

# Lesson Plan Overview

<b>Course</b>	Asylum Officer Basic Training Course
<b>Lesson</b>	<b><i>The International Religious Freedom Act (IRFA) and Religious Persecution Claims</i></b>
<b>Rev. Date</b>	March 12, 2009
<b>Lesson Description</b>	This lesson introduces asylum officers to the International Religious Freedom Act and the particular responsibilities the Act creates with regard to the adjudication of asylum claims. Through reading and discussing country conditions information, students are exposed to resources addressing religious freedom around the world and increase their awareness of particular situations in the world. In addition, through discussion and practical exercises, students will learn how to appropriately conduct an interview of an asylum applicant with a claim based on religion.
<b>Field Performance Objective</b>	Given a request for asylum (including Credible Fear and Reasonable Fear interviews) based on a religious claim, the asylum officer will be able to correctly apply the law to determine eligibility for asylum in the United States.
<b>Academy Training Performance Objective</b>	Given written asylum scenarios involving religion-based claims, the trainee will identify appropriate methods for conducting interviews and correctly apply the law to determine asylum eligibility.
<b>Interim (Training) Performance Objectives</b>	<ol style="list-style-type: none"><li>1. Identify the training requirements of IRFA for those adjudicating asylum cases.</li><li>2. Identify statutory and regulatory requirements for the consideration of asylum cases based on religious persecution.</li><li>3. Identify appropriate – and inappropriate – methods of conducting interviews involving issues of religious persecution.</li><li>4. Identify legal rulings that bear upon the adjudication of claims based on religious persecution.</li><li>5. Identify major characteristics of specific religious groups that have experienced persecution.</li></ol>
<b>Instructional Methods</b>	Lecture, discussion, practical exercises

<b>Student Materials/References</b>	Participant Workbook; <i>Fatin v. INS</i> , 12 F.3d 1233 (3d Cir. 1993); <i>Matter of S-A-</i> , 22 I&N Dec. 1328 (BIA 2000); <i>Muhur v. Ashcroft</i> , 355 F.3d 958 (7th Cir. 2004)
<b>Method of Evaluation</b>	Written test
<b>Background Reading</b>	<ol style="list-style-type: none"> <li>1. U.S. Department of State. "Executive Summary," <i>2008 Annual Report on International Religious Freedom</i> (Washington, DC: 14 September 2008),</li> <li>2. United States Commission on International Religious Freedom. <i>Annual Report of the U.S. Commission on International Religious Freedom</i> (Washington, DC: May 2008). (Review Table of Contents, Introduction, "IRFA and the US Refugee and Asylum Programs," "The State Department's <i>Annual Report on International Religious Freedom</i>," "Countries of Particular Concern and the commission Watch List," and Appendix 3: International Human Rights Standards: Summary of Provisions on Freedom of Thought, Conscience, and Religion or Belief)</li> <li>3. <i>The International Religious Freedom Act of 1998</i>. HR 2431 P.L. 105-292 (Oct 27. 1998), 112 Stat. 2787. (Title VI is included in the training materials.)</li> <li>4. Elwood, Kenneth J., Deputy Executive Associate Commissioner, INS Office of Field Operations. <i>Implementation of the International Religious Freedom Act of 1998</i>, Memorandum for Jeffrey L. Weiss, Acting Director, office of International Affairs. (Washington, DC: 5 April 1999), 3 p. (attached)</li> <li>5. Langlois, Joseph E., Deputy Director, Asylum Division. <i>Religious Persecution</i>, [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. (attached)</li> <li>6. Pearson, Michael A., Executive Associate Commissioner, INS Office of Field Operations. <i>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</i>, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p. (attached)</li> </ol>

7. United Nations High Commissioner for Refugees. *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, 12 pp. (attached)
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. (attached).

**Supplemental Reading**

Lawyers Committee for Human Rights. *Religion and Asylum: Summary Results of Survey, A Briefing Paper Prepared for the Roundtable on Religion-based Persecution Claims* (New York: November 2002), 21 pp. (attached)

## CRITICAL TASKS

**SOURCE: Asylum Officer Validation of Basic Training Final Report (Phase One), Oct. 2001**

Task/ Skill #	Task Description
001	Read and apply all relevant laws, regulations, procedures, and policy guidance.
012	Identify issues of claim.
020	Conduct non-adversarial interview.
024	Determine if applicant is a refugee.
SS 7	Ability to interpret cross-cultural behavior and respond appropriately.
SS 8	Ability to read and interpret statutes, precedent decisions and regulations.
SS 9	Ability to analyze and apply country conditions information.
SS 10	Ability to lead/direct/organize and control the interview process.
SS 13	Ability to analyze complex issues.
SS 19	Maintain current working knowledge of relevant laws, regulations, procedures, policies, and country conditions information.
E 1	Relevant reference materials and databases.
E 2	Internet and INS Intranet.

