

Forced Migration

Class 9: exclusion

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Timing and Finality

Transit and Protection Needs

Bad Acts and Future Risks

Exclusion

Timing and Finality

INA § 208(a)(2): 1-year bar and claim preclusion unless applicant demonstrates either: “changed circumstances which materially affect the applicant’s eligibility for asylum” or “extraordinary circumstances relating to the delay.”

Exclusion

Transit and Protection Needs

Refugee Convention Art. 1D: Convention shall not apply to persons receiving protection or assistance from organs or agencies of the United Nations other than UNHCR—i.e., Palestinians receiving protection or assistance from UNRWA. But these people are entitled to the benefits of the Convention when “such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly.”

Exclusion

Transit and Protection Needs

Refugee Convention Art. 1E: Convention shall not apply to person recognized as having the rights and obligations of nationality in country of residence.

Exclusion

Transit and Protection Needs

INA § 208(a)(2)(A): Application barred if removal to safe third country possible based on bilateral or multilateral agreement. Only such agreement at present is with Canada.

Exclusion

Transit and Protection Needs

INA § 208(b)(2)(vi): Not eligible for asylum if: “firmly resettled in another country prior to arriving in the United States.”

8 C.F.R. § 208.15: “An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement” unless: (a) entry was necessary consequence of flight, remained only as long as necessary to arrange onward travel, and did not establish significant ties, or (b) conditions so restricted that he or she was not in fact resettled.

Exclusion

Bad Acts and Future Risks

Refugee Convention Art. 1F: Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity;
- (b) he has committed a serious non-political crime outside the country of refuge prior to admission; or
- (c) he has been guilty of acts contrary to the purposes and principles of the UN.

Exclusion

Bad Acts and Future Risks

Refugee Convention Art. 33: Prohibition against non-refoulement does not apply to a refugee:

- (1) “whom there are reasonable grounds for regarding as a danger to the security of the country in which he is,” or
- (2) having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

Exclusion

Bad Acts and Future Risks

INA § 208(b)(2)(A): Not eligible for asylum if:

(i) the alien ordered, incited, assisted, or otherwise participated in persecution on protected ground;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the US prior to arrival;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the US;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the US;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of INA § 212(a)(3)(B)(i) or § 237(a)(4)(B).

Exclusion

Bad Acts and Future Risks

INA § 241(b)(3)(B): Not eligible for withholding if:

(i) the alien ordered, incited, assisted, or otherwise participated in persecution on protected ground;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the US prior to arrival;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the US;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the US.

Exclusion

Bad Acts and Future Risks

What is a “particularly serious crime”?

For purposes of asylum exclusion, any “aggravated felony.”

For purposes of withholding exclusion, any “aggravated felony” for which alien sentenced to at least 5 years imprisonment or that has been determined by AG to constitute a particularly serious crime.

(And what is an “aggravated felony”? See INA § 101(a)(43).)