellate Counsel, ICE Office of the Principal Legal Advisor, [Guidance on Religious Persecution Claims Relating to Unregistered Religious Groups](#), Memorandum for ICE Chief Counsel, (Washington, DC: February 25, 2008), section VI.

<sup>30</sup> U.N. High Commissioner for Refugees, [Religion-Based Refugee Claims Under Article 1A\(2\) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees](#), paras. 28 and 30, U.N. Doc. HCR/GIP/04/06 (Apr. 28, 2004). See also *Yan v. Gonzales*, 438 F.3d 1249, 1252 (10th Cir. 2006) (reversing an adverse credibility finding that relied on the applicant's incorrect responses to a "a mini-catechism" test and failed to consider the applicant's personal experiences with Christianity and his personal circumstances including: "his very personalized notion" of certain doctrinal elements of Christianity, high school level education, that the applicant had only converted to Christianity 5 years earlier, and that the applicant's lack of knowledge regarding when he celebrated Easter could result from the fact that the holiday is celebrated on different days each year.); *Matter of J-Y-C-*, 24 I&N Dec. 260, 265 (BIA 2007) (finding that a Chinese applicant who claimed to be Christian could reasonably have been expected to identify the Bible during an airport interview since the applicant later

Ninth Circuit rejected an adverse credibility determination based, in part, on the applicant's inability to recite The Lord's Prayer.<sup>31</sup> The court held that questioning an applicant on his knowledge of religious doctrine to determine if he is a true believer is "not an appropriate method for determining eligibility for asylum."<sup>32</sup>

1. Recognize that religions are practiced differently around the world

Location, time period, and culture will produce variations in religious beliefs or practices.<sup>33</sup> Religious practices may vary from country to country and even within countries.

*Example*

An officer familiar with the practices of a Protestant church finds unbelievable an applicant's claim that he was baptized in an indoor baptismal font rather than in a natural body of water, as the officer believes is the church custom. However, the applicant lives in a near-Arctic climate in which the temperature of the bodies of water never rises above 45 degrees and baptisms are, therefore, not conducted in natural bodies of water.

2. Recognize that suppression of a religious group affects practice

Many persons who fear harm on account of religion have been forced to practice their faith in secret or not allowed to practice their faith at all. Sometimes these groups have been without a formal leader or religious texts and have simply passed on traditions from one generation to the next. Absent formal religious education, such individuals may not be able to discuss church history or the theological significance of particular practices. Additionally, underground or illegal religious institutions may not adhere to all formal practices of the faith for lack of training, worship or gathering space, materials, or for other reasons.<sup>34</sup>

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testified before the IJ that his experiences with Christianity before coming to the US and while in China included having been given a Bible by a friend who also told him to read it.)

<sup>31</sup> *Ren v. Holder*, 648 F.3d 1079, 1088 (9th Cir. 2011).

<sup>32</sup> *Id.*

<sup>33</sup> U.N. High Commissioner for Refugees, [Religion-Based Refugee Claims Under Article 1A\(2\) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees](#) (2004), para. 28. Note, however, that "[g]reater knowledge may be expected . . . of individuals asserting they are religious leaders or who have undergone substantial religious instruction." *Id.* at para. 32. See *Mezvrishvili v. U.S. Att'y Gen.*, 467 F.3d 1292, 1295-1297 (11th Cir. 2006) (finding error where an IJ held that the applicant did not demonstrate sufficient knowledge of his religion given that the applicant had been a Jehovah's Witness for only four years and did not represent that he had undertaken active study of the religion for those four years).

<sup>34</sup> See *Huang v. Gonzales*, 403 F.3d 945, 949 (7th Cir. 2005) (rejecting IJ's adverse credibility finding because, among other things, the IJ failed to consider that members of an illegal underground Chinese Catholic church might have to deviate from formal practices); see also *Jiang v. Gonzales*, 485 F.3d 992, 994-995 (7th Cir. 2007) (noting that the IJ had "an exaggerated notion of how much people in China actually should know about Christianity." The court compared the IJ's finding that the applicant could not have been persecuted for being a Christian because he

### *Example*

A 35 year-old woman claiming to be Ukrainian Catholic cannot describe how she would receive the Eucharist. This could be explained by the fact that in her rural town there were very few families who were Catholic and they had not had a priest since 1925.

### 3. Recognize your personal perceptions of a religion may not be accurate

You are not expected to be a theological scholar. Good research on a particular religion, and how it is practiced in a particular region, is crucial to conduct a thorough interview. Even if you are familiar with a religion through personal study or experience, you must be careful when questioning applicants and making credibility determinations.<sup>35</sup> You must not make assumptions, but should instead attempt to verify the applicant's statements with country of origin information.

This is particularly important when the claimant is a member of the same faith group as you. You may be tempted to rely on your personal experiences in the faith to evaluate the testimony of the applicant. It is unlikely, however, that applicants for asylum or refugee status will practice their religion as it is practiced in the United States.

### 4. Do not judge sincerity based on the applicant's manner of religious practice

You should not assume that the applicant's religious beliefs are not sincere based solely on the manner in which the applicant engaged in religious worship or the applicant's attendance at religious services. Religious practices can vary from country to country, community to community, and even person to person. You may notice, if you practice a religion, that the way you practice it may be different than other members of your family. How a religion is practiced may not be indicative of religious sincerity.<sup>36</sup> For example, attendance or lack of attendance at religious services may be affected by numerous factors, such as the availability of places for religious observance, personal circumstances that may inhibit or prevent religious attendance, fear of serious harm when attending religious services, or personal preferences. The frequency of or lack of attendance at religious services may not be indicative of religious sincerity.

## **Religious Beliefs Can Be Imputed to an Applicant**

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could not interpret a Biblical passage to a finding that an individual is not "a baseball devotee because he can't explain the intricacies of the balk rule.").

<sup>35</sup> *Cosa v. Mukasey*, 543 F.3d 1066, 1069 (9th Cir. 2008) (reversing adverse credibility finding because IJ wrongly relied on speculation and conjecture regarding how Millenists dress and behave to fault the applicant's dress and demeanor, and used personal opinion to find that it was "preposterous" that applicant was baptized after only a short period of association with the religion).

<sup>36</sup> See, e.g., *Singh v. Holder*, 720 F.3d 635, 643-644 (7th Cir. 2013) (finding "inappropriate" behavior of IJ who doubted that applicant was Sikh because the applicant did not follow all tenets of Sikhism listed in a Wikipedia entry and noting that "Rather than seeking a verbatim recitation of an encyclopedia article, IJs should listen to a petitioner's personal explanation of religious beliefs...Orthodoxy is no substitute for sincerity.")