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**Presentation****I. INTRODUCTION**

The purpose of this lesson is to introduce the student to the International Religious Freedom Act (also referred to as “IRFA”) and to look at how claims of religious persecution should be analyzed in light of IRFA.

Sections II and III of this lesson provide an overview of IRFA and a detailed analysis of Title VI, the section of IRFA that is most relevant to refugee and asylum adjudicators. Sections IV, V, VI, and VII of this lesson discuss the nature of religion and violations of religious freedom, and explore the issues that an adjudicator should consider when analyzing whether a particular act constitutes persecution on account of religion. Finally, Section VIII of this lesson lists resource materials students may find useful when adjudicating claims of religious persecution.

**II. 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.

Although IRFA specifically noted Congressional concern for Christians in the Sudan and China, Tibetan Buddhists, and the Bahai 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.

IRFA seeks to address two different, though equally important issues. First, IRFA addresses the issues of religious freedom and religious persecution directly, and includes a series of diplomatic and foreign

**References**

*The International Religious Freedom Act of 1998*, Pub. L. No. 105-292, 112 Stat. 2787 (codified at 22 U.S.C. §§ 6401—6481 (1999)).

Note: Participants should review this lesson in conjunction with the lesson, *Asylum Eligibility III, Nexus and Five Protected Characteristics, Part V*.

22 U.S.C. § 6401(a)(1) (1999).

policy provisions designed to enhance the ability of the United States to promote religious freedom and to speak out and act against religious persecution around the globe. Second, IRFA addresses perceived problems within our own system – specifically within the Department of State (DOS) and the Department of Justice and Immigration and Naturalization Service (INS), now the Department of Homeland Security (DHS) – that may lead to diminished attention to the problems of religious persecution.

IRFA is divided into seven titles. For refugee and asylum adjudicators, 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:

#### A. 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. The website can be found at <http://www.state.gov/g/drl/irf/>.
- Requires DOS to publish various papers on religious freedom and an annual report that documents religious persecution throughout the world. The annual report may be found on the website for religious freedom at <http://www.state.gov/g/drl/rls/irf/>.

**Note:** These are just the highlights of the provisions in each Title of IRFA. Students should read the entire law for a complete understanding of all its provisions.

Note that DOS has not published any papers on their internet site on religious freedom beyond the annual report.

#### B. 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. The Commission maintains a website: <http://www.uscirf.gov>.

#### C. Title III – National Security Council (NSC)

- Creates an NSC Special Advisor to the President on International Religious Freedom. The Special Advisor serves as a resource for executive branch officials and

makes policy recommendations.

#### **D. 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” where the government has engaged in or tolerated certain violations. The designated countries may be found on the website of the Commission on International Religious Freedom at <http://www.uscirf.gov>.

#### **E. Title V – Promotion of Religious Freedom**

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

#### **F. Title VI – Refugee, Asylum, and Consular Matters**

22 U.S.C. §§ 6471—6474 (1999).

[This Title is discussed in detail at Section III, Title VI of IRFA].

#### **G. Title VII – Miscellaneous Provisions**

- States 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.

### **III. TITLE VI OF IRFA**

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

**Note:** Students should read [Title VI](#) for the complete provisions in each section. These are just the highlights.

#### **A. Section 601. Use of Annual Report**

22 U.S.C. § 6471 (1999).

This section specifically mandates the use of the DOS annual report on religious freedom and other country conditions information by immigration judges, asylum officers, and refugee and consular officers when analyzing claims for asylum or refugee status on account of religion.

**Note:** 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

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



religious persecution as stated by an applicant do not appear in the DOS annual report.

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.

## **B. Section 602. Reform of Refugee Policy**

[22 U.S.C. § 6472](#) (1999).

This section 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.

**Note:** Component #3 protects against bias on all of the protected grounds, not just religion.

## **C. Section 603. Reform of Asylum Policy**

[22 U.S.C. § 6473](#) (1999).

This section contains two 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 context to receive

training on “the nature of religious persecution abroad, including country-specific conditions, instruction on the internationally recognized 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.”

IRFA also requires that immigration judges receive training on religious persecution.

#### **D. Section 604. Inadmissibility of Foreign Government Officials who have Engaged in Particularly Serious Violations of Religious Freedom**

This section 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.

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.

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.

For specific instructions, *see* Michael A. Pearson. 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. Note that if these individuals are in the U.S., they are not necessarily precluded for applying for asylum, withholding of removal, or protection under the Convention Against Torture.

#### **E. Section 605. Studies on the Effect of Expedited Removal Provisions on Asylum Claims**

22 U.S.C. § 6474 (1999).

The 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.

