

USCIS Form I-589 Application for Asylum: Establishing Eligibility Through Membership in a Particular Social Group

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FINDINGS

USCIS FORM I-589 APPLICATION FOR ASYLUM: ESTABLISHING ELIGIBILITY THROUGH MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

Executive Summary

The Form I-589 Application for Asylum and for Withholding of Removal represents the foundational legal document for asylum seekers in the United States. When an applicant seeks protection based on persecution "on account of membership in a particular social group," the I-589 becomes the critical vehicle for articulating and substantiating a complex, fact-intensive legal claim. This report addresses the intersection of substantive asylum law regarding particular social groups (hereinafter "PSG") and the practical requirements for completing and supporting the I-589 form. The legal landscape governing PSG claims has undergone significant evolution, with recent Board of Immigration Appeals and Attorney General decisions establishing increasingly rigorous standards for what constitutes a cognizable social group. Simultaneously, 2025 administrative policy changes have introduced new scrutiny mechanisms, administrative holds on benefit processing, and prepermission procedures that fundamentally alter how asylum applications are evaluated. For immigration practitioners in Northern California and nationwide, understanding both the controlling legal framework and current procedural requirements is essential to advancing viable PSG-based asylum claims.

Key Risk Assessment: The current legal environment presents a medium to high-risk landscape for PSG-based asylum claims. While the substantive law recognizes PSG as a valid protected ground, recent administrative actions have narrowed processing timelines, introduced enhanced re-review procedures for previously approved cases, and authorized immigration judges to summarily dismiss legally insufficient asylum applications without a merits hearing. Success depends on meticulous I-589 completion that clearly delineates the proposed social group at the outset, robust corroborating evidence, and strategic preservation of alternative protected grounds throughout all proceedings.

Legal Framework Establishing the Particular Social Group Protected Ground

Statutory Authority and Definition

The Immigration and Nationality Act provides that a "refugee" is any person who is outside their country of nationality and is unable or unwilling to return "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."^[3] The statute does not define "particular social group," leaving that task to administrative bodies and courts. An applicant seeking asylum must apply through Form I-589 and establish by a preponderance of the evidence that he or she qualifies as a refugee under this definition.^[13] The applicant bears the burden of proof entirely, and this burden does not shift to the Department of Homeland Security except in specific circumstances involving past persecution and internal relocation alternatives.^[13]

The regulatory framework implementing INA § 208 establishes comprehensive procedural requirements for asylum applications. Regulations provide that asylum applications shall be filed in accordance with prescribed procedures, and the applicant must demonstrate that the application has been filed either within one year of arrival in the United States or that the applicant qualifies for an exception to this deadline.^[20] The regulations

also establish that testimony, if credible, may be sufficient to sustain the burden of proof without corroboration, though applicants are encouraged to present corroborating evidence where available.[13]

The Three-Prong Test for Cognizable Particular Social Groups

The Board of Immigration Appeals established the foundational framework for analyzing particular social groups in [Matter of Acosta, 19 I&N Dec. 211 (BIA 1985)][49], holding that a particular social group must be composed of members sharing a "common, immutable characteristic." [31][49] This characteristic must be one that members "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." [31] The Acosta standard recognized that immutable characteristics include "innate one[s] such as sex, color, or kinship ties, or in some circumstances...shared past experience such as former military leadership or land ownership." [2][49]

Over decades, BIA jurisprudence evolved to refine this standard. In [Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014)][31][52], the BIA clarified that to establish a cognizable particular social group, an applicant must establish that the group is "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." [2][31][52] This three-prong test has become the controlling framework for PSG analysis throughout the United States.

Immutability Prong: The immutability requirement does not limit relief to characteristics visible to the naked eye. [31][52] Rather, as the BIA explained in M-E-V-G-, many immutable characteristics are not ocularly visible, yet a society could still perceive members of a group as comprising a particular social group "for a host of reasons, such as sociopolitical or cultural conditions in the country." [31] The fact that members of a particular social group may make efforts to hide their membership to avoid persecution does not deprive the group of its protected status. [31] Sexual orientation, gender identity, and kinship ties all qualify as immutable characteristics under this prong, despite not being visibly apparent in all circumstances. [2][31]

Particularity Prong: The particularity requirement ensures that a particular social group is "narrowly defined" and that "major segments of the population will rarely, if ever, constitute a distinct social group." [31][52] A group defined solely by its persecution or risk of persecution fails this prong; the group must exist independently of the persecution claimed. [31][52] Additionally, the characteristics defining the group must have "commonly accepted definitions" within the society in question. [19] For example, in [Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014)][19][22], the BIA found that the group comprised of "married women in Guatemala who are unable to leave their relationship" met the particularity requirement because the terms "married," "women," and "unable to leave the relationship" have "commonly accepted definitions within Guatemalan society." [19][22]

Social Distinction Prong: Social distinction requires that the group is "perceived as a group by society" rather than merely "seen by society." [2] This is measured from the perspective of the society in question, not from the perspective of the persecutor. [31][52] A group must have "a distinct identity in the relevant country, because it is perceived as being different by the surrounding society." [28] In M-E-V-G-, the BIA clarified that "to be socially distinct, a group need not be seen by society; rather, it must be perceived as a group by society." [2][19] Social distinction must be assessed on a case-by-case basis, depending on the specific conditions and societal perceptions in the country of origin; a group recognized as socially distinct in one country may not qualify in another. [2][25]

Nexus Requirement: "At Least One Central Reason"

Beyond establishing membership in a cognizable particular social group, an applicant must establish that the persecution was "on account of" that membership. Following the REAL ID Act of 2005, the applicable

standard requires that the membership in the particular social group "was or will be at least one central reason for persecuting the applicant." [8][50] This represents a more demanding standard than the prior "at least in part" language, creating what courts have described as a "central reason" nexus requirement. [50] The Supreme Court has clarified that this standard does not require proof of the persecutor's specific intent, but rather that the applicant's membership in the protected group was a "but for caus[e]" of the persecution. [50]

The nexus analysis varies across circuits. The Ninth Circuit, controlling in Northern California, has generally taken a more flexible approach than the Fourth, Tenth, and Eleventh Circuits. [50] Notably, in withholding of removal claims (as opposed to asylum claims), the Ninth and Sixth Circuits require only that the protected ground be "one reason" for the harm, not necessarily the "central reason," creating a lower nexus threshold for withholding compared to asylum. [60] This distinction can be strategically significant when an applicant's case presents a mixed-motive persecution scenario.