An applicant’s knowledge of her religion, or the depth of her beliefs, may not be relevant if she faces persecution on account of beliefs a persecutor perceives her to hold. An adjudicator must look at the totality of the applicant’s circumstances, and country conditions information, when assessing whether an applicant has been or would be persecuted on account of an imputed religious belief.<sup>37</sup> For example, in *Bastanipour v. INS*, the court found that “[w]hether Bastanipour believes the tenets of Christianity in his heart of hearts or . . . is acting opportunistically (though at great risk to himself) in the hope of staving off deportation would not, we imagine, matter to an Iranian religious judge.”<sup>38</sup>

## **5 RIGHT TO RELIGIOUS FREEDOM**

In Section 2 of IRFA, Congress acknowledged that freedom of religious belief and practice is a universal human right and a fundamental freedom articulated in numerous international instruments. A review of these international instruments is important background information, given IRFA’s training requirements for Refugee and Asylum Officers, which includes instruction on the internationally recognized right to freedom of religion. Some of the relevant provisions in the listed international instruments are below.<sup>39</sup>

### **5.1 United Nations Charter**

Article 1 of the *United Nations Charter* provides that one of the purposes of the United Nations is to achieve international cooperation in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>40</sup>

### **5.2 Universal Declaration of Human Rights**

Article 18 of the *Universal Declaration of Human Rights* states that “[e]veryone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” The text of this Article is quoted in IRFA.<sup>41</sup>

### **5.3 International Covenant on Civil and Political Rights**

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<sup>37</sup> For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

<sup>38</sup> *Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992).

<sup>39</sup> [22 U.S.C. § 6401\(a\)\(2\)](#) (1999).

<sup>40</sup> *Charter of the United Nations*. (San Francisco: 26 June 1945).

<sup>41</sup> *Universal Declaration of Human Rights*. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.



Article 18 of the *International Covenant on Civil and Political Rights*<sup>42</sup> provides that:

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

#### **5.4 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief**

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* reaffirms the provisions in Article 18 of the *International Covenant on Civil and Political Rights*.<sup>43</sup>

#### **Religious Discrimination and Intolerance**

Article 2 addresses issues of discrimination based on religion or other beliefs and defines religious discrimination and intolerance as follows:

1. No one shall be subject to discrimination by any State, institution, or group of persons on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

#### **Parents' Right to Choose Religion**

Article 5 addresses the rights of parents to choose the belief or religion in which they desire their children to be raised and the rights of children to have access to education in that belief.

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<sup>42</sup> [International Covenant on Civil and Political Rights](#). G.A. Res. 2200A (XXI), UN GAOR, Dec. 16, 1966. The text of Article 18(1) is quoted in IRFA.

<sup>43</sup> [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#), G.A. Res. 36/55, UN GAOR, Nov. 25, 1981.

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child serving as the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of others to practice a religion or belief, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care of either of his parents or legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes regarding the religion or belief in which they would have wished their child to be raised, the best interests of the child serving as the guiding principle.
5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

### **Freedom of Thought, Conscience, Religion, or Belief**

Article 6 states that the right to freedom of thought, conscience, religion, or belief shall include, among others, the following:

1. To worship or assemble in connection with a religion or a belief, and to establish and maintain places for these purposes
2. To establish and maintain appropriate charitable or humanitarian institutions
3. To make, acquire and use to an adequate extent the necessary articles and materials related to the rites and customs of a religion or belief
4. To write, issue and disseminate relevant publications in these areas
5. To teach a religion or belief in places suitable for these purposes
6. To solicit and receive voluntary financial and other contributions from individuals and institutions



7. To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief
9. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels

## 5.5 Other International Instruments

Other international instruments that promote the right to religious freedom include the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter of Human and People's Rights, the American Convention on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe (the "Helsinki Accords").

## 6 VIOLATIONS OF RELIGIOUS FREEDOM ACCORDING TO IRFA

IRFA highlights the wide range of actions that persecuting regimes take to violate religious freedoms, and provides a *non-exclusive* list of actions that constitute "violations of religious freedom" and a separate list of violations that constitute "particularly severe violations of religious freedom."<sup>44</sup> The range of violations listed in IRFA is instructive for determining persecution under the INA given IRFA's training requirements for asylum and refugee adjudicators on the nature and methods of religious persecution practiced in foreign countries.

The codification of this categorical framework, however, does not mandate a particular result in an individual case. As discussed below in the Religious Persecution section, these violations may or may not constitute persecution, depending upon whether the harm the applicant experienced or fears is sufficiently serious to amount to persecution.

This categorical framework also gives the President a vehicle for identifying and sanctioning violations of religious freedom in other countries.<sup>45</sup>

These categories generally reflect the rights enshrined in the international instruments discussed above, and compose the framework used to determine if countries will be designated as "countries of particular concern for religious freedom."<sup>46</sup>

### 6.1 Particularly Severe Violations of Religious Freedom

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<sup>44</sup> See [22 U.S.C. §§ 6204 \(11\) and \(13\)](#).

<sup>45</sup> See section on Religious Freedoms, above.

<sup>46</sup> [22 U.S.C § 6441](#),

*Particularly severe violations* are systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment
- Prolonged detention without charges
- Causing the disappearance of persons by the abduction or clandestine detention of those persons
- Other flagrant denial of the right to life, liberty, or the security of person

## **6.2 Violations of Religious Freedom**

*Violations of religious freedom* are violations of the internationally recognized right to freedom of religion and religious belief and practice, including violations such as:

Arbitrary prohibitions on, restrictions of, or punishment for:

- Assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements
- Speaking freely about one's religious beliefs
- Changing one's religious beliefs and affiliation
- Possession and distribution of religious literature, including Bibles
- Raising one's children in the religious teachings and practices of one's choice

### ***Example***

The government of China requires that unofficial house churches register with the government. Those that refuse to register, on either theological or political grounds, are subject to intimidation, extortion, harassment, detention, and closure of their churches. See 2011 USCIRF Annual Report, "China."

Any of the following acts are violations of religious freedom if committed on account of an individual's religious belief or practice:

- Detention
- Interrogation
- Imposition of an onerous financial penalty
- Forced labor
- Forced mass resettlement
- Imprisonment

- Forced religious conversion<sup>47</sup>
- Beating
- Torture
- Mutilation
- Rape
- Enslavement
- Murder
- Execution

IRFA also identifies

“state-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of ‘religious police[,]’ severe prohibitions against construction and repair of places of worship, denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, . . . prohibitions against publishing, distributing, or possessing religious literature and materials,” forcing religious believers to meet secretly, and targeting religious leaders by national security forces and hostile mobs, as additional forms of religious freedom violations.<sup>48</sup>

## 7 RELIGIOUS PERSECUTION

### 7.1 Persecution Generally

A variety of harms, ranging from physical abuse to mental suffering may rise to the level of persecution. In certain cases, severe forms of discrimination may constitute persecution.<sup>49</sup> The difference between persecution and discrimination is one of degree, which makes a hard and fast line difficult to draw.<sup>50</sup> Moreover, the Board of Immigration Appeals (BIA) has held that harms and abuses that might not individually rise to the level of persecution may, in the aggregate, constitute persecution.<sup>51</sup> For example, in *Shi v. U.S. Att’y Gen.*, the Eleventh Circuit held that the evidence compelled the conclusion that a Chinese Christian applicant had suffered persecution where he had been arrested during an underground church service, interrogated, detained for a week, and chained to an iron

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<sup>47</sup> Being forced to change one’s religion and being prohibited from voluntarily changing one’s religion are both considered violations of religious freedom.

<sup>48</sup> [22 U.S.C. § 6401\(a\)\(4\) and \(5\)](#).