1. On September 1, 2000, the General Accounting Office (GAO) (renamed the Government Accountability Office in 2004) released a report on the Expedited Removal Process as required under IRFA; however, it did not specifically address the issue of how the agency handles the religious-based claims of individuals in the expedited removal process.

General Accounting Office. *ILLEGAL ALIENS: Opportunities Exist to Improve the Expedited Removal Process*. GAO/GGD-00-176. (Washington, DC: 1 September 2000) 107p.

The GAO report found that the agency was generally in compliance with its Expedited Removal procedures at Selected Ports of Entry and the Credible Fear Process at selected asylum offices.

2. The US Commission on International Religious Freedom commissioned a study on Asylum Seekers in Expedited Removal, and issued a final Report in February 2005.

US Commission on International Religious Freedom. *Report on Asylum Seekers in Expedited Removal*. (Washington, DC: 8 Feb. 2005). The CIRF Report is available on line at: [www.uscirf.gov](http://www.uscirf.gov). Note that the Congress authorized the Commission to examine how expedited removal was affecting asylum seekers, regardless of whether or not the claim was based on religion, race, nationality, membership in a particular social group, or political opinion.

The Study sought to answer the following four questions:

- a. Are immigration officers, exercising expedited removal authority, improperly encouraging asylum seekers to withdraw applications for admission?
- b. Are immigration officers, exercising expedited removal authority, incorrectly failing to refer asylum seekers for a credible fear interview?
- c. Are immigration officers, exercising expedited removal authority, incorrectly removing asylum seekers to countries where they may face persecution?
- d. 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.

#### IV. THE NATURE OF RELIGION

## A. 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.

*See Zhang v. Ashcroft*, 388 F.3d 713, 720 (9th Cir. 2004) (per curiam) (citing Paragraph 71 of the UNHCR Handbook).

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. Defining “religion” to include an individual’s thought, conscience, and belief allows for a broad interpretation of this protected ground in the asylum adjudication context.

22 U.S.C. § 6401(a)(1) - (3) (1999).

Religion, as a protected ground, is not limited to traditional religious beliefs and practices. For purposes of establishing asylum eligibility, persecution suffered or feared on account of a non-traditional belief system 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.

*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.

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. 896, 899 (E.D.N.Y. 1977); *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).

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, and neither courts nor adjudicators may inquire into the truth, validity, or reasonableness of a claimant’s religious beliefs. Therefore, the role of the asylum officer is not to determine whether a belief system can be considered a “religion,” but to determine whether the applicant has or might suffer persecution on account of those beliefs.

The protected ground of religion also covers an individual’s failure or refusal to observe a religion or certain religion-based laws. Protected “beliefs” include “theistic, non-theistic and atheistic beliefs,” and applicants may be persecuted because they are considered “heretics, apostates, schismatic, pagans or superstitious.”

*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.

The Ninth Circuit has held that an individual may also face persecution on account of religion, even if he denies that his belief, identity and/or way of life constitutes a “religion.”

[UNHCR Guidelines](#) at 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).

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.”

*Bucur v. INS*, 109 F.3d 399 (7th Cir. 1997).

The 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.”

See [UNHCR Handbook Paragraph 71](#).

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

- 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](#)

## **B. Credibility Considerations in Religious Persecution Cases**

Credibility determinations, which are always difficult, can be particularly complex in religious persecution cases. Adjudicators may need to judge the sincerity of the applicant’s claimed religious beliefs, but cannot judge the validity of the belief system itself. Additionally, adjudicators 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:

See [UNHCR Religion Guidelines at paras. 28-33](#) (discussing the challenges inherent in credibility determinations in religion-based refugee claims);

### **1. Refrain from judging the validity of a belief system**

Asylum officers should not question the validity of a sincerely held belief, even if the belief appears to be strange, illogical, or absurd.

2. Distinguish between the sincerity of belief and the validity of belief

It is appropriate for an asylum officer to evaluate whether an individual adopted a belief system solely for the purposes of trying to obtain asylum. Such an evaluation requires the asylum officer to determine whether the beliefs are sincerely held. However, officers must recognize that an examination of the sincerity of the belief does not grant license to question whether the belief system has merit.

3. Lack of knowledge of religious tenets does not necessarily test religious identity

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 conducted by an asylum officer.

Further, any testing of 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."

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 (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 (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..

See *Yan v. Gonzales*, 438 F.3d 1249 (10<sup>th</sup> 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 (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 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.)

- a. religions are practiced differently around the world

Location, time period, and culture will produce variations in religious beliefs or practices.

**Example:** An asylum officer familiar with the practices of the Pentecostal church finds unbelievable an applicant's claim that he was baptized into a Pentecostal church in an indoor baptismal font rather than a natural body of water, as is the church custom. However, the inconsistency is explained by the fact that the applicant lives in a near-Arctic climate in which the temperature of the bodies of water never rises above 45 degrees, too cold for a baptism.