Current Legal Landscape: 2025-2026 Developments

Recent BIA and Attorney General Decisions

The legal landscape governing PSG-based asylum claims has undergone substantial development in 2024-2025, reflecting shifting administrative priorities. In [Matter of W-Y-C- & H-O-B-, 27 I&N Dec. 189 (BIA 2018)][1][25], the BIA established that asylum applicants must clearly delineate their claimed particular social group "on the record before the Immigration Judge" and that the Board "generally will not address a newly articulated particular social group that was not advanced before the Immigration Judge." [1] This precedent, now widely applied, has created a critical procedural requirement: applicants must identify their specific PSG formulation early in removal proceedings, preferably at the master calendar hearing or initial pleading stage, or risk forfeiture on appeal.

More recently, in [Matter of O-A-R-G-, et al., 29 I&N Dec. 30 (BIA 2025)][24][35], the BIA addressed PSG claims based on former status or employment. The decision clarified that an applicant must establish nexus between their current membership in a PSG of "former" persons (e.g., "former police officers") and the harm they experienced. The BIA distinguished between harm suffered due to the applicant's prior active status and harm based on their current status as a former member of that category. This decision narrows potential claims for individuals who have left positions or organizations that made them targets of persecution. [24][35]

In September 2025, the BIA issued a precedential decision reaffirming [Matter of L-E-A-][11][21] and narrowing the interpretation of nexus for family-based PSG claims. [60] The decision requires that applicants demonstrate the persecutor's motive for harm was based on a desire to overcome the protected characteristic of family membership or on animus against the family itself, rather than using the family as a means to achieve an unrelated goal (such as financial gain or recruitment). The BIA noted that fears of gang activity, which involve many Central American cases based on financial motivation and recruitment, "rarely support a showing of nexus to a protected ground such as family membership." [60] However, the decision preserved a meaningful distinction: in the Ninth and Sixth Circuits, the nexus standard for withholding of removal remains lower, requiring only that the protected ground be "one reason" rather than the "central reason" for harm. [60]

EOIR Policy Memorandum 25-28: Pretermission of Legally Insufficient Applications

On April 11, 2025, the Executive Office for Immigration Review (EOIR) issued [Policy Memorandum 25-28][44][47], which fundamentally altered how immigration judges evaluate asylum applications. The memo authorizes immigration judges to pretermite (summarily dismiss) legally insufficient asylum applications

without a merits hearing, provided no disputed factual issues exist.[44][47] The memo clarifies that adjudicators may properly consider pretermission of a legally deficient asylum application, though the ultimate decision remains with the presiding adjudicator.[44][47]

This policy has significant implications for I-589 completion. An incomplete or insufficiently detailed Form I-589 may now be subject to pretermission on legal sufficiency grounds alone, without the applicant receiving an opportunity to present testimony or evidence at a hearing. Immigration judges nationwide have already begun dismissing cases on these grounds.[14] The memo does not define "legal sufficiency" with precision, but clear guidance from the Board of Immigration Appeals decision [Matter of C-A-R-R-, 29 I&N Dec. 13 (BIA 2025)][14] establishes that an asylum application is considered incomplete if it "(1) lacks a response to each question on the form, (2) is unsigned, or (3) is missing required materials." [14] The BIA clarified that each question on the I-589 must include a "specific, responsive answer," and merely referring to attached declarations (e.g., "see attached affidavit") is insufficient to satisfy completeness requirements.[14]

Administrative Holds and Re-Review Requirements

Beginning December 2, 2025, USCIS implemented an "adjudicative hold" on all pending asylum applications filed affirmatively with the agency, regardless of country of origin.[43][46] The stated rationale involved security concerns following an incident involving an Afghan national granted asylum. This hold does not apply to asylum applications pending in immigration courts, only to affirmative asylum interviews scheduled before USCIS Asylum Officers.[43][46] However, affected applicants may still be subject to mandatory re-review procedures if they received benefits after January 1, 2021.

Additionally, [Presidential Proclamation 10949][15][18] and subsequent implementing guidance have established enhanced scrutiny for nationals of twelve countries with "full restrictions" on entry (Afghanistan, Burma, Chad, Republic of the Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan, Yemen) and partial restrictions for seven additional countries.[15][18] For nationals of these countries, USCIS is conducting "comprehensive re-review" of all cases approved since January 1, 2021, and will consider citizenship from restricted countries as a "significant negative factor" in adjudicating many immigration applications, including asylum and adjustment of status.[43][46] This creates risk even for applicants with previously approved asylum applications.

USCIS Policy Changes Affecting PSG-Based Claims

In June 2025, USCIS rescinded its 2022 policy providing deferred action to Special Immigrant Juvenile Status (SIJS) recipients, though this has been temporarily stayed by federal courts.[46] More broadly, several USCIS policy changes in 2025 may affect asylum applicants, including enhanced social media vetting and reviews for anti-American activity as of August 2025.[46] These changes suggest a general tightening of security and background considerations across all immigration benefit categories, including asylum.

Defining and Articulating a Cognizable Particular Social Group on Form I-589

The Three-Part Analysis Applied in Practice

When completing the I-589 form, an applicant must translate the abstract three-prong PSG test into a clear, specific articulation of the claimed group. The process begins with identifying the common immutable characteristic that unites group members. This might be gender (for gender-based PSG claims), sexual orientation or gender identity (for LGBTQ/H claims), family relationship, age combined with gender and

nationality, disability, former occupational status, or shared past experiences such as former military service or land ownership.

