

## **IRAP Case Outline and Claim Analysis: Requests for Review**

There is no appeal for a denial of an application for refugee status, but USCIS may exercise its discretion to review a rejected application. The principal applicant or a third party on his/her behalf must file a Request for Review (RFR) within 90 days of the date on the Notice of Ineligibility or provide compelling reasons for USCIS to waive the deadline.

### **1. Grounds for RFR:**

- a. An RFR must allege **significant error** or present **new evidence**
- b. Possible errors might include:
  - i. Insufficient fact-finding or analysis (the USCIS has not elaborated on what constitutes sufficient fact-finding)
  - ii. Unsupported credibility determination (the applicant was not given the opportunity to rebut; decision is not supported by adequate assessment, issue not material to refugee determination)
- c. New evidence must:
  - i. be sufficient and relevant to prove that the applicant qualifies for resettlement
  - ii. be factually related to the original case
  - iii. have been unavailable at the time of the original interview and application
- d. What are the significant error(s) and/or new evidence you're presenting in this case?
- e. If the RFR is not timely (i.e. past 90 days), explain why the RFR is late

### **2. Reasons for Ineligibility:**

- a. **Special Humanitarian Concern:** USCIS has determined that the applicant has failed to establish that applicant qualifies for access to the U.S. Refugee Admissions Program (USRAP).
- b. **Refugee Claim:** USCIS has determined that the applicant failed to establish that he meets the definition of a refugee under INA Section 101(a)(42). He may have failed to establish **persecution** (he suffered past persecution or has a well-founded fear of future persecution) and/ or a **protected characteristic** (past persecution or fear of future persecution was on account of a protected characteristic: race, religion, nationality, membership in a particular social group, or political opinion).
- c. **Persecution of Others:** USCIS has determined that the applicant failed to establish that he did not order, incite, assist or otherwise participate in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion.

- d. **Firm Resettlement:** USCIS has determined that the applicant failed to establish that he is not firmly resettled in a third country.
  - e. **Admissibility:** USCIS has determined the applicant failed to establish that he is admissible to the United States pursuant to INA §212(a) (8 U.S.C. §1182(a)). USCIS typically lists the specific provisions under which he was determined to be inadmissible.
  - f. **Credibility:** USCIS has rejected the application based on credibility grounds regarding an applicant's claims. Recent Notice of Ineligibility forms will typically specify the specific claim(s) whose credibility is in question (i.e. refugee claim, involvement in acts of persecution, admissibility to the U.S.). It will also list the source of the concerns for the credibility, including: 1. Material inconsistencies within the applicants testimony, 2. Material inconsistencies between the applicant's testimony and other evidence (documentation, country conditions, other case member's testimony) 3. Insufficiently detailed answers presented to material questions. 4. Material parts of the applicant's testimony or other evidence was determined to be implausible in light of known country conditions.
  - g. **What are the listed ineligibility grounds for your case? How will you refute those grounds?**
- 3. A Closer Look at Admissibility (if applicable)**
- a. **Criminal and related grounds**
    - i. "Moral Turpitude": Among other types of crimes, committing crimes of moral turpitude renders refugees inadmissible. INA § 212(a)(2)(A)(i)(I). "Moral turpitude" is based on whether an act was "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."
    - ii. Exceptions for purely political offenses:
      - 1. Baseless convictions
      - 2. Crimes against the state
      - 3. "Common" offenses (with purely political motive)
    - iii. Exceptions for convictions based on discriminatory factors in countries of first asylum
      - 1. Immigration-related crimes
      - 2. Purely political offenses or baseless convictions
    - iv. Discretionary Waivers: Even if a refugee's conviction does not qualify as "purely political," there is a possibility of a discretionary waiver of the moral turpitude bar in a few other situations:
      - 1. Crime committed before 18<sup>th</sup> birthday
      - 2. Maximum penalty for the crime was not more than 1 year's imprisonment and sentence imposed not more than 6 months

3. First offense for simple possession of less than 30 grams of marijuana
- b. Material Misrepresentation:** (1) the noncitizen made a false representation of fact; (2) the misrepresentation was willful; and (3) the fact misrepresented was material for the purpose of obtaining a visa, other documentation, entry into the United States or other immigration benefit
- i. Must be material (alien is excludable on the true facts or the misrepresentation cut off a line of inquiry that might have resulted in proper determination of exclusion) and willful (“deliberate and voluntary”)
  - ii. Common patterns:
    1. Falsely representing identity or citizenship
    2. Use of false documents
    3. Falsely representing criminal history
- c. Waivers of Inadmissibility:** certain grounds of inadmissibility enumerated in INA section 212(a) may be waived for one or more of three reasons: humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.
- i. I-602 Waiver: it must be shown that one or more of the three waiver grounds outweigh the severity or significance of the inadmissibility ground.
- d. Terrorism-Related Inadmissibility:** “engaging in terrorist activity” encompasses members or representatives of terrorist organizations and persons who provide “material support” to persons or organizations engaged in terrorist activities.
- i. Tiers: Terrorist organizations are classified into three “Tiers.” Tiers I and II encompass organizations designated by DOS and the DHS. Tier III represents “undesigned” terrorist organizations.
  - ii. Discretionary Exemptions:
    1. Group exemptions (exemption for applicants who have voluntary associations with specific exempted group)
    2. Situational exemptions:
      - a. Material support under duress
      - b. Solicitation under duress
      - c. Military-type training under duress
      - d. Voluntary medical care
      - e. Certain applicants with existing immigration benefits (only Tier III)
      - f. Certain limited material support (only Tier III)
      - g. Insignificant material support (only Tier III)