[UNHCR Religion Guidelines at 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." [UNHCR Religion Guidelines, para. 32.](#)

*See, Mezvrishvili v. US Att'y Gen.*, 467 F.3d 1292, 1295 (11<sup>th</sup> 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).

a. 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 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.

**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.

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 (7<sup>th</sup> 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 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.")

b. the perceptions of the asylum officer may not accurately reflect the religion

The asylum officer is 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. However, even officers who are familiar with a religion through personal study or experience must be careful when questioning applicants and making credibility determinations.

This is particularly important when the claimant is a member of the same faith group as the adjudicator. The officer may be tempted to rely on his or her personal experiences in the faith to evaluate the testimony of the applicant. However, it is unlikely that applicants for asylum will have practiced their religion as it is practiced in the United States.

*Cosa v. Mukasey*, 543 F.3d 1066 (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).

c. sincerity of religious belief and religious practice



Asylum officers 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 or even within the applicant's own religious community; thus, how a religion is practiced may not be indicative of religious sincerity. 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, or fear of serious harm when attending religious services; hence, the frequency with which an applicant attends religious services or a lack of attendance at religious services may not be indicative of religious sincerity.

*See, e.g., Huang*, 403 F.3d at 949 (rejecting IJ's adverse credibility finding that was based in part on the IJ's personal beliefs and false assumption that Catholicism is practiced in China in the same way that it is practiced in the United States).

*See Yan v. Gonzales*, 438 F.3d at 1255-1256 (the court rejects an adverse credibility finding based in part on a finding that the applicant was inconsistent regarding his attendance at religious services in the US because the IJ misinterpreted the applicant's testimony and failed to consider the applicant's explanation for his infrequent church attendance when he moved to Denver, CO; *i.e.* - the applicant could not understand the services at the church he had attended since they were held in English and he could not find a church holding services in Chinese.)

#### 4. Religious beliefs can be imputed to an applicant

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, therefore, look at the totality of the claimant's circumstances, and country conditions information, when assessing whether an applicant has been or would be persecuted on account of an imputed religious belief. 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."

*See*, lesson, *Asylum Eligibility III, Nexus and the Five Protected Characteristics, Part VII, D., Imputed Political Opinion*.

*Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992).

## V. RIGHT TO RELIGIOUS FREEDOM

In Section 2 of IRFA, Congress acknowledged that freedom of religious belief and practice is a universal human right and

22 U.S.C. § 6401(a)(2) (1999).

fundamental freedom articulated in numerous international instruments. A review of these international instruments is important background information for asylum adjudications, given IRFA’s training requirements for 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 as follows.

### A. 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.”

*Charter of the United Nations.*  
(San Francisco: 26 June 1945).

### B. 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.

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

### C. International Covenant on Civil and Political Rights

Article 18 of the *International Covenant on Civil and Political Rights* provides that:

*International Covenant on Civil and Political Rights.* GA Res. 2200A (XXI), UN GAOR, Dec. 16, 1966.

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.

The text of Article 18(1) is quoted in IRFA.

**D. 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*.

*Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. GA. Res. 36/55, UN GAOR, Nov. 25, 1981.

1. Article 2 addresses issues of discrimination based on religion or other beliefs and defines religious discrimination and intolerance as follows:
  - a. No one shall be subject to discrimination by any State, institution, or group of persons on the grounds of religion or other belief.
  - b. 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.
2. Article 5 addresses the rights of parents and children to choose the belief or religion in which they desire the children to be raised and to have access to education in that belief.
  - a. 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.
  - b. 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.

- c. The child shall be protected from any form of discrimination on the ground of religion or belief. He or she 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.
  - d. 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.
  - e. 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.
3. Article 6 states that the right to freedom of thought, conscience, religion, or belief shall include, among others, the following:
- a. To worship or assemble in connection with a religion or a belief, and to establish and maintain places for these purposes;
  - b. To establish and maintain appropriate charitable or humanitarian institutions;
  - c. 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;
  - d. To write, issue and disseminate relevant publications in these areas;
  - e. To teach a religion or belief in places suitable for these purposes;
  - f. To solicit and receive voluntary financial and other contributions from individuals and institutions;

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

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*").

## VI. 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." 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.

See 22 U.S.C. § 6473(b) & (c) (1999).

The codification of this categorical framework, however, does not mandate a particular result in an individual asylum application. As discussed below in Section VII., 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.

See section V. Religious Freedoms, above.

These categories generally reflect the rights enshrined in the international instruments discussed above, and compose the

22 U.S.C. § 6442 (1999).

framework used to determine if countries will be designated as “countries of particular concern for religious freedom.”

### A. Particularly Severe Violations of Religious Freedom

*Particularly severe violations* are systematic, ongoing, egregious violations of religious freedom, including violations such as - - [22 U.S.C. § 6402\(11\)](#) (1999).