Once the immutable characteristic is identified, the applicant must articulate how that characteristic defines particularity. This requires identifying commonly accepted definitional boundaries within the claimed group's society of origin. For example, if the PSG is "unmarried women in El Salvador unable to access police protection," the applicant must explain that "unmarried," "women," and "unable to access protection" have discrete, well-understood meanings in Salvadoran society. Conversely, if the claimed PSG is too amorphous (such as "young people" or "poor persons"), it likely fails the particularity requirement because these characteristics do not establish clear membership boundaries.[31]

The social distinction prong requires demonstrating that the society in question perceives members of the group as distinct. This perception need not be uniform across the entire country; it may be confined to specific regions from which the applicant originates.[28][32] Evidence of social distinction might include reports documenting societal attitudes, media coverage, academic research, or official government policies that recognize the group as distinct. For example, in [Matter of A-R-C-G-][19][22], the BIA found social distinction for "married women in Guatemala who are unable to leave their relationship" based on evidence showing that Guatemalan society, including police and other officials, recognized this group as distinct due to machismo, family violence, and gender dynamics in Guatemalan culture.[19][22]

Country-Specific Analysis Requirements

A critical and often overlooked requirement is that PSG cognizability must be analyzed against conditions in the specific country of origin. The BIA has emphasized that "the determination of [whether a] particular social group is cognizable must be based on case-by-case analysis; one social group could be viable if from country X, but not if from country Y." [25] This means that evidence of how a group functions in one country is not automatically transferable to another country context, even if the group shares similar characteristics.

For example, sexual orientation and gender identity constitute immutable characteristics cognizable as PSG bases in virtually all country contexts within U.S. asylum law.[2][40][45][48] However, the specific manifestations of persecution, visibility in society, and government capacity or willingness to protect may differ dramatically between, for instance, Mexico and Afghanistan. Similarly, "women fleeing domestic violence" may constitute a PSG in Guatemala (as established in Matter of A-R-C-G-) but requires careful country-specific analysis to establish cognizability in other Latin American countries, African countries, or Asian countries, each with distinct legal systems, police responsiveness, and cultural attitudes toward gender-based harm.

Practical PSG Categories with Established or Strong Precedent

Several PSG formulations have achieved recognized status in U.S. asylum jurisprudence. Sexual orientation has been recognized since at least [Matter of Toboso-Alfonso][45] and continues to be established through numerous cases, including the Ninth Circuit's landmark decision in [Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000)][45][48], which recognized that homosexual men constitute a particular social group based on the immutability of sexual orientation and its fundamental importance to identity.[48] Transgender identity has similarly achieved recognition through Hernandez-Montiel and subsequent cases establishing that gender identity is immutable and fundamental to personal identity.[45][48]

Gender-based PSG claims have achieved mixed but increasingly robust status. In [Matter of A-R-C-G-][19][22], the BIA recognized "married women in Guatemala who are unable to leave their relationship" as a cognizable PSG, establishing a framework that has been applied (with varying degrees of

success) in subsequent domestic violence asylum claims. However, not all gender-based formulations succeed; the BIA and circuits have rejected overly broad gender-based groups and those that are defined primarily by persecution risk rather than by independent, immutable characteristics.[31]

Family-based PSG claims remain viable but face significant headwinds following recent decisions. [Matter of L-E-A-][8][11][21], in its current form following 2025 BIA reaffirmation, establishes that family members may constitute a particular social group when the applicant can demonstrate nexus between the harm and family membership itself, not merely the fact that family members were harmed.[8][11][21][60] Gang-based targeting of family members has been recognized as PSG grounds in certain circuits, particularly where the gang specifically targets family relationships to enforce control.[57][58] However, where gang violence is motivated primarily by financial gain, recruitment, or territorial control, courts increasingly find that family membership is "incidental" to the persecutor's actual motive.[60]

Former police officers, military personnel, and other individuals with former occupational status have constituted recognized PSG bases in specific contexts, particularly where the persecutor continues to target individuals for their former role despite their departure from that position. However, as [Matter of O-A-R-G-][24][35] establishes, the nexus analysis is rigorous: the applicant must show that persecution is based on their status as a "former" member, not merely on their prior conduct while actively holding that position.[24][35]

Form I-589 Completion: Strategic Articulation of Particular Social Group Claims

Part A: Biographical Information and Initial Screening Questions

The I-589 begins with Part A, which collects biographical information about the applicant.[9][12][17] Although this section appears routine, several questions have direct relevance to PSG-based claims. Question 14 (Race/Ethnic or Tribal Group) and Question 15 (Religion) must be completed with specificity.[9][12] If the applicant's PSG claim intersects with race, ethnicity, or religion, these fields should reflect the precise group membership; for example, rather than writing "Christian," an applicant should specify "Evangelical Christian" or the precise denomination, as this specificity supports PSG particularity arguments.[9]

Similarly, questions regarding gender and marital status (Questions 9-10) require careful attention. For applicants whose PSG claims are based on gender identity, transgender status, or marital status, these responses should accurately reflect the applicant's identity and status.[9][12][17][40] For transgender applicants, USCIS forms previously required biological sex at birth, but guidance now permits applicants to check the gender with which they identify; applicants should insert an asterisk and note "See Supplement B" if there is any discrepancy between gender identity and sex assigned at birth.[9]

Part B: Questions About Persecution-Critical Articulation Point

The I-589 Form poses several narrative questions under Part B that directly implicate PSG analysis. Question 1 asks "Why are you seeking asylum?" with checkboxes for various grounds, including "Membership in a Particular Social Group." [9][12][17][40] An applicant whose claim is based wholly or partly on PSG membership must check this box. Importantly, an applicant may simultaneously check multiple boxes (e.g., Membership in a Particular Social Group AND Political Opinion or Religion) if multiple protected grounds apply.[9][12][40]