<sup>49</sup> See [Kovac v. INS](#), 407 F.2d 102, 105-07 (9th Cir. 1969) (holding that persecution is not limited to physical suffering).

<sup>50</sup> *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997).

<sup>51</sup> [Matter of O-Z- and I-Z-](#), 22 I&N Dec. 23, 26 (BIA 1998)

bar outside in the rain for a night; the Court found it especially significant that the police had confiscated the applicant's religious group's bibles and attempted to force him to abandon his religious principles.<sup>52</sup>

In *Sumolang v. Holder*, the Ninth Circuit found that “[h]arm to a child can amount to past persecution of the parent when that harm is, at least in part, directed against the parent ‘on account of’ or ‘because of’ *the parent’s* race, religion, nationality, membership in a particular social group, or political opinion” in the context of a religious persecution claim. It noted that, where a child is so young that she lacks the capacity to have a religious belief of her own, harm to the child on account of religion must be understood as intended to punish the parent for the parent’s religious belief.<sup>53</sup>

When determining whether particular harm or abuses constitute persecution, you must consider their impact on the individual applicant. See RAIIO Training modules, *Refugee Definition and Persecution*.

## 7.2 Religious Persecution

IRFA lists a wide array of actions that persecuting regimes may take to violate religious freedoms, ranging from severe physical abuse and torture, to various forms of psychological harm. These violations may or may not constitute persecution, depending upon the severity of the harm imposed, and the applicant’s individual circumstances.

### 1. Relevance of inclusion on IRFA list of violations

As noted in “Violations of Religious Freedom According to IRFA,” above, the range of violations listed in IRFA is instructive for determining persecution, given IRFA’s training requirements on the nature and methods of religious persecution practiced abroad.<sup>54</sup> That a particular type of harm is listed in IRFA as a violation of religious freedom does not necessarily mean that the violation rises to the level of persecution. Similarly, the omission from IRFA of a type of harm does not mean that the harm cannot amount to religious persecution under the INA.

In most instances, the serious forms of mistreatment categorized in IRFA as “particularly severe violations of religious freedom,” such as torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges; disappearance by abduction, and other flagrant denial of the right to life, liberty, or the security of persons, will constitute persecution.<sup>55</sup>

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<sup>52</sup> [Shi v. U.S. Att’y Gen.](#), 707 F.3d 1231, 1236-1237 (11th Cir. 2013).

<sup>53</sup> *Sumolang v. Holder*, 723 F.3d 1080, 1084 (9th Cir. 2013).

<sup>54</sup> See 22 U.S.C. § 6473(b) & (c).

<sup>55</sup> 22 U.S.C. § 6402(11).

IRFA states that other “severe and violent forms of religious persecution,” include “detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of, or practice of their faith.”<sup>56</sup> Additional violations of religious freedom listed in IRFA, including arbitrary prohibitions on, restrictions of, or punishment for various religious activities, may constitute persecution, depending on the circumstances.<sup>57</sup>

## 2. Restrictions on practicing religion

As noted above, prohibitions on or restrictions of religious beliefs and practices may rise to the level of persecution, even without physical mistreatment. The Seventh Circuit has held that “[i]f a person is forbidden to practice his religion, the fact that he is not imprisoned, tortured, or banished, and is even allowed to attend school, does not mean that he is not a victim of religious persecution.”<sup>58</sup>

Where religious beliefs or practices have been restricted or banned, and the individual has not been physically harmed, the adjudicator must determine the degree of suffering or psychological harm caused by the religious freedom violation. In these cases it will be useful to determine the importance or centrality of the particular practice in the religion or to the individual applicant, in order to assess whether the suffering caused by the restriction amounts to persecution.<sup>59</sup>

## 3. Forced compliance with religious laws or practices that are abhorrent to an applicant’s beliefs

The U.S. Courts of Appeals for the Third and Seventh Circuits have indicated that forced compliance with laws that are “profoundly” or “deeply” abhorrent to a person may rise to the level of persecution.<sup>60</sup> In *Fatin v. INS*, the Third Circuit upheld the denial of asylum to an Iranian applicant who testified that, although she objected to a law requiring that women wear the chador and she did not want to wear it, she would be willing to do so rather than be punished; therefore, the Court reasoned, she had not demonstrated that compliance with the law would be profoundly abhorrent to her. In *Yadegar-Sargis v. INS*, however, the Seventh Circuit cautioned that the refugee definition does not require “that one be willing to suffer martyrdom to be eligible for asylum.”<sup>61</sup>

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<sup>56</sup> [22 U.S.C. § 6401\(a\)\(5\)](#); see also [§ 6402\(13\)\(B\)](#) (listing the following additional religious freedom violations: interrogation, imposition of an onerous financial penalty, forced labor, forced religious conversion, and mutilation).

<sup>57</sup> [22 U.S.C. § 6402\(13\)\(A\)](#).

<sup>58</sup> *Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997); see also Membership in a Religious Community, below.

<sup>59</sup> For additional information on considering the importance of the feelings, opinions, and physical and psychological characteristics of the applicant, see RAIO Training modules, *Refugee Definition* and *Persecution*.

<sup>60</sup> *Fatin v. INS*, 12 F.3d 1233, 1241-42 (3d Cir. 1993); see also *Yadegar-Sargis v. INS*, 297 F.3d 596, 604-05 (7th Cir. 2002).

<sup>61</sup> *Yadegar-Sargis*, 297 F.3d at 603 n.5.

#### 4. Guidance from UNHCR *Handbook*

The UNHCR *Handbook* also provides that various violations of religious freedom, even without physical mistreatment or abuse, can constitute persecution.<sup>62</sup> Religious persecution may include:

1. Prohibition of membership in a religious community
2. Prohibition of worship in private or in public
3. Prohibition of religious instruction
4. Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community

### 7.3 Agents of Persecution

Religious persecution is not limited to government-sponsored violence; it can also include “[d]iscrimination, harassment, and violence by groups that the government is unwilling or unable to control” as well as acts of persecution by private entities that are either tolerated or outright sponsored by the government.<sup>63</sup>

An applicant may meet the burden of proving that the government is “unable or unwilling” to control nongovernmental entities by specific evidence of government inaction and evidence that generally the government is complicit in, or tacitly approves of the private persecution.<sup>64</sup> See RAIIO Training Modules, *Persecution* and *Well-Founded Fear*.

### 7.4 No Requirement to Conceal Religious Beliefs

Recognizing that “[o]ne aim of persecuting a religion is to drive its adherents underground in the hope that their beliefs will not infect the remaining population,” you cannot require applicants to conceal their religion upon return in order to avoid persecution.<sup>65</sup> In *Muhur v. Ashcroft*, the Seventh Circuit rejected an Immigration Judge’s determination that a Jehovah’s Witness could not establish a well-founded fear of persecution in Eritrea because she was “not a religious zealot.”<sup>66</sup> The court held that the IJ improperly assumed that one is not entitled to asylum on the basis of religious

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<sup>62</sup> See [UNHCR Handbook, para. 72](#).

<sup>63</sup> [Singh v. INS](#), 94 F.3d 1353, 1359 (9th Cir. 1996)

<sup>64</sup> [Ivanov v. Holder](#), 736 F.3d 5 (1st Cir. 2013); see also [Matter of O-Z- & I-Z-](#), 22 I&N Dec. 23, 26 (BIA 1998).