- 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; or
- Other flagrant denial of the right to life, liberty, or the security of person.

### B. 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: [22 U.S.C. § 6402\(13\)](#) (1999).

1. 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; or
  - Raising one’s children in the religious teachings and practices of one’s choice.
  
2. 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

**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 the closing of their churches. *See* 2005 USCIRF Annual Report, “China.”

**Note:** Being forced to change

- Beating
- Torture
- Mutilation
- Rape
- Enslavement
- Murder
- Execution

one's religion and being prohibited from voluntarily changing one's religion are both considered violations of religious freedom.

22 U.S.C. § 6401(a)(4) & (5).

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.

## VII. RELIGIOUS PERSECUTION

### A. 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.

See *Kovac v. INS*, 407 F.2d 102, 105-07 (9th Cir. 1969) (holding that persecution is not limited to physical suffering); see also, lesson, [Asylum Eligibility Part I: Definition of Refugee, section VI. “Persecution.”](#)

Moreover, the cumulative effect of harms and abuses that might not individually rise to the level of persecution may, in the aggregate, constitute persecution. For example, in *Guo v. Ashcroft*, the Ninth Circuit held that the Chinese Christian applicant demonstrated compelling evidence of persecution where he was arrested, detained twice, physically abused, and forced to renounce his religion.

*Guo v. Ashcroft*, 361 F.3d 1194, 1203 (9th Cir. 2004); see also *Korablina v. INS*, 158 F.3d 1038, 1044-45 (9th Cir. 1998) (finding persecution where Jewish citizen of Ukraine witnessed violent attacks against other Jews, experienced one violent attack, received death threats over the phone, and suffered discrimination in education and employment).

When determining whether particular harms or abuses constitute persecution, the adjudicator must consider the impact of the

harms on the individual applicant.

## B. 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 Section VI., "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 for asylum adjudicators on the nature and methods of religious persecution practiced abroad. 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.

*See 22 U.S.C. § 6473(b) & (c).*

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.

*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."

*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).*

The 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.

*22 U.S.C. § 6402(13)(A).*

### 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.”

*Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997); *see also* section VII.B., *Membership in a Religious Community*, below.

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.

*See*, lesson, *Eligibility Part I: Definition of a Refugee*, for a discussion of considering the importance of the feelings, opinions, and physical and psychological characteristics of the applicant.

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

The U.S. Court of Appeals for the Third Circuit has indicated that forced compliance with laws that fundamentally are abhorrent to a person’s deeply held religious convictions may constitute persecution.

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

For example, being forced to renounce religious beliefs or to desecrate an object of religious importance might be persecution if the victim holds strong religious beliefs.

Note that the persecutor’s motivation for requiring the act would still need to be evaluated.

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. Religious persecution may include:

*See UNHCR Handbook, para. 72.*

- a. Prohibition of membership in a religious community;
- b. Prohibition of worship in private or in public;
- c. Prohibition of religious instruction; or
- d. Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community.

### C. 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,” adjudicators cannot require an asylum applicant to conceal his religion upon return in order to avoid persecution. In *Muhur*, 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.” The court held that the IJ improperly assumed that one is not entitled to asylum on the basis of religious persecution if one can escape the notice of persecutors by concealing one’s religion.

*Muhur v. Ashcroft*, 355 F.3d 958, 961 (7th Cir. 2004); *Antipova v. U.S. Att’y Gen.*, 393 F.3d 1259, 1264-1265 (11<sup>th</sup> Cir. 2004) (the IJ noted 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.),

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.

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.”).

### D. Religious Discrimination

Although serious forms of religious discrimination may constitute persecution, other forms of religious discrimination, without more, may not be sufficient to establish 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. 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.

*Sofinet v. INS*, 196 F.3d. 742 (7th Cir. 1999).

See, lesson, *Eligibility Part I: Definition of a Refugee* for a discussion of discrimination and harassment.

The Court further added that the totality of the evidence Sofinet presented was insufficient to demonstrate his claimed religious

persecution – “In fact, the evidence highlights only that Sofinet, at worst, experienced ridicule, harassment and self-initiated job termination because of his religious beliefs.”

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 on account of religion.

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.

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. 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.

## E. Membership in a Religious Community

Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum on the basis of religious persecution, even if other members of the group have been persecuted. Each case requires an analysis of whether the individual in question suffered harm amounting to persecution.

In *Bucur*, the Seventh Circuit held that evidence that Romanian Jehovah’s Witnesses were persecuted under the Ceausescu regime did not suffice to show that the applicant in question had suffered persecution in Romania.

Note, however, that 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

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

See also, lesson, *Eligibility Part I: Definition of a Refugee* for a discussion of discrimination and harassment.

See *UNHCR Handbook, para. 54*.