Question 3.A asks "Have you or your family members ever belonged to or been associated with any

organizations or groups in your home country?" This question is "usually most relevant to someone claiming persecution based on their political opinion or affiliation," but has direct implications for PSG-based claims involving membership in organizations (such as LGBTQ organizations) or family associations.[9][40] The applicant should list all relevant group memberships, including LGBTQ organizations, religious congregations, political parties, professional associations, or informal community groups that relate to the PSG claim.[9][40] Corroborating evidence such as membership cards, letters, news articles, or photographs should be attached.[9][40]

The most critical narrative section appears in the form's request for "Describe your experience of persecution" or similar language on the form's face. This is where many applicants and practitioners make strategic errors. Rather than merely writing "See attached declaration" or summarizing persecution generally, best practices require that the applicant succinctly summarize on the form itself the most serious incidents comprising the persecution claim, including the most serious incidents that establish persecution specifically based on PSG membership.[9][12][17] The declaration (which should be significantly more detailed) supplements but does not replace these on-form narratives.

Critical Requirement from Matter of C-A-R-R-: The BIA's 2025 decision in [Matter of C-A-R-R-][14] establishes binding guidance that each question on the I-589 must receive a "specific, responsive answer." The BIA noted that it will "no longer consider" narrative essay questions satisfactorily answered by "please see attached declaration." [14] Instead, practitioners must provide summary answers directly on the form that are "specific and responsive" to each question, then provide detailed expansion through supplementary declarations.[14] Failure to comply with this requirement creates substantial risk that the application will be deemed incomplete and subject to pretermission under EOIR PM 25-28.[14][44]

Strategic Use of I-589 Supplement B for PSG Articulation

The I-589 Supplement B form provides space for explaining or amplifying answers to form questions.[9] For PSG claims, Supplement B becomes essential for clearly articulating the proposed group's precise boundaries and explaining how it meets the three-prong test. A well-drafted Supplement B addressing the PSG claim should:

First, identify the proposed particular social group with precision, using language substantially consistent with BIA formulations when possible. For example: "Women in [Country] who have experienced domestic violence and are unable to obtain police protection due to systemic failures and cultural attitudes." Or: "Transgender individuals in [Country] who visibly present as their true gender."

Second, explain immutability. The supplement should establish why members of this group share an immutable characteristic-one they cannot change or should not be required to change because it is fundamental to their identity. For gender-based claims, this might involve explaining that gender is an immutable characteristic rooted in biological development and social identity. For sexual orientation claims, it should reference the biological and psychological research establishing sexual orientation's immutability and fundamental importance to identity.[45][48]

Third, address particularity directly. The supplement should identify the commonly accepted definitional boundaries of the group within the society of origin. This requires demonstrating that terms used to define the group (e.g., "married," "unable to leave," "transgender," etc.) have discrete, well-understood meanings in that society and that the group's boundaries are sufficiently narrow to avoid encompassing major population segments.[31][52]

Fourth, establish social distinction through specific evidence. The supplement should reference country

conditions reports, media coverage, academic research, government policies, or expert evidence demonstrating that the society in question recognizes members of this group as distinct. This is not about establishing how the persecutor views the group, but rather how society generally perceives the group.[31][52]

Finally, bridge nexus within the PSG explanation. While nexus (the connection between persecution and group membership) is technically a separate element, establishing it clearly in the PSG explanation prevents later disputes. The supplement should explain how the persecution the applicant suffered or fears is specifically connected to their membership in this group, not merely to some other characteristic or circumstance.

Burden of Proof, Evidence Requirements, and Corroboration Standards

Allocation of Burden: When Does It Shift?

The applicant bears the burden of establishing that he or she is a refugee within the meaning of INA § 101(a)(42)(A) by a preponderance of the evidence.[13][39] This burden encompasses establishing membership in a cognizable particular social group, membership in that group, and persecution or well-founded fear of persecution based on that membership.[1][8] However, the burden shifts in certain circumstances. Once an applicant establishes past persecution, the applicant is presumed to have a well-founded fear of persecution based on that persecution, and the burden then shifts to the government to establish by a preponderance of the evidence that either: (a) there has been a fundamental change in circumstances, or (b) internal relocation is reasonable.[13][39]

The regulations also establish different burdens for internal relocation depending on whether the persecutor is a government actor or private actor. In cases involving private persecutors (including gang members, family members, or neighbors acting in their private capacity), the applicant bears the burden of establishing that internal relocation would not be reasonable unless the applicant has established past persecution, in which case the burden shifts to the government.[13][39] Conversely, where persecution is by a government or government-sponsored actor, it is presumed that internal relocation would not be reasonable, and the government must establish by a preponderance of the evidence that relocation would be reasonable.[13][39]

Testimony as Sufficient Evidence

Credible testimony by the applicant, if uncontradicted, may be sufficient to establish the applicant's burden of proof without corroboration.[13][39] This principle applies to asylum claims generally and PSG claims specifically. However, the standard for testimony is demanding: the testimony must be credible, plausible, detailed, internally consistent, consistent with the applicant's written statements, and unembellished despite probing questioning.[55] Immigration judges assess credibility based on multiple factors enumerated in INA § 208(b)(1)(B)(iii), including demeanor, candor, responsiveness, inherent plausibility, consistency between written and oral statements, internal consistency, and consistency with other evidence of record.[55]

In PSG claims specifically, the applicant's testimony must establish not only the persecution facts but also the applicant's membership in the claimed group and the nexus between the persecution and that group membership. For example, a transgender applicant's testimony might establish: (1) when and how the applicant came to understand their gender identity; (2) how the applicant presented their gender in the country of origin; (3) specific incidents of persecution based on visible presentation as transgender; (4) the applicant's understanding that society in the country of origin recognizes transgender individuals as a distinct group; and (5) why the applicant fears persecution would continue or occur upon return.

