

Forced Migration

Class 2: underlying values; US law

John Palmer

Brooklyn Law School

August 22, 2012

Who is a refugee?

Protection in the United States

Who is a refugee?

Shacknove

vs.

Zolberg et al.

vs.

Martin

Protection in the United States

substance: pre-1980 provisions

INA § 243(h) (from 1952): AG may withhold deportation to country in which there was “clear probability” alien would be subject to persecution.

Parole (from 1952): AG could “parole” aliens temporarily into the country “for emergent reasons or for reasons deemed strictly in the public interest.” (Parole authority still exists but has been restricted.)

Conditional entry (from 1965): INS could grant status to aliens fleeing communist or Middle Eastern country because of persecution based on race, religion, or political opinion.

Protection in the United States

substance: post-1980

INA § 241(b)(3) (formerly § 243(h)):

[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

Protection in the United States

substance: post-1980

INA § 101(a)(42):

The term “refugee” means (A) any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . .

Protection in the United States

substance: post-1980

INA § 208(b)(1)(A):

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.