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

*Bucur v. INS*, 109 F.3d 399 (7th Cir. 1997); see also *UNHCR Handbook, para. 73*.

See 8 C.F.R. 280.13(b)(2)(iii); lesson, *Eligibility Part II: Well-Founded Fear*, section IV., “Pattern or Practice of

persecution.

Persecution...”

## F. Issues with “Nexus to a Protected Characteristic” in Religious Persecution Cases

See generally, lesson, *Eligibility Part III: Nexus and the Five Protected Characteristics*.

In many countries, politics and religion are intertwined, making the analysis of nexus more difficult. In such cases, the officer 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.

In two separate cases before the Board of Immigration Appeals (BIA), *Matter of R-* and *Matter of K-S-*, 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. In *Matter of K-S-*, which affirmed *Matter of R-*, 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.

*Matter of R-*, Int. Dec. 3195 (BIA 1992) and *Matter of K-S-*, Int. Dec. 3209 (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.

### 1. Conversion

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

See, e.g., *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992) (prosecution under law against apostasy found to be “on account of” religion).

### 2. Forced Compliance With Laws or Punishment for Violation of Laws – 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. For example, 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.

See *Matter of H-M-*, 20 I&N Dec. 683 (BIA 1993); *Chang v. INS*, 119 F.3d 1055, 1060 (3d Cir. 1997) (noting that “fear of prosecution for violations of ‘fairly administered laws’ does not itself qualify one as a ‘refugee’”); *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); see also, lesson, *Eligibility Part III: Nexus*, section VIII.H., “Persecution v. Prosecution.”

However, “[n]othing in the statute or legislative history suggests . . . that fear of prosecution under laws of general applicability may never provide the basis for asylum or withholding of deportation.”

*Chang*, 119 F.3d at 1060-61.

a. general considerations:

To determine whether punishment for violation of a generally applicable law constitutes religious persecution, relevant considerations include:

- (i) Is the law neutral in intent?
- (ii) Is the law neutrally or unequally enforced?
- (iii) How does the persecutor view those who violate the law?

b. 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. Paragraph 57 of the UNHCR Handbook states that “penal prosecution for a reason mentioned in the definition . . . may in itself amount to persecution.”

See also *Chang v. INS*, 119 F.3d 1055, 1061 (3d Cir. 1997) (stating in political persecution case that “if the law itself is based on one of the enumerated factors and if the punishment under that law is sufficiently extreme to constitute persecution, the law may provide the basis for asylum . . .”).

For example, prosecution for the crime of attending religious services, or for providing “illegal” religious instruction to a child, could constitute persecution on account of religion.

[UNHCR Handbook, para. 57.](#)

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.

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

[Bandari v. INS](#), 227 F.3d 1160, 1168 (9th Cir. 2000) (citing [Maini v. INS](#), 212 F.3d 1167 (9th Cir. 2000)).

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 the asylum officer evaluate how the authorities view individuals who violate religious laws.

Keep in mind that Section 601 of IRFA requires immigration judges, asylum officers, and refugee and 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.

c. 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.

For example, the Ninth Circuit held that prosecution for violation of dress and conduct rules for women in Iran did not amount to persecution on account of religion, where the applicant presented no evidence that the persecutors were aware of her religious beliefs, and she made no showing of disproportionately severe punishment, or pretextual prosecution.

[Fisher v. INS](#), 79 F.3d 955 (9th Cir. 1996) (en banc).

Some state restrictions on religious practice can be legitimate, and it is important to focus on the intent or the purpose of the law. Article 18 of the United Nations International Covenant on Civil and Political Rights provides that the “freedom to manifest one’s

[International Covenant on Civil and Political Rights \(ICCPR\)](#) (16 December 1966)



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.”

(Art. 18).

**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. *See also* UNHCR Religion Guidelines para. 5 (discussing examples of permissible restrictions, including, for example, prohibition on ritual killings).

- d. 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. For example, if 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 would be evidence that the persecutor’s intent is to punish members of a particular religious group because of their religious beliefs.

*See also* [Ghebremedhin v. Ashcroft](#), 385 F.3d 1116, 1120 (7th Cir.), *amended*, 392 F.3d 241 (7th Cir. 2004) (holding that Eritrean Jehovah’s Witness was eligible for asylum because, among other things, the government subjected Jehovah’s Witnesses who refused to participate in national service on religious grounds to harsher treatment).

Additionally, 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.

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

In *Bandari v. INS*, the Ninth Circuit 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. Though the initial stop of the applicant by the police may have been characterized as equal enforcement of a neutral law, the fact that the police detained the applicant for several days, beat him, insulted his religion, and sentenced him for violation of a law that prevented interfaith dating demonstrated that the harm he suffered was persecution on account of his religion,

[Bandari v. INS](#), 227 F.3d 1160, 1168 (9th Cir. 2000).

rather than prosecution.