Corroborating Evidence and Country Conditions Documentation

While testimony alone may suffice, the BIA "not only encourage[s], but require[s] the introduction of corroborative testimonial and documentary evidence, where available." [16][56] Lack of corroboration will reflect adversely on the applicant's credibility. [56][58] For PSG claims, corroborating evidence typically includes: (a) documentary evidence of the applicant's status or membership in the group (e.g., membership cards, photographs, witness affidavits); (b) evidence of past persecution (medical records, police reports, photographs of injuries); (c) country conditions evidence demonstrating that the group is recognized as socially distinct and faces persecution; and (d) expert testimony when necessary to establish country conditions or specific characteristics of the group.

Country conditions evidence is particularly critical for PSG claims because the cognizability determination depends heavily on how the society in question recognizes and treats the group. For asylum applications, relevant country conditions sources include: State Department Country Reports on Human Rights Practices, Human Rights Watch reports, Amnesty International publications, UN human rights monitoring reports, Trafficking in Persons Report (for claims involving vulnerable populations), academic research, and Spanish-language news sources and advocacy organization materials (for Latin American countries). [31][32]

For LGBTQ/H asylum claims, country-specific evidence might include: reports on criminalization of same-sex conduct, documented incidents of violence against LGBTQ individuals, police complicity or failure to protect LGBTQ persons, and evidence of social stigma and family rejection based on sexual orientation or gender identity. [56] For gender-based PSG claims, evidence should address police responsiveness to gender-based violence, cultural attitudes toward women's autonomy and departure from abusive relationships, and documented patterns of domestic violence in the specific country. [19][22]

Credibility Challenges: Transgender and Gender Identity Claims

Transgender and gender identity claims face particular credibility scrutiny from some adjudicators, particularly given recent administrative statements regarding gender identity. When an applicant's PSG claim is based on transgender status or gender identity, the applicant must be prepared to provide credible testimony regarding: when the applicant first understood their gender identity; how they presented their gender in their country of origin; whether they were open about their gender identity and to whom; how society and family responded; and what harm they suffered or fear based on their identity. [45][48][56]

A 2025 practice advisory from Immigration Equality specifically addresses this landscape, noting that "asylum claims based on gender identity are clearly cognizable under the INA," despite recent executive statements expressing opposition to transgender protections. [48] The advisory emphasizes that medical and social science evidence establishes that "transgender identities are fundamental and immutable" and that forcing a person to change or abandon their gender identity subjects them to severe psychological harm. [48] Practitioners should prepare expert evidence or declarations addressing the biological and psychological basis for gender identity's immutability and fundamental importance to identity, drawing on American Medical Association, American Psychological Association, and similar professional organization materials. [48]

Evidentiary Support for Family-Based PSG Claims Post-2025

Family-based PSG claims face particularly rigorous evidentiary requirements following the 2025 BIA reaffirmation of [Matter of L-E-A-][60] and the September 2025 precedential decision on nexus. [60] To establish that family membership is one central reason for persecution (rather than incidental to another persecutor motive), applicants must present evidence demonstrating the persecutor's actual motivation. This might include: testimony from the applicant and family members about specific targeting of family members

due to familial relationships; evidence that other families not sharing the same relationship were not similarly targeted; documentary evidence (such as written threats) specifically referencing family relationships; and country conditions evidence showing gang or cartel practices of targeting family units to enforce control or retaliation.[57][58][60]

Particularly for gang-related family PSG claims, practitioners must carefully distinguish between persecution motivated by the persecutor's desire to overcome family loyalty (establishing nexus) and persecution motivated by financial gain, territorial control, or recruitment (failing to establish nexus).[60] The BIA has noted that gang violence involving financial motivation or recruitment "rarely support[s] a showing of nexus to a protected ground such as family membership." [60] However, where evidence establishes that the gang specifically seeks to target family units to enforce compliance or prevent defection, nexus may be established.[57][58]

Procedural Requirements: Filing Deadlines, Articulation Timing, and Recent Evidentiary Standards

The One-Year Filing Deadline and Exceptions

A critical threshold requirement is that applicants generally must file their I-589 application within one year of arrival in the United States.[20][23] The applicant bears the burden of proving by clear and convincing evidence that the application has been filed within one year of the date of last arrival, or must demonstrate to the satisfaction of the asylum officer, immigration judge, or Board that the applicant qualifies for one of the statutory exceptions.[20]

Exceptions to the one-year deadline include: (1) changed circumstances materially affecting the applicant's eligibility for asylum, (2) extraordinary circumstances relating to the delay in filing, and (3) the applicant was an unaccompanied minor or suffered from mental impairment during the one-year period.[20] "Changed circumstances" may include changes in conditions in the country of origin materially affecting asylum eligibility or changes in the applicant's circumstances, including activities the applicant becomes involved in outside the country of origin that place the applicant at risk.[20] "Extraordinary circumstances" may include serious illness or disability (including psychological effects of persecution), legal disability during the one-year period, ineffective assistance of counsel, or death or serious illness of the applicant's legal representative.[20]

Importantly, for applicants who filed an incomplete I-589 that was rejected by USCIS and then resubmitted within a reasonable period, the resubmitted application may still satisfy the one-year deadline provided the initial application was filed within one year, even if the corrected application is filed after one year has passed.[20][14]

The Requirement to Clearly Delineate the PSG Before the Immigration Judge

The [Matter of W-Y-C- & H-O-B-][1][25] requirement to clearly delineate the particular social group on the record before the Immigration Judge is not merely procedural formality; it is a jurisdictional gateway. The BIA held that it "generally will not address a newly articulated particular social group that was not advanced before the Immigration Judge." [1] This means that if an applicant articulates one PSG before the immigration judge and then articulates a materially different PSG on appeal to the BIA, the BIA will decline to consider the new formulation and will review only the PSG advanced before the immigration judge.[1][25]

The practical implication is that applicants must identify their PSG formulation as early as possible in removal proceedings, preferably in the initial Response to Notice to Appear or at the first master calendar hearing. Where possible, practitioners should briefly articulate the PSG in pleadings (such as the Master Calendar Response) and then fully develop it in the I-589 Supplement B and supporting declarations and evidence. At the hearing, the applicant's testimony should consistently reference the PSG formulation articulated on the form; any shift or refinement should be clearly explained and should constitute a reasonable clarification rather than an entirely new formulation.