<sup>65</sup> [Muhur v. Ashcroft](#), 355 F.3d 958, 961 (7th Cir. 2004).

<sup>66</sup> [Muhur v. Ashcroft](#), 355 F.3d 958, 960-961 (7th Cir. 2004);

persecution if one can escape the notice of persecutors by concealing one's religion.<sup>67</sup> The Ninth Circuit has also held that forcing an individual to practice his or her religion in hiding is contrary to our basic principles of religious freedom and the protection of religious refugees.<sup>68</sup> In *Kazemzadeh v. U.S. Att'y Gen.*, the Eleventh Circuit adopted a similar approach, finding that being forced to practice a religion underground to avoid punishment is itself a form of persecution.<sup>69</sup>

Cases in which applicants are forced to conceal their religion in order to avoid persecution are distinct from those in which the evidence indicates that the applicant **voluntarily** practices his or her religion in such a way that it is not reasonably likely to come to the attention of the feared persecutors. In such cases, the applicant may not have a well-founded fear of persecution. For example, in *Yi Xian Chen v. Holder*, the Seventh Circuit upheld a determination that an applicant who began practicing Falun Gong in the United States, had never had any problems with the Chinese government, and testified that he planned to practice Falun Gong inside his house or on a nearby farm outside rather than in public did not have a well-founded fear because he was not reasonably likely to draw the Chinese government's attention.<sup>70</sup>

## 7.5 Religious Discrimination

Although serious forms of religious discrimination may constitute persecution, lesser forms of religious discrimination, without more, may not rise to the level of persecution. For example, in *Sofinet v. INS*, a Romanian Seventh Day Adventist claimed that he suffered religious persecution because he was reprimanded for not working on his Sabbath.<sup>71</sup> The U.S. Court of Appeals for the Seventh Circuit held that although the applicant was occasionally reprimanded for failing to work as a police officer on Saturdays, he enjoyed steady employment for the five years between his conversion and his departure from Romania, and he failed to provide any evidence that he sought work that did not require Saturday hours. The Court further added that the totality of the evidence Sofinet presented was insufficient to demonstrate his claimed religious persecution. The Court noted that the evidence highlights only that Sofinet, at worst,

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<sup>67</sup> *Id.*; *Antipova v. U.S. Att'y Gen.*, 392 F.3d 1259, 1263-1265 (11th Cir. 2004)(overturning an IJ decision noting with disfavor that the applicant had been subjected to acts of persecution because she “advertised” that she was a practitioner of Judaism by displaying her menorah on a window. The court noted that neither the INA provision on withholding of removal nor the related regulations required the applicant to avoid “signaling” her religious affiliation.).

<sup>68</sup> See *Zhang*, 388 F.3d at 719 (rejecting IJ's finding that petitioner could avoid persecution by practicing Falun Gong in secret); see also *Iao v. Gonzales*, 400 F.3d 530, 532 (7th Cir. 2005) (“[T]he fact that a person might avoid persecution through concealment of the activity that places her at risk of being persecuted is in no wise inconsistent with her having a well-founded fear of persecution.”).

<sup>69</sup> *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 1354-55 (11th Cir. 2009).

<sup>70</sup> *Yi Xian Chen v. Holder*, 705 F.3d 624, 630 (7th Cir. 2013).

<sup>71</sup> *Sofinet v. INS*, 196 F.3d 742, 744 (7th Cir. 1999).



experienced ridicule, harassment and self-initiated job termination because of his religious beliefs.”<sup>72</sup>

Similarly, in *Nagoulko v. INS*, the Ninth Circuit held that occasional disruptions in worship services and other church activities, where the applicant was not prevented from practicing her religion and did not suffer physical violence, did not amount to treatment so extreme as to compel a finding of past persecution.<sup>73</sup>

On the other hand, discrimination or harassment, especially in combination with other harms, may be sufficient to establish persecution if the adverse practices or treatment accumulates or increases in severity to the extent that it leads to consequences of a substantially prejudicial nature. Discriminatory measures that lead to serious restrictions on an individual’s right to practice his or her religion could amount to persecution.<sup>74</sup>

In *Krotova v. Gonzales*, a Russian Jewish family presented evidence of sustained economic discrimination and pressure, physical violence and threats against the principal applicant and her close associates, and serious restrictions on the applicant’s ability to practice her religion.<sup>75</sup> The court rejected the BIA’s determination that the family experienced discrimination, and held that the cumulative impact of the anti-Semitic harms amounted to persecution. The *Krotova* opinion includes a useful discussion comparing cases finding discrimination with cases where the harm constitutes persecution.<sup>76</sup>

## **7.6 Reduced Evidentiary Burden: Lautenberg-Specter Cases in the Refugee Program**

Under the Lautenberg Amendment,<sup>77</sup> certain categories of overseas refugee applicants – largely religious minorities from the former Soviet Union, Southeast Asia, and Iran – may establish a well-founded fear of persecution under a reduced evidentiary burden. Specifically, a category member may show a well-founded fear by establishing a “credible basis for concern about the possibility of persecution.” Applicants generally establish a credible basis of concern by showing multiple instances of discrimination in one or more of the following areas:

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<sup>72</sup> *Id.* at 747.

<sup>73</sup> *Nagoulko v. INS*, 333 F.3d 1012, 1016-1017 (9th Cir. 2003); see also *Matter of V-F-D-*, 23 I&N Dec 859, 863 (BIA 2006) (holding that discrimination in school, neighborhood and employment opportunities on account of religion did not amount to past persecution).

<sup>74</sup> For additional information on discrimination and harassment, see RAIO Training modules, *Refugee Definition and Definition of Persecution and Eligibility Based on Past Persecution*. See also [UNHCR Handbook, para. 54](#).

<sup>75</sup> *Krotova v. Gonzales*, 416 F.3d 1080, 1082 (9th Cir. 2005); see also *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998) (holding that Ukrainian father and son who experienced anti-Semitic attacks, vandalism, threats and a humiliating incident suffered persecution).

<sup>76</sup> *Krotova*, 416 F.3d at 1084-1087.

<sup>77</sup> The Lautenberg Amendment amended the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. No.101-167. For a list of Lautenberg category members, please see the Lautenberg Lesson Plan.



- Inability to study or practice religion or cultural heritage
- Denial of access to educational, vocational or technical institutions
- Adverse treatment in the workplace
- Loss of home, job or educational opportunities

Lautenberg-Specter applicants may also establish a credible basis of concern by showing mistreatment against similarly situated individuals or by showing that they suffered harm on account of their request to emigrate. There is no provision in the law for asylum applicants to be covered by the reduced evidentiary burden set forth in the Lautenberg Amendment.