- e. 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 possessing "improper" religious values. An adjudicator must, therefore, explore all possible motives, including mixed motives, *see* below, when assessing whether the harm the applicant suffered or fears is on account of a protected ground.

### 3. Refusal to comply with religious norms

Harm of an applicant that is motivated by the applicant's refusal to comply with religious norms may constitute persecution on account of religion. For example, 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.

*Matter of S-A-*, 22 I&N Dec.1328 (BIA 2000).

### 4. Mixed motives for persecution

A persecutor may have mixed motives in seeking to harm an individual. An applicant is not required to establish the exact motivation of the persecutor where different reasons for the actions are possible. 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.

INA § 208(b)(1)(B)(i); *see Matter of S-P-*, 211 I&N Dec. 486, 490 (BIA 1996) (an applicant bears the burden of "establishing facts on which a reasonable person would fear that the danger arises on account of" a protected ground); *Maini v. INS*, 212 F3d 1167, 1176 n.1 (9th Cir. 2000) (finding that applicants suffered past persecution on account of their religion in addition to non-protected economic grounds); *see also*, lesson, *Eligibility Part III: Nexus*, section II, "On Account Of" (Nexus)."



## G. Persecution By Members of Applicant’s Religion

Officers 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 Section VII.F.3., *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.

*Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

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, they were persecuted on account of their interfaith marriage. The U.S. Court of Appeals for the Ninth Circuit overturned a decision by the BIA finding 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.”

*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.”).

## VIII. RESOURCE MATERIALS

Title VI of IRFA requires asylum officers and other immigration officials to consult the DOS 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 provide documentation on the status of religious freedom in the world.

### A. Countries of Particular Concern

The President is required to designate as “countries of particular concern” those countries where the government has engaged in or tolerated violations of religious freedom. These countries are so designated in order to use sanctions to encourage the countries to improve their treatment of religious groups. In September 2007, the Secretary of State, acting under the authority of the President, re-designated eight such countries – Burma, China, the Democratic People’s Republic of Korea (North Korea), Eritrea, Iran, Saudi Arabia, Sudan, and Uzbekistan.

U.S. Department of State. “Executive Summary,” *2007 Annual Report on International Religious Freedom* (Washington, DC: 14 Sept.. 2007), (attached). See *Remarks on the Department of State’s Annual Report on International Religious Freedom*, (14 Sept.. 2007).

These designations are made as a matter of foreign policy for the purpose of imposing sanctions and other restrictions on countries that violate religious freedom. While the designations do not have any bearing on individual asylum claims, the designation informs adjudicators of the widespread abuse of religious groups in these countries.

## **B. The US Department of State Annual Report on International Religious Freedom**

Each year the Department of States 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*. The most recent annual report was released on September 2007. In its Executive Summary, the report breaks down the countries of the world into categories according to the severity of treatment of religious organizations and their members. These categories are not statutorily recognized and the countries listed in each are not necessarily those designated as countries of particular concern.

U.S. Department of State.  
“Executive Summary,” 2007  
*Annual Report on International Religious Freedom* (Washington, DC: 9 Sept.. 2007), (attached).

- *Totalitarian or Authoritarian Attempts to Control Religious Belief or Practice* – Countries included in this category seek to control any form of dissent in thought or expression. In these countries religious expression is often considered as a threat to the political ideology. .
- *State Hostility Toward Minority or Non-approved Religions* – This category includes countries that are hostile toward minority religions and often implement policies to intimidate the groups, cause their members to convert, or to flee the country. .
- *State Neglect of the Problem of Discrimination Against, or Persecution of, Minority or Non-approved Religions* – Countries in this category have laws against the discrimination of religious groups or individuals, but fail to enforce those laws against the actions of nongovernmental entities or local law enforcement officials.
- *Discriminatory Legislation or Policies Disadvantaging Certain Religions* – Countries in this category, typically having a history of one dominant religion, place minority religions at a disadvantage by favoring the dominant religion in their laws and regulations.
- *Discriminating Against Certain Religions by Identifying*

*them as Dangerous “Cults” or “Sects”* – These countries have investigated minority religions for wrongdoing, as well as launching disinformation campaigns against them.

Some of the examples of mistreatment of believers listed in the DOS report include: execution (North Korea); harassment, extortion, prolonged detention, and physical abuse (China); closures of “underground” places of worship and “house churches” (China); infiltration or monitoring of meetings and activities of religious groups (Burma); subjection of all religious publications to censorship (Burma); forcing believers to renounce their faith (Eritrea); prohibition on proselytizing (Iran); surveillance, infiltration, and harassment of clergy (Cuba); and restrictions on the training and ordination of clergy (Vietnam).

