

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

*Regional Office
for the United States of America &
the Caribbean*

1800 Massachusetts Ave, NW
Suite 500
Washington, DC 20036

*Bureau Régional
pour les Etats-Unis d'Amérique et
Caraïbes*

Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.ORG

CONVENTION AGAINST TORTURE

If you fear that you will be tortured if returned to your home country, you may be eligible for protection under a law implementing a United Nations treaty called the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention Against Torture").

Under Article 3 of the Convention Against Torture, the United States may not deport a person to another country where there are substantial grounds for believing that the person would be in danger of torture. The Convention Against Torture differs from protection under the asylum and withholding of removal laws in three significant ways: (1) there are no exceptions to protection under Article 3 if the person meets the standard; for example, protection is still available to persons convicted of "aggravated felonies"; (2) the torture does not have to be "on account of" race, religion, nationality, membership in a particular social group or political opinion; and, (3) a public official, or person acting in an official capacity, must either inflict the harm, or consent or acquiesce to the harm's occurrence.

In October 1998, a law was enacted implementing Article 3 of the Convention Against Torture. The INS issued implementing regulations on 19 February 1999, which went into effect on 22 March 1999.

**WHO IS ELIGIBLE FOR PROTECTION
UNDER THE CONVENTION AGAINST TORTURE?**

INS regulations define torture and describe the standards you must meet to be eligible for protection under the Convention Against Torture. See 8 CFR sections 208.16-208.18. Torture is defined as any act which intentionally causes severe pain or suffering, and may include physical or mental harm. To constitute torture, a public official or a person acting in an official capacity must either inflict the harm, or consent or acquiesce to the harm's occurrence. Further, to meet the definition of torture, you must be in the offender's custody or physical control when the torture occurs. Torture may be committed for a variety of wrongful purposes, including: (1) to obtain information or a confession; (2) to punish you for an act you or a third person has committed or is suspected of having committed; (3) to intimidate or coerce you or a third person; or, (4) for discriminatory reasons. See 8 CFR 208.18(a) for additional information on these and other aspects of the "torture" definition.

If you fear you may be subjected to torture if you return to your home country, you may be eligible for Convention Against Torture protection. To be successful, you must establish that it is "more likely than not" that you will be tortured if you are returned. Your testimony may be sufficient to establish your fear of torture, but the immigration judge will also look at other evidence, including: (1) evidence of past torture you may have experienced; (2) evidence that you could relocate to a part of the country where you are not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights in your country; and, (4) other relevant information about conditions in your home country. See 8 CFR 208.16(c).

WHAT KIND OF PROTECTION DOES THE CONVENTION AGAINST TORTURE PROVIDE?

The INS regulations implementing the Convention Against Torture create two types of protection. The first provision establishes a form of relief called "withholding of removal under the Convention Against Torture." Traditional "withholding of removal" (not under the Convention Against Torture) is a form of relief already found in United States law under the Immigration and Nationality Act (INA) Section 241(b)(3). Traditional withholding of removal is similar to asylum, but has a higher standard of proof and has certain bars to relief, for example some criminal convictions. Withholding of removal under the Convention Against Torture is available to those who are not barred from traditional withholding of removal and who can demonstrate a substantial likelihood that they would be tortured if returned to their home countries. If you are granted withholding of removal under the Convention Against Torture, you will be eligible for the same benefits as if you had been granted traditional withholding of removal.

The second form of protection is called "deferral of removal" and is intended for those people who are barred from the traditional withholding of removal under INA 241(b)(3) (for example, due to criminal convictions), but who can still demonstrate a substantial likelihood that they would be tortured if returned to their home countries. Deferral of removal is a less permanent form of relief and can be terminated if the United States government determines that it is safe for you to return to your country. It is important to note that a grant of relief under the Convention Against Torture, either withholding of removal or deferral of removal, does not mean that the INS cannot attempt to deport you to another, safe country, or that you will necessarily be released from detention. The attached "INS Fact Sheet on the Convention Against Torture" and the enclosed regulations provide more information on these two forms of relief.

HOW DOES ONE APPLY FOR WITHHOLDING OR DEFERRAL OF REMOVAL UNDER THE CONVENTION AGAINST TORTURE?¹

1. **If your case is before an Immigration Judge** and you have not received a final order of removal, exclusion or deportation, you may apply for withholding of removal under the Convention Against Torture at this time. You apply by completing the INS Form I-589, which is an application for asylum, traditional withholding of removal, and withholding of removal and deferral of removal under the Convention Against Torture. If you have not already submitted a Form I-589 to the Immigration Judge, and would like to seek protection under the Convention Against Torture, tell the judge and ask that you be provided with the necessary form.
2. **If your case is on appeal to the Board of Immigration Appeals (BIA) and your Convention Against Torture claim was never considered by an Immigration Judge**, you may wish to submit to the BIA a motion to remand your case to an Immigration Judge for a hearing on your claim. If you do this, you may also wish to state in your motion that you are reserving all of your issues on appeal. Note that if your case was heard by an Immigration Judge after 22 March 1999, your Convention Against Torture claim should have been considered at that time.

¹ **NOTE:** This information sheet does not include all groups of people potentially eligible for Convention Against Torture relief. For example, if you are in "expedited removal proceedings" under INA Section 235(b), proceedings for stowaways under INA Section 235(a), expedited administrative removal proceedings for persons convicted of aggravated felonies under INA Section 238, reinstatement of removal proceedings under INA Section 241, or alien terrorist removal proceedings under INA Section 235(c) or Section 501, special rules apply to your case. You should inform an immigration officer and contact an attorney if you are in such proceedings and wish to seek relief under the new law. The enclosed INS policy memorandum dated 18 March 1999 provides some additional information on the procedures which apply in these cases.

3. **If you have a final order of removal:** To raise a claim under the Convention Against Torture you will likely need to file a motion to reopen your case. The procedures and requirements for reopening a case are set forth in the INS regulations at 8 CFR Sections 3.2 and 3.23. If your final order of removal was issued by the BIA (for example, if the BIA affirmed an order of removal issued by the Immigration Judge that heard your case), then you would likely file your motion with the BIA. If the final order of removal was issued by the Immigration Judge (for example, if you were ordered deported *in absentia* or if you did not appeal a negative decision by the Immigration Judge), then you would likely file your motion with the Immigration Judge that heard your case.

In preparing a motion to reopen, you will need to show that evidence about the torture you may face in your country was not available and could not have been presented at your previous hearing. Generally, motions to reopen must be filed within 90 days after the Immigration Judge or BIA issues a decision in your case. There are, however, exceptions to the filing deadline. Most notably, if your motion to reopen is based on changed country conditions in your country of origin, you may be able to reopen your case at any time beyond the filing deadline.

NOTE: The filing of a motion to reopen will not automatically stay your deportation. To do this, you must also request a stay of removal at the same time you file a motion to reopen.

NOTE: This flyer is intended to provide general guidance only and should not be considered a substitute for direct legal assistance.