Recent Standards for I-589 Completeness and Pretermission Risk

As discussed above, [EOIR PM 25-28][44][47] and [Matter of C-A-R-R-][14] establish that immigration judges may pretermit (summarily dismiss without a hearing) asylum applications deemed legally insufficient. An application is incomplete if it "(1) lacks a response to each question on the form, (2) is unsigned, or (3) is missing required materials." [14] The BIA clarified that blank spaces (other than spaces explicitly identified as optional, such as spouse or children information if the applicant has no spouse or children) constitute incompleteness. [14] Practitioners should write "N/A" or "Not Applicable" rather than leaving spaces blank, even if the answer does not directly apply to the applicant's claim. [9][12][14]

Each essay-type question on the I-589 must receive a "specific, responsive answer" that directly addresses the question posed. [14] The practice of responding "See attached affidavit/declaration" is now explicitly disfavored. [14] Instead, best practice requires that the applicant provide a concise answer to each question on the form itself (often in summary form), and then provide expanded, detailed responses in supporting declarations and Supplement B. [14] This ensures that the form itself contains sufficient information for an immigration judge to conduct a preliminary legal sufficiency review, satisfying the requirements of EOIR PM 25-28.

San Francisco-Specific Considerations and Northern California Practice Context

San Francisco Immigration Court: Judges' Known Preferences and Local Procedures

San Francisco Immigration Court operates three hearing locations: the main courthouse at 100 Montgomery Street, Suite 800; a secondary location at 630 Sansome Street, 4th Floor, Room 475; and the Concord hearing location at 1855 Gateway Blvd., Suite 850, Concord, CA 94520. The court handles a substantial asylum caseload, with particular concentration of cases involving Central American asylum seekers (Guatemalan, Salvadoran, Honduran, and Nicaraguan nationals) and Mexican nationals, reflecting Northern California's demographic and immigration patterns.

While judicial assignments in San Francisco Immigration Court vary and individual judges maintain their own procedural preferences, the court generally follows EOIR national policies and local administrative orders. Practitioners should be aware that master calendar hearings in San Francisco frequently involve scheduling continuances for submission of I-589 applications (for pro se respondents or those recently represented), and judges typically set specific deadlines for I-589 submission with consequences for failure to meet deadlines. Evidence submission deadlines are strictly enforced; late evidence is frequently rejected unless the applicant demonstrates extraordinary circumstances for the delay.

The San Francisco Asylum Office has specific interview patterns and procedures, though applicants in removal proceedings are not interviewed by the Asylum Office; rather, they proceed directly to removal proceedings before an immigration judge. However, applicants with pending affirmative asylum applications

before the Asylum Office should be aware that interview appointments have been suspended as of December 2, 2025, due to the administrative hold implemented by USCIS, and applicants should monitor the Asylum Office's website for updates on when interviews will resume.

San Francisco Asylum Office: Credible Fear Interview and Asylum Interview Procedures

Applicants placed into expedited removal proceedings at ports of entry (such as San Ysidro or Otay Mesa) undergo credible fear screening before USCIS Asylum Officers. For PSG-based claims, asylum officers conducting credible fear interviews are required to explore all potential protected grounds, including PSG, even if the applicant has not explicitly articulated a claim based on that ground. However, applicants should be proactive in articulating their PSG claim during the credible fear interview, as asylum officers often follow the narrative provided by the applicant and may not probe for alternative grounds unless the applicant indicates they are relevant.

For applicants proceeding to asylum merits interviews before USCIS Asylum Officers (which only occur in specific procedural contexts under current regulations), officers should apply the same legal standards for PSG as immigration judges. Asylum officers must be credible, competent asylum adjudicators trained in PSG analysis. Applicants should ensure that I-589 forms submitted with USCIS are detailed and complete, following the Matter of C-A-R-R- standards discussed above.

California State Law Intersections: Criminal Conviction Modification and Immigration Consequences

Northern California practitioners must be alert to the intersection between California state criminal law and immigration asylum eligibility. Several California statutes permit conviction modification or vacatur based on immigration consequences. [California Penal Code § 1473.7][44] permits applicants to move to vacate a prior conviction based on ineffective assistance of counsel, lack of advisement of immigration consequences, or misrepresentation of immigration consequences. [California Penal Code § 1203.43][44] permits post-conviction relief for crimes now subject to reduced classification under Proposition 47. These provisions can be strategically important for asylum applicants whose asylum eligibility depends on establishing that a prior conviction does not constitute an offense rendering them ineligible for asylum (such as a persecution bar, serious nonpolitical crime bar, or other statutory bar).

Moreover, [California's Values Act (SB 54)][44] prohibits state law enforcement from using resources to enforce immigration laws or detain individuals solely based on an immigration detainer. This state-level protection may be relevant for asylum applicants at risk of ICE detention, as it limits state police cooperation with immigration enforcement in certain contexts.

ERO Field Office 1 Enforcement Patterns and Detention Practices

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Field Office 1 covers Northern California and Nevada. The field office operates several detention facilities, including the Santa Rita Jail (Alameda County), Yuba County Jail, and private detention facilities. Understanding local detention practices is important for asylum applicants at risk of or currently in immigration detention.

Alternatives to detention remain available in some Northern California cases, though the regulatory framework has shifted. ICE may release applicants on parole, supervise release, or other alternatives, though practice varies by individual cases and current enforcement priorities. Practitioners representing detained asylum applicants should file comprehensive bond redetermination requests emphasizing the applicant's ties to the community, family relationships, employment, and the strength of the asylum claim. For PSG-based

claims, evidence of membership in community organizations, churches, or advocacy groups can establish ties supporting bond redetermination.