## 7.7 Membership in a Religious Community

Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum or refugee status on the basis of religious persecution.<sup>78</sup> Each case requires an analysis of whether the individual suffered or may suffer harm amounting to persecution. Of course, an individual need not show that she will be singled out individually for persecution if she shows that she is included in a group that suffers a pattern or practice of persecution.<sup>79</sup>

## 7.8 Issues with “on Account of” in Religious Persecution Cases

In many countries, politics and religion are intertwined, making the analysis of nexus more complex. In such cases, you must determine whether the applicant was targeted on account of his or her religious beliefs, political opinion, in the course of legitimate government investigation of crimes, or some combination of all three. Motivation of the persecutor is a critical element in the analysis of nexus.<sup>80</sup>

In two separate cases before the BIA, *Matter of R*-<sup>81</sup> and *Matter of K-S*-,<sup>82</sup> each respondent based his asylum claim, in part, upon the premise that the Indian authorities persecute Sikhs on account of religion. In *Matter of R*-, the BIA held that harm suffered incidental to the government’s pursuit of Sikh militant separatists was not persecution on account of religion. Likewise in *Matter of K-S*-, the BIA relied heavily on a State Department opinion which stated that the government of India does not take action against individuals solely on account of their membership in the Sikh faith, but against those accused of committing acts of violence.

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<sup>78</sup> [UNHCR Handbook, para. 73](#).

<sup>79</sup> See [8 C.F.R. 208.13\(b\)\(2\)\(iii\)](#). For additional information, see also RAIO Training module, *Well-Founded Fear*, section on *Pattern or Practice of Persecution*.

<sup>80</sup> For additional information, see RAIO Training module, *Nexus and the Five Protected Grounds*.

<sup>81</sup> [Matter of R](#)-, 20 I&N Dec. 621, 623-625 (BIA 1992).

<sup>82</sup> [Matter of K-S](#)-, 20 I&N Dec. 715, 722 (BIA 1993).

In both cases the BIA rejected the notion that the respondents' membership in the Sikh faith was the reason ("on account of") for the harm suffered, because they presented no direct or circumstantial evidence that the authorities were motivated by the respondents' religious beliefs.

### 7.8.1 Conversion

It may be illegal in some countries to convert from one religion to another and the penalties may be severe. In some countries, for example, conversion from Islam to another religion is considered apostasy (renunciation of faith) and may be punishable by imprisonment or death. Punishment for conversion may be considered persecution on account of religion, depending on the degree of the harm threatened or imposed.

### 7.8.2 Prosecution v. Persecution

Cases involving forced compliance with laws of general applicability raise challenging questions of nexus and motive. In general, prosecution for a criminal offense is not persecution, and a government has the right to investigate and punish individuals for violations of legitimate laws. In *Matter of H-M-*, the BIA held that the applicant's prosecution for foreign currency speculation, black market sales, and conspiracy to possess illegal weapons did not constitute persecution.<sup>83</sup> However where a law of "general applicability" punishes individuals because of a protected ground and the punishment for violations of the law rises to the level of persecution, an applicant who has been punished for violating the law may be able to establish past persecution, and an applicant who is reasonably likely to violate the law may have a well-founded fear. For example, in *Karouni v. Gonzales*, the Ninth Circuit Court of Appeals noted that the applicant's feared arrest and detention for violating a law prohibiting same-sex acts would constitute persecution on account of membership in a particular social group defined by his sexual orientation.<sup>84</sup>

### General Considerations

To determine whether punishment for violation of a generally applicable law constitutes religious persecution, you should consider:

- Is the law neutral in intent?
- Is the law neutrally or unequally enforced?
- How does the persecutor view those who violate the law?

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<sup>83</sup> See *Matter of H-M-*, 20 I&N Dec. 683 (BIA 1993); *Abedini v. INS*, 971 F.2d 188 (9th Cir. 1992) (holding that prosecution for violation of generally applicable anti-propaganda and conscription laws is not persecution on account of protected ground). For additional information, see also RAIO Training module, *Nexus and the Five Protected Grounds*.

<sup>84</sup> *Karouni v. Gonzales*, 399 F.3d 1163, 1174 (9th Cir. 2005).

## Laws Based on Religious Principles

Laws that target particular religious beliefs and practices generally are not neutral in intent. When a law criminalizes a particular religious practice, punishment for violation of the law may amount to persecution on account of religion.

### *Examples*

Prosecution for the crime of attending religious services, or for providing “illegal” religious instruction to a child, could constitute persecution on account of religion.<sup>85</sup>

Punishment for refusal to comply with religious norms or laws (such as dress codes or gender roles based on religious principles) may, in some cases, constitute persecution on account of religion or another protected ground.<sup>86</sup>

Punishment for violation of a law that is designed to prevent the commingling of individuals of different faiths, such as laws against interfaith dating or marriage, could amount to persecution on account of religion.<sup>87</sup>

When a civil or criminal law is itself based on religious laws or principles in a country where there is little separation between church and state, the evaluation of the persecutor’s intent may be complex. A thorough understanding of country conditions will help you evaluate how the authorities view individuals who violate religious laws. Keep in mind that Section 601 of IRFA requires Immigration Judges, Asylum, Refugee, and Consular Officers to use the Department of State Annual Report on International Religious Freedom, and other country conditions reports, when analyzing claims of religious persecution.

## Laws of Neutral Intent that Affect Religious Practices

While laws that require punishment for holding a particular belief would almost always be considered a violation of religious freedom, punishment for violation of laws that proscribe particular actions or practices associated with a religion may or may not be linked to the protected ground of religion.

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<sup>85</sup> [UNHCR Handbook, para. 57](#)

<sup>86</sup> See, e.g., [Matter of S-A-](#), 22 I&N Dec. 1328 (BIA 2000)(granting asylum to a woman with liberal Muslim beliefs who was persecuted by her father who had more orthodox Muslim beliefs); [Sarhan v. Holder](#), 658 F.3d 649 (7th Cir. 2011)(although this is a particular social group case, the court noted that “[s]ociety as a whole brands women who flout its norms as outcasts, and it delegates to family members the task of meting out the appropriate punishment—in this case, death.”).

<sup>87</sup> [Bandari v. INS](#), 227 F.3d 1160, 1168 (9th Cir. 2000)(finding applicant suffered persecution for interfaith dating), citing with approval [Maini v. INS](#), 212 F.3d 1167 (9th Cir. 2000)(finding applicants suffered persecution for interfaith marriage).

### *Example*

In *Romeike v. Holder*, the Sixth Circuit Court of Appeals held that prosecution for violating a truancy law by a couple who homeschooled their children in accordance with their religious values did not constitute persecution on account of religion because the law applies equally to all parents, is not intended to target the applicant's religion, and does not impose disproportionately harsh treatment on parents who homeschool for religious reasons.<sup>88</sup>

Some state restrictions on religious practice can be legitimate. It is important, therefore, to focus on the intent or the purpose of the law. Article 18 of the International Covenant on Civil and Political Rights provides that the "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others."<sup>89</sup>

### *Example*

A curfew imposed during a period of civil strife may prevent individuals from attending evening religious services. Because the law was not intended to overcome a characteristic, but rather to protect public safety, no nexus to religion would be established.<sup>90</sup>

## **Unequal or Pretextual Enforcement of the Law or Disproportionately Severe Punishment**

Unequal enforcement of a law that appears neutral may be evidence of persecutory intent. Prosecution that is used as a pretext to harm an individual on account of any of the five protected grounds may constitute persecution. Punishment that is unduly harsh or disproportionately severe, given the nature of the offense committed, may be evidence of pretext.<sup>91</sup>

### *Examples*

A law that prohibits public gatherings on public property without a permit is enforced only against members of one particular religion, but not against other groups. The unequal enforcement is evidence that the persecutor's intent is to punish members of a particular religious group because of their religious beliefs.