In 2005, the Secretary of State noted that if Vietnam’s record of improvement on issues of religious freedom were to continue, the US could eventually be able to remove that country from the list of Countries of Particular Concern. This assessment proved to be correct; Vietnam was removed for the list in 2007.

*Remarks on the Department of State's Annual Report on International Religious Freedom*, 8 Nov. 2005.

### C. US Commission on International Religious Freedom Reports

Established by the International Religious Freedom Act, the US 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.

*USCIRF. Frequently Asked Questions* (Washington, DC: 7 March 2001) [Internet]

#### 1. Annual reports

On May 1, of each year the US Commission on International Religious Freedom issues its Annual Report. Mindful of its mandate to make recommendations on how to make use of policy designed 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.

*USCIRF Report of the U.S. Commission on International Religious Freedom* (Washington, DC: 1 May 2000). [Internet]

In its most recent annual report released in May 2007, the Commission summarized its activities over the course of the past year and recommended policies to the United States Government that would promote and protect religious freedom around the world. The report includes chapters focusing on human rights in Turkey, Iraq, and the Russian Federation. The report also discusses the effects of the peace agreement in Sudan, and the total lack of

*USCIRF. Annual Report of the U.S. Commission on International Religious Freedom* (Washington, DC: May 2007).

religious freedom in North Korea. The Commission has a “Watch 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. Countries included in the Commission’s “Watch List” are: Afghanistan, Bangladesh, Belarus, Cuba, Egypt, Indonesia, Iraq, and Nigeria.

The report provides detailed information regarding the activities of the Commission, and the status of religious freedom in 23 countries. The report also includes discussions on the linkages between IRFA and the U.S. Refugee and Asylum Programs.

Further, the report describes the arguments and evidence presented to the Department of State in making its recommendations that 11 countries be designated as countries of particular concern (CPCs). The countries recommended to receive that designation are Burma, China, Eritrea, Iran, North Korea, Pakistan, Saudi Arabia, Sudan, Turkmenistan, and Vietnam. The Commission also urged that Pakistan, Turkmenistan, and Uzbekistan be designated as CPCs.

USCIRF. “Countries of Particular Concern and the Commission Watch List” *Annual Report of the U.S. Commission on International Religious Freedom* (Washington, DC: May 2007), pp. 79-88.

## 2. 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. Individual country reports have focused on North Korea, Sudan, and others countries.

These reports can be accessed on the USCIRF website at [www.uscirf.gov](http://www.uscirf.gov)

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.

## 3. Comments on the DOS Annual Report on International Religious Freedom

Each year the US 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 (as they were in December 2000), or as part of the USCIRF *Annual Report* (as was done in the 2006 *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.

USCIRF. *Annual Report of the U.S Commission on International Religious Freedom* (Washington, DC: May 2006), pp. 73-80.

## IX. SUMMARY

### A. 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.

IRFA also established new responsibilities for government agencies in order to increase the amount of accessible information on religious persecution, expand the consideration of issues of religious persecution in matters of foreign policy and national security, and improve the treatment of religious individuals by US government officials.

### B. Title VI of IRFA

Title VI of IRFA speaks directly to the role of asylum officers and others in improving the US 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 asylum 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 Commission on International Religious Freedom with the authority to request studies by the Comptroller General on certain aspects of the expedited removal process.

### **C. The Nature of Religion**

1. The protected ground of religion is broadly understood, and protects traditional as well as non-traditional belief systems.
2. The definition of religion and religious freedom includes religious beliefs and religious practices.
3. Religious beliefs and practices may vary by sect, region, country, and culture, and asylum officers 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.

### **D. 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 UN 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 to the asylum officer in determining what actions may be considered violations of religious freedom.

### **E. 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 imposed, and the applicant’s individual circumstances.

## **F. Religious Persecution – General Considerations**

1. Prohibitions on, or restrictions of, 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. Adjudicators cannot require an applicant to conceal his religious beliefs upon return in order to avoid persecution.
4. 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.
5. Generally, mere membership in a religious community will not be sufficient to establish eligibility for asylum on the basis of religious persecution.
6. The motivation of the persecutor must be examined to determine if:
  - a. the applicant has been targeted or could be targeted; and
  - b. the applicant’s religion is the targeted characteristic.
7. Laws that impose harsh penalties for conversion from one religion to another may constitute persecution on account

of religion

8. Punishment for violation of a generally applicable law affecting religious beliefs or practices may constitute persecution on account of religion. The officer 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.
9. 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.

### **G. Resource Materials**

Asylum officers have at their disposal a number of tools to aid in the adjudication of cases of claimed religious persecution. IRFA requires that officers consider the information contained in the Department of State Annual Report on International Religious Freedom when adjudicating such cases. In addition, officers should consult other resources, such as the reports and press releases issued by the US Commission on International Religious Freedom.

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, should not lead to an assumption that a claim to persecution is unfounded.