Strategic Analysis Framework: Evaluating Particular Social Group Claims

Arguments Favoring Cognizability of Proposed Particular Social Group

Several arguments may support cognizability of a proposed PSG, depending on the specific facts and group definition. First, evidence that the applicant's society recognizes members of the group as distinct through legal, cultural, or social norms supports social distinction. For example, if the country of origin has legal protections for LGBTQ individuals (or conversely, explicit criminalization), this evidences social recognition of the group as distinct. Government policies targeting or protecting the group also support social distinction arguments.

Second, evidence of pattern and practice of persecution against members of the group supports both social distinction (by evidencing societal recognition) and nexus (by establishing that persecution of group members is systemic rather than idiosyncratic). Reports from Human Rights Watch, Amnesty International, UN human rights bodies, and country expert witnesses can establish that members of the group face systematic persecution.

Third, for gender-based groups, evidence of cultural or religious norms affecting group members supports social distinction. For example, research on machismo culture, religious interpretations affecting gender roles, or legal restrictions on women's autonomy supports arguments that "women unable to leave abusive relationships" is socially distinct in societies where such norms prevail.

Fourth, demonstrating that the group is narrowly defined and does not encompass major population segments supports particularity. For example, distinguishing between "women" generally (too broad) and "women in [Country] who have survived domestic violence and sought police protection" (more particular) shows that the applicant's group definition appropriately narrows the scope.

Government's Strongest Counterarguments

DHS counsel in immigration court generally raise several counterarguments to PSG cognizability, and practitioners must be prepared to address them. First, DHS may argue that the proposed group is defined primarily by persecution risk rather than by an independent, immutable characteristic. For example, if a group is defined as "people who fear gang violence," this arguably defines the group by persecution rather than by an independent characteristic. The response is to identify the independent characteristic (e.g., family membership, refusal to join a gang, sexual orientation) that makes the group vulnerable to gang targeting.

Second, DHS may argue that the group is overbroad. A proposed group such as "all women in El Salvador" would be too broad; however, "married women in El Salvador unable to leave their relationship due to cultural and legal barriers" is more defensible as particular and narrow.

Third, DHS may argue that the applicant has failed to establish that the applicant's own persecution was based on PSG membership rather than some other cause. This implicates nexus rather than PSG cognizability, but adjudicators sometimes conflate the two. The response requires evidence specific to the applicant's circumstances explaining why the persecutor targeted the applicant based on PSG membership.

Fourth, DHS may argue that the country conditions evidence is insufficient to establish social distinction. For

example, if country conditions reports do not explicitly discuss how the society in question perceives members of the group, DHS may argue that social distinction is not established. The response requires either (a) locating more specific country conditions evidence, (b) expert testimony addressing the applicant's society, or (c) carefully analyzing general country conditions reports to infer social perception of the group.

Balancing Risk and Alternative Protected Grounds

Best practice in PSG claims requires identifying and developing alternative protected grounds throughout the case, even if the primary theory is based on PSG membership. For example, an applicant fleeing political persecution who is also LGBTQ should develop both the political opinion claim and the PSG claim, as they may apply independently or in combination. Similarly, applicants fleeing religious persecution who are members of a religious minority should develop both the religion claim and potentially a PSG claim based on membership in that religious group.

This strategy serves multiple purposes. First, it satisfies the applicant's burden by presenting multiple viable theories. Second, it preserves alternative grounds for appeal if the PSG claim fails. Third, in some circuits (particularly the Ninth Circuit for withholding of removal claims), the nexus standard for alternative grounds may be more favorable, as discussed below. Fourth, it protects against potential adverse precedent; if PSG cognizability is challenged or rejected, the applicant retains other claims.

Nexus Analysis: Establishing the "At Least One Central Reason" Connection

Articulating Nexus on I-589 and in Supporting Evidence

Once an applicant establishes membership in a cognizable PSG, the applicant must establish that persecution was or will be "at least one central reason" for the persecutor's conduct. This requires carefully explaining on the I-589 form and in supporting evidence exactly why the persecutor targeted the applicant based on PSG membership.

For PSG claims, articulating nexus requires connecting specific incidents of persecution to the claimed group membership. For example, an LGBTQ applicant should explain not merely that they experienced violence, but specifically that they experienced violence because they are LGBTQ (whether the persecutor knew about their LGBTQ identity or the applicant fears persecution upon return because of their sexual orientation or gender identity). Similarly, an applicant claiming persecution based on family membership should explain why the persecutor targeted the family unit based on familial relationships, not merely why individual family members were harmed for unrelated reasons.

On the I-589 form, responses to persecution questions should explicitly connect each incident to the PSG claim. For example: "I was beaten by police because I presented as a woman and they called me a 'maricón' [a derogatory term for a gay man], showing they targeted me based on my gender presentation and perceived sexual orientation." This direct articulation of nexus is more powerful than a narrative describing violence without explaining the persecutor's motivation.

Meeting the "But For Cause" Standard Without Proving Specific Intent

The Supreme Court's guidance on the "one central reason" standard clarifies that the applicant need not prove the persecutor's specific intent but must show that the applicant's membership in the protected group was a "but for caus[e]" of persecution—that is, the persecution would not have occurred absent the applicant's PSG membership.[50] This distinction is important: the applicant need not establish what motivated the persecutor

internally, but must establish that the persecutor's conduct was linked to the PSG characteristic.

For example, if an applicant was beaten by police who called them homophobic slurs, this evidences nexus even if the applicant cannot prove the police officers' subjective intent to punish homosexuality. The connection between the homophobic language and the violence establishes that sexual orientation was at least one central reason for the beating.

Conversely, if an applicant was robbed by gang members (without homophobic language or comments about the applicant's sexual orientation), the applicant would need additional evidence that the robbery was connected to the applicant's LGBTQ status, such as evidence that the gang systematically targets LGBTQ persons or that the applicant was specifically targeted because the gang knew of the applicant's LGBTQ identity.