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<sup>88</sup> *Romeike v. Holder*, 718 F.3d 528, 533-534 (6th Cir. 2013).

<sup>89</sup> Art. 18 of *International Covenant on Civil and Political Rights (ICCPR)* (16 December 1966).

<sup>90</sup> See also *UNHCR Religion Guidelines*, para. 15 (discussing examples of permissible restrictions, including, for example, prohibition on ritual killings).

<sup>91</sup> *Matter of A-G-*, 19 I&N Dec. 502, 506 (BIA 1987); *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996); *UNHCR Handbook*, para. 57-59.

In *Ghebremedhin v. Ashcroft*, the Seventh Circuit overturned an Immigration Judge's finding that a Jehovah's Witness who feared that he would be harmed because of his failure to perform national service would not be targeted on account of his religion because all Eritreans are required to. According to the Court, the IJ failed to consider evidence both from the applicant's testimony and from country conditions reports that Jehovah's Witnesses are singled out for disproportionately severe treatment, such as extended detention and extreme physical punishment, for their failure to serve.<sup>92</sup>

The Ninth Circuit, in *Bandari v. INS*, considered the claim of an Iranian Christian who had been arrested by police for violating a law that prohibited public displays of affection when he kissed a Muslim girl. The initial stop of the applicant by the police may have been characterized as equal enforcement of a neutral law. The police, however, detained the applicant for several days, beat him, insulted his religion, and sentenced him for violation of a law that prevented interfaith dating. These actions by police demonstrated that the harm the applicant suffered was persecution on account of his religion, rather than prosecution.<sup>93</sup>

### **The Persecutor's View of Violators**

Where an individual is punished for his or her refusal to comply with a religious law, the persecutor may view the individual as both a law-breaker and as an individual with "improper" religious values. You must, therefore, explore all possible motives, as well as the possibility that the persecutor had mixed motives, when assessing whether the harm the applicant suffered or fears is on account of a protected ground. *See Mixed Motives* section, below.

#### **7.8.3 Refusal to Comply with or Alleged Flouting of Religious Norms**

Harm resulting from an applicant's refusal to comply with religious norms may constitute persecution on account of religion. In *Matter of S-A-*, a woman with liberal Muslim beliefs differed from her father's orthodox Muslim views concerning the proper role of women in Moroccan society. As a result of her refusal to share or submit to her father's religion-inspired restrictions and demands, her father subjected her (but not her brothers) to repeated physical assaults, imposed isolation, and deprivation of education. The BIA held that harm inflicted on the applicant by her father because she refused to comply with religious norms amounted to past persecution on account of religion.<sup>94</sup>

Harm to a person who is alleged to have flouted repressive moral norms may also constitute persecution on account of the person's membership in a particular social group. In *Sarhan v. Holder*, the Seventh Circuit noted that honor killings occur where a woman

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<sup>92</sup> [\*Ghebremedhin v. Ashcroft\*](#), 385 F.3d 1116, 1120 (7th Cir. 2004).

<sup>93</sup> [\*Bandari v. INS\*](#), 227 F.3d 1160, 1168 (9th Cir. 2000).

<sup>94</sup> [\*Matter of S-A-\*](#), 22 I&N Dec. 1328, 1336 (BIA 2000).

commits the “sin” of going for a walk with a man who is not her husband or relative.<sup>95</sup> The applicant in *Sarhan* was falsely accused of adultery by her sister-in-law and was threatened with death by her brother for bringing dishonor to her family. The court found that Jordanian society as a whole brands women who flout its norms as outcasts, and it delegates to family members the task of meting out the punishment.<sup>96</sup> The court rejected the BIA’s conclusion and the government’s argument that this was merely a “personal dispute” between the applicant and her brother. The court held that the dispute is a “piece of complex cultural construct that entitles male members of families dishonored by perceived bad acts of female relatives to kill those women.”<sup>97</sup>

#### 7.8.4 Mixed Motives

A persecutor may have more than one motive in seeking to harm an individual. One or more of the persecutor’s motives may be a protected ground. There is no requirement that the applicant demonstrate that the protected characteristic is or was the **only** factor motivating the persecutor to harm the applicant.

For example, organized criminal groups may be motivated to harm religious people both to further their criminal goals and because of their religious beliefs. In *Ivanov v. Holder*, the First Circuit Court of Appeals considered the case of a Russian applicant who practiced the Pentecostal faith and volunteered at a drug rehabilitation center run by his church. One night, while the applicant was leaving the center, a group of skinheads involved in drug trafficking beat him, kidnapped him, and detained him for three days in a basement without food and water. The Court rejected the Board’s conclusion that the group was motivated solely by the applicant’s interference with its drug trade, holding that it failed to consider the possibility that the group had mixed motives given that it also had an “overarching mission” of intolerance toward adherents of “foreign” religions and specifically expressed opposition to the center’s religious methods.<sup>98</sup>

A mixed motive analysis for asylum applications filed on or after May 11, 2005 is governed by the REAL ID Act of 2005, which amended INA § 208. Under the amendment, an asylum applicant “must establish that race, religion, nationality, membership in a particular social group, or political opinion, was or will be at least one central reason for persecuting the applicant.”<sup>99</sup> See [ASM Supplement – Mixed Motives](#) at the end of this module.

Refugee adjudications are governed by case law interpreting the refugee definition, prior to the 2005 amendment. In *Matter of Fuentes*, for example, the BIA held that an applicant

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<sup>95</sup> [Sarhan v. Holder](#), 658 F.3d 649, 654 (7th Cir. 2011).

<sup>96</sup> [Id.](#) at 655.

<sup>97</sup> [Id.](#) at 656.

<sup>98</sup> [Ivanov v. Holder](#), 736 F.3d 5, 15 (1st Cir. 2013).

<sup>99</sup> [INA §208\(b\)\(1\)\(B\)\(i\)](#).



does not need to establish the exact motivation of his persecutor, but he does need to establish that a reasonable person would fear the danger arises on account of a protected ground.<sup>100</sup> See [RAD Supplement – Mixed Motives](#) at the end of this module. See RAI0 Training module, *Nexus the Five Protected Grounds*.

## 7.9 Persecution by Members of Applicant’s Religion

You may encounter cases in which the persecutor belongs to the same religious group as the applicant. This may occur, for example, when the persecutor believes that the applicant is not sufficiently complying with religious tenets. In *Matter of S-A-* (see above, *Refusal to Comply with Religious Norms*), the BIA found that the applicant had been persecuted by her father because her beliefs regarding the proper role of Muslim women differed from his. Both the applicant and her father practiced Islam.<sup>101</sup> Similarly, in *Maini v. INS*, the petitioners argued that despite the fact that the Communist Party Marxist (CPM) of India is comprised of both Sikhs and Hindus, *Maini* and his wife were persecuted on account of their interfaith marriage. The U.S. Court of Appeals for the Ninth Circuit held that “if an applicant can establish that others in his group persecuted him because they found him insufficiently loyal or authentic to the religious, political, national, racial, or ethnic ideal they espouse, he has shown persecution on account of a protected ground. Simply put, persecution aimed at stamping out an interfaith marriage is without question persecution on account of religion.”<sup>102</sup>

## 8 RESOURCE MATERIALS

Title VI of IRFA requires Asylum and Refugee Officers and other immigration officials to consult the Department of State annual report on religious freedom, as well as other country conditions reports, when analyzing claims for asylum or refugee status based on religion. A body of resource materials is available to document the status of religious freedom in the world.

