

Инициатива качества  
систем убежища

в Восточной Европе и на Южном Кавказе



Asylum Systems  
Quality Initiative

in Eastern Europe and the Southern Caucasus

**Inclusion in RSD – Well-founded fear  
UNHCR Training - Belarus  
30 October 2013**

# DOES THE APPLICANT MEET THE INCLUSION CRITERIA?

Once the decision maker decides on the facts, the next step is to apply the elements of the legal definition of a Convention refugee to the facts that have been accepted.

**...the term “refugee” shall apply to any person who:**

**...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable, or owing to such fear, is unwilling to return to it.**

# INCLUSION CRITERIA

1. Outside country of nationality or habitual residence
2. Well-founded fear
3. Persecution
4. Grounds – race, religion, nationality, membership in a particular social group or political opinion

**WELL-FOUNDED FEAR: IS THERE A REASONABLE POSSIBILITY THAT THE APPLICANT WOULD EXPERIENCE HARM IF RETURNED TO THE COUNTRY OF NATIONALITY OR COUNTRY OF FORMER HABITUAL RESIDENCE?**

- Key phrase in the definition
  - Will consider under this heading – who it is he fears; what he fears; the existence of state protection; application of forward looking test for risk of harm if he returns
- Two elements:
  - Subjective
  - Objective

# SUBJECTIVE ELEMENT

- Refers to “fear” aspect of the definition.
- Fear is subjective and individual to each person
- Therefore, consider applicant’s state of mind/  
motivations/ personality/ experiences
- Always a consideration but most relevant where  
there is no objective basis for future harm but there  
are compelling reasons not to return arising from  
past persecution

# OBJECTIVE ELEMENT

Is there an objective basis to the applicant's fear? Is the applicant's fear "well-founded"?

Consider:

- Applicant's experiences – Who does he fear? What does he fear will happen if he returns?
- Experience of similarly situated individuals
- State protection

# WELL-FOUNDED FEAR

1. Does the applicant have to experience past harm?
2. Does state protection have to be perfect?
3. How does COI help you assess the well-foundedness of the fear?
4. Why is the test of risk a “reasonable possibility”?



# PAST HARM

Evidence of past harm is not required

Example – Applicant is member of a persecuted ethnic group. He has not been targeted personally. Consider situation of similarly situated members of the ethnic group.

But if the applicant has been harmed in the past, that is an indication of future harm.

Example - Applicant is member of persecuted ethnic group and has experienced racially motivated beatings.

# STATE PROTECTION

- Important consideration – is most relevant where the agent of persecution is an non-state actor
- If state authorizes the harm or tolerates it, state protection is not available.
- If state not involved in the harm, must ask what the state is doing to protect the applicant

# ADEQUACY OF STATE PROTECTION

Assess COI to decide if the state is doing enough to protect the applicant –

Is there an effective legal system and can the applicant access it?

Consider what the applicant has done to get protection.

# Importance of COI

...the Court considers that, given the absolute nature of the protection afforded by Article 3, it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as materials originating from other, reliable and objective sources, such as, for instance, other Contracting and non-Contracting States, agencies of the United Nations and reputable non-governmental organizations.

Salah Sheekh v. The Netherlands [2007] ECHR (11 January 2007)

# IMPORTANCE OF GOOD COUNTRY OF ORIGIN INFORMATION

- COI is essential to assessing well-founded fear
- Factors in assessing quality of COI
  - Relevant
  - Up-to- date
  - Reliable
  - Accurate
  - Impartial and objective

# ANALYSIS FRAMEWORK FOR WELL-FOUNDED FEAR

- Consider why the applicant has left his country of origin
- Identify what he fears will happen to him if he returns
- Determine whether adequate state protection is available
- Is there a serious possibility that the applicant would experience harm if he returned? If “yes”, his fear is well-founded.