### 8.1 Countries of Particular Concern

The President is required to designate as “countries of particular concern” those countries that have engaged in or tolerated violations of religious freedom. The United States uses sanctions against these countries to encourage them to improve their treatment of religious groups.<sup>103</sup>

### 8.2 The US Department of State Annual Report on International Religious Freedom

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<sup>100</sup> [Matter of Fuentes](#), 19 I&N Dec. 658, 662 (BIA 1988).

<sup>101</sup> [Matter of S-A-](#), 22 I&N Dec. 1328 (BIA 2000).

<sup>102</sup> [Maini v. INS](#), 212 F.3d 1167, 1175 (9th Cir. 2000) (“That a person shares an identity with a persecutor does not foreclose a claim of persecution on account of a protected ground.”).

<sup>103</sup> See U.S. Dep’t of State, “[Countries of Particular Concern](#).”

Each year the Department of State publishes an annual report which provides information on the treatment of religious groups in most countries of the world, much in the same way as the annual *Country Reports on Human Rights Practices*.<sup>104</sup>

### **8.3 U.S. Commission on International Religious Freedom Reports**

Established by the International Religious Freedom Act, the U.S. Commission on International Religious Freedom (USCIRF) monitors the status of religious freedom in other countries and advises the President and Congress on how best to promote religious freedom.

#### **Annual Reports**

Each year the U.S. Commission on International Religious Freedom issues its Annual Report.<sup>105</sup> Mindful of its mandate to make recommendations on how to combat violations of religious freedom in the world, its reports focus on particular countries that it sees as “priorities” in the fight for global religious freedom.

In its annual report, the Commission summarizes its activities over the course of the past year and recommends policies to the United States Government that would promote and protect religious freedom around the world. The Commission also recommends that the State Department designate certain “Tier 1” countries as Countries of Particular Concern and has a “Tier 2” list of countries where the Commission believes that religious freedom conditions do not rise to the statutory level requiring designation as Countries of Particular Concern, but which require close monitoring of the situation.

#### **Individual Country Reports, Hearings, and Testimony**

In addition to its annual report, the Commission periodically publishes reports dealing with particular countries. Quite often, these reports are issued in response to particular issues or violations of religious freedom in a given country.

The Commission also organizes hearings on issues of religious freedom when it determines that greater examination of the situation in a country is required. Human rights monitors, religious scholars, and other interested parties have presented their views to the Commission in such fora.

Finally, Commission members occasionally testify before Congress on issues of religious freedom and concerns regarding threats to that freedom around the world.

### **8.4 Comments on the DOS Annual Report on International Religious Freedom**

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<sup>104</sup> See U.S. Dep’t of State, “[Annual Reports to Congress on International Religious Freedom](#).”

<sup>105</sup> USCIRF, [Frequently Asked Questions](#).



Each year the U.S. Commission on International Religious Freedom responds to the statements made by the Department of State in its *Annual Report*. These comments may be published in a separate report or as part of the USCIRF *Annual Report*. The comments intend to balance the body of material on international religious freedom by pointing out omissions of information and to critique the implementation of policy on international religious freedom.

## **9 SUMMARY**

### **9.1 Overview of IRFA**

IRFA, the International Religious Freedom Act, was enacted on October 27, 1998, to promote religious freedom and call attention to its abuse worldwide. IRFA also created new foreign policy mechanisms for use by the United States to act against religious persecution abroad.

### **9.2 Title VI of IRFA**

Title VI of IRFA speaks directly to the role of Asylum, Refugee, and Consular officers in improving the U.S. government response to religious persecution.

1. Section 601 mandates that immigration judges, asylum officers, and immigration officers refer to the Department of State Annual Report on International Religious Freedom when adjudicating requests for asylum or refugee status.
2. Section 602 requires greater attention to issues of refugee law and religious persecution by those involved in the processing of refugees overseas, including DOS consular officers, immigration officers, and interpreters.
3. Section 603 requires greater scrutiny of the potential biases of those individuals used as interpreters during inspection or interviews. The section also requires training on religious persecution for all those involved in the expedited removal process.
4. Section 604 creates a new ground of inadmissibility for any foreign government official who has been responsible for or has directly carried out severe violations of religious freedom.
5. Section 605 provides the U.S. Commission on International Religious Freedom with the authority to request studies by the Comptroller General on certain aspects of the expedited removal process.

### **9.3 The Nature of Religion**

1. The protected ground of religion is broadly understood, and protects familiar as well as unfamiliar belief systems.

2. The definition of religion includes religious beliefs (and non-belief) and religious practices.
3. Religious beliefs and practices may vary by sect, region, country, and culture, and you must put aside preconceived notions of what can be considered a religion and how religions are practiced across the globe.
4. An individual's religious identity generally cannot be verified by "testing" the applicant on his or her knowledge of the tenets of the religion.

#### **9.4 Right to Religious Freedom**

Internationally-recognized standards regarding religious freedom are codified in various international instruments and cited in IRFA. These instruments, such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, provide invaluable guidance in determining what actions may be considered violations of religious freedom.

#### **9.5 Violations of Religious Freedom**

IRFA highlights the wide range of actions that persecuting regimes take to violate religious freedoms, and provides a non-exclusive list of actions that constitute "violations of religious freedom" and a separate list of violations that constitute "particularly severe violations of religious freedom." The range of violations listed in IRFA is instructive for determining persecution under the INA given IRFA's training requirements for asylum and refugee adjudicators on the nature and methods of religious persecution practiced in foreign countries.

Whether or not a particular violation of religious freedom (either particularly severe or not) could be considered persecution on account of religion depends upon the degree of harm threatened or imposed, and the applicant's individual circumstances.

#### **9.6 Religious Persecution – General Considerations**

1. Prohibitions or restrictions on religious beliefs and activities can, without physical mistreatment, rise to the level of persecution.
2. Forced compliance with religious laws or practices that are fundamentally abhorrent to a person's deeply held religious convictions may constitute persecution.
3. Persecution by government, as well as by private individuals whom the government is unable or unwilling to control, may establish a religious persecution claim.
4. Adjudicators cannot require an applicant to conceal his religious beliefs upon return in order to avoid persecution.

5. Serious measures of discrimination on account of religion may be sufficient to establish persecution if the adverse practices accumulate or increase in severity leading to consequences of a substantially prejudicial nature. Other forms of religious discrimination, without more, may not be sufficient to establish persecution.
6. Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum or refugee status on the basis of religious persecution.
7. The motivation of the persecutor must be examined to determine if:
  - i. the applicant has been targeted or could be targeted
  - ii. the applicant's religion is the targeted characteristic
8. Laws that impose harsh penalties for conversion from one religion to another may constitute persecution on account of religion.
9. Punishment for violation of a generally applicable law affecting religious beliefs or practices may constitute persecution on account of religion. You must analyze the intent and purpose of the law, whether the law is unequally enforced, and how the persecutor views those who violate the law.
10. It is possible for individuals to establish that they have been persecuted on account of their religion by members of the same faith community. For example, an individual could be harmed because he or she is perceived by others to be failing in the faith or to have violated moral norms.

## 9.7 Resource Materials

You have at your disposal a number of tools to aid in the adjudication of cases of claimed religious persecution. IRFA requires you to consider the information contained in the Department of State *Annual Report on International Religious Freedom* when adjudicating asylum and refugee cases. In addition, you may consult other resources, such as the reports and press releases issued by the U.S. Commission on International Religious Freedom.

You must not assume that a religious persecution claim is unfounded because of the absence of information on persecution of a particular group in either of the above-mentioned reports, or the fact that a refugee-producing country is not designated as a country of particular concern.<sup>106</sup>

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<sup>106</sup> [Gaksakuman v. U.S. Att'y Gen.](#), 767 F.3d 1164 (11th Cir. 2014).

**PRACTICAL EXERCISES**

[NOTE: Practical Exercises for this module to be added later.]

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

**OTHER MATERIALS**

There are no Other Materials for this module.

## SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

### REQUIRED READING

None

### ADDITIONAL RESOURCES

1. [\*Matter of S-P-\*](#), 21 I&N Dec. 486 (BIA 1996).
2. [\*Maini v. INS\*](#), 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

### SUPPLEMENTS

#### [RAD Supplement – Mixed Motives](#)

As mentioned in the Mixed Motives section of the module, refugee resettlement adjudications are not governed by the 2005 amendments to the asylum statute. As with asylum adjudications, however, you must explore all possible motives, including mixed motives, when assessing a claim based on an applicant’s religious beliefs or practices. An applicant bears the burden of establishing that “a reasonable person would fear that the danger arises on account of” a protected ground.<sup>107</sup> In *Maini v. INS*, for example, the court found that the applicants suffered past persecution, at least in part, on account of religion, in addition to non-protected economic grounds.<sup>108</sup>

<sup>107</sup> [\*Matter of S-P-\*](#), 21 I&N Dec. 486, 490, 497 (BIA 1996).

<sup>108</sup> [\*Maini v. INS\*](#), 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).

**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

INA §208(b)(1)(B)(i) – REAL ID Act amendment regarding mixed motives for persecution.

**ADDITIONAL RESOURCES**

1. [\*Matter of J-B-N- & S-M-\*](#), 24 I&N Dec. 208 (BIA 2007).
2. [\*Ndayshimiye v. Att’y Gen. of U.S.\*](#), 557 F.3d 124 (3d Cir. 2009).
3. [\*Rizal v. Gonzales\*](#), 442 F.3d 84 (2d Cir. 2006).
4. [\*Huang v. Gonzales\*](#), 403 F.3d 945 (7th Cir. 2005).
5. Elwood, Kenneth J., Deputy Executive Associate Commissioner, INS Office of Field Operations. [Implementation of the International Religious Freedom Act of 1998](#), Memorandum for Jeffrey L. Weiss, Acting Director, Office of International Affairs. (Washington, DC: 5 April 1999), 3 p.
6. Langlois, Joseph E., Deputy Director, Asylum Division. [Religious Persecution](#), [with two attachments: letter to William Bartlett, Office of Asylum Affairs, Department of State, concerning training conducted for Asylum Officers on religious persecution; list of documentation distributed by the Resource Information Center on religious persecution, 1992-1998] Memorandum for Asylum Office Directors. (Washington, DC 5 May, 1998), 12 p.
7. Pearson, Michael A., Executive Associate Commissioner, INS Office of Field Operations. [Amendment to the Immigration and Nationality Act \(the Act\) adding section 212\(a\)\(2\)\(G\), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom](#), Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p.
8. Landau, David, Chief Appellate Counsel, ICE Office of the Principal Legal Advisor, [Guidance on Religious Persecution Claims Relating to Unregistered Religious](#)

[Groups](#), Memorandum for ICE Chief Counsel, (Washington, DC: February 25, 2008), 12 pp.

## SUPPLEMENTS

### ASM Supplement - Mixed Motives

Under INA section 208, as amended by the REAL ID Act of 2005, the applicant must establish that religion, or any other protected ground, was or will be “at least one central reason for the persecution.”<sup>109</sup> In [Matter of J-B-N- & S-M-](#),<sup>110</sup> the Board found that amendments added by the REAL ID Act did not radically alter the BIA’s mixed motive analysis. This decision was modified by the Third Circuit in [Ndayshimiye v. Att’y Gen. of U.S.](#),<sup>111</sup> which held that the BIA’s interpretation of the “one central reason” standard is in error only to the extent that it would require an asylum applicant to show that a protected ground for persecution was not “subordinate” to any unprotected motivation.

The REAL ID Act changes only apply to asylum applications filed on or after May 11, 2005. For applications filed prior to the REAL ID Act, the applicant bears the burden of establishing that “a reasonable person would fear that the danger arises on account of” a protected ground.<sup>112</sup> In [Maini v. INS](#), for example, the court found that the applicants suffered past persecution, at least in part, on account of religion, in addition to non-protected economic grounds.<sup>113</sup>

### ASM Supplement – Use of DOS Annual Report

Although section 101(a)(3) of the REAL ID Act of 2005, codified at [8 U.S.C. §1158\(b\)\(1\)\(B\)\(iii\)](#), states that credibility determinations may be based on the consistency of an applicant’s statements with DOS country reports, IRFA prohibits Adjudicators from making an adverse determination based solely on the fact that an applicant’s claims are not mentioned in the DOS annual report.

Section 601 of IRFA requires immigration judges, asylum officers, and refugee and

<sup>109</sup> [INA § 208\(b\)\(1\)\(B\)\(i\)](#). For additional information, see also RAIO Training module, *Nexus the Five Protected Grounds*.

<sup>110</sup> [Matter of J-B-N- & S-M-](#), 24 I&N Dec. 208 (BIA 2007).

<sup>111</sup> [Ndayshimiye v. Att’y Gen. of U.S.](#), 557 F.3d 124 (3d Cir. 2009).

<sup>112</sup> [Matter of S-P-](#), 21 I&N Dec. 486, 490 (BIA 1996).

<sup>113</sup> [Maini v. INS](#), 212 F.3d 1167, 1176 n.1 (9th Cir. 2000).



consular officers to use the US Department of State Annual Report on International Religious Freedom, and other country conditions reports, when analyzing claims of religious persecution. Asylum Officers are required to cite the Department of State's Annual Report On Religious Freedom and other reliable country of origin information during the adjudication of an affirmative asylum claim.

## Supplement C

### **International Operations Division** International Religious Freedom Act (IRFA) and Religious Persecution

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#### **SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

#### **REQUIRED READING**

- 1.
- 2.

#### **ADDITIONAL RESOURCES**

- 1.
- 2.

#### **SUPPLEMENTS**

<p><b><u>IO Supplement</u></b></p> <p><b>Module Section Subheading</b></p>
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