Nexus in Private Persecutor vs. Government Persecutor Cases

The regulations distinguish between government persecutors and private persecutors for purposes of establishing "unwilling or unable" protection, and this distinction can affect nexus analysis in some cases. Where a private persecutor (such as a family member, gang member, or neighbor) inflicts harm, the applicant must not only establish nexus but also establish that the government was unwilling or unable to protect the applicant from that harm.[13][39] Where a government persecutor directly inflicts harm, the nexus analysis is straightforward-if government officials target an applicant based on PSG membership, the nexus requirement is satisfied.

However, in cases involving private persecutors, some adjudicators incorrectly treat the "unwilling or unable to protect" requirement as part of nexus analysis, when it is technically a separate element. Practitioners must carefully distinguish these elements: nexus is whether the private persecutor targeted the applicant based on PSG membership; "unwilling or unable" is whether the government would fail to provide protection if asked. Both must be established, but they are separate requirements.

Government's Strongest Nexus Counterarguments

DHS frequently argues that nexus is absent when the persecutor had mixed or multiple motives for targeting the applicant. For example, if a gang targets an applicant based on both the applicant's refusal to join the gang AND the applicant's family membership, DHS may argue that family membership was not one central reason but rather secondary to the recruitment motive. The applicant's response requires evidence distinguishing between the persecutor's primary and secondary motives and demonstrating that family membership was at least one central reason, even if recruitment was also a factor.

Establishing Well-Founded Fear: Pattern and Practice vs. Individualized Fear

Pattern and Practice Standard: Demonstrating Group-Level Persecution

An applicant may establish a well-founded fear of persecution by demonstrating that there is a "pattern or practice" in the country of origin of persecution of persons similarly situated to the applicant on account of the applicant's protected ground, and that the applicant is a member of and identified with such group.[13][39] This standard allows applicants who have not suffered past persecution to establish a well-founded fear based on evidence that members of their group systematically face persecution.

For PSG claims, establishing pattern and practice requires evidence that the group (not merely the persecutor

or a subset of persecutors) systematically targets persons within the PSG. This might include statistical evidence, case studies, investigative journalism, NGO reports, or expert testimony documenting widespread persecution of group members. For example, an LGBTQ applicant could establish pattern and practice through evidence that LGBTQ individuals in the applicant's country systematically face violence from multiple sources (police, family members, vigilante groups, gangs), that such violence is widespread and documented, and that the applicant would face similar risks upon return based on group membership.

Conversely, evidence of isolated incidents or persecution by a single persecutor or small group does not establish pattern and practice. If only one gang in one city targets LGBTQ individuals, this may not establish pattern and practice across the country, unless the applicant can demonstrate that the applicant would face persecution if relocated to other areas of the country.

Individualized Fear Standard: Four Mogharrabi Elements

Where an applicant has not suffered past persecution or cannot establish pattern and practice, the applicant may nevertheless establish a well-founded fear of persecution by demonstrating individualized fear based on the four elements established in [Matter of Mogharrabi] and applied throughout asylum jurisprudence.[16][30][42] These elements require the applicant to show: (1) the applicant possesses a belief or characteristic (the PSG membership) that the persecutor seeks to overcome in others by means of punishment; (2) the persecutor is aware or could become aware of the characteristic; (3) the persecutor has the capability to punish the applicant; and (4) the persecutor has the inclination to punish the applicant.[16][30][42]

For PSG claims, demonstrating these elements requires: (1) establishing that the persecutor targets persons within the PSG; (2) explaining why the persecutor knows or would discover the applicant's PSG membership; (3) addressing the persecutor's capacity to inflict harm; and (4) providing evidence (such as specific threats, patterns of behavior toward similarly situated persons, or country conditions) that the persecutor intends to target the applicant.

Recent 2025 Policy Changes and Current Implementation Status

USCIS Administrative Hold on Affirmative Asylum Applications

As of December 2, 2025, USCIS implemented an adjudicative hold on all pending affirmative asylum benefit requests filed with the agency.[43][46] This hold does not affect applications pending in immigration courts; however, applicants with pending affirmative applications have experienced indefinite suspension of interview processing. The stated rationale involves national security concerns, though the policy applies to all nationalities without exception (despite Presidential Proclamation 10949 targeting specific countries).

Practical Impact for Practitioners: Clients with pending affirmative I-589 applications should not expect scheduling of asylum interviews in the near term. Counsel should monitor USCIS website updates regarding when the hold may be lifted. In the interim, affected applicants may consider whether defensive filing in immigration court (via credible fear interview and removal proceedings) might provide a more expedited pathway to asylum determination, though this involves the significant risk of potential removal proceedings and appeals.

Re-Review Requirements for Previously Approved Asylum Cases

USCIS has announced that all individuals from the twelve countries subject to full entry restrictions under

Presidential Proclamation 10949 who received immigration benefits (including asylum approval) since January 1, 2021, are subject to mandatory "comprehensive re-review." [43][46] While details remain unclear as of early 2026, the re-review process involves USCIS evaluation of whether previously approved applications should be reconsidered or revoked based on current policy standards.

Practical Impact: Practitioners should immediately notify clients who received asylum approval from restricted countries after January 1, 2021, that their cases may be subject to re-review and that such re-review might result in reconsideration of asylum status. Clients should preserve evidence supporting their original asylum eligibility and consider engaging counsel to participate in any re-review process.

Enhanced Social Media Vetting and Anti-American Activity Screening

As of August 19, 2025, USCIS expanded social media vetting procedures, with announcements that reviews for "anti-American activity" would be added to vetting conducted for certain categories of applicants. [46] While guidance remains evolving, this suggests that USCIS may scrutinize applicant social media activity and statements for evidence of anti-American sentiment or activity, potentially affecting asylum eligibility.

Practical Impact: Counsel should advise clients to carefully manage their social media presence during pending asylum proceedings and to consider consulting with counsel regarding potentially problematic online activity or statements that might be discovered during government vetting.

Preservation and Appeal Strategy

Record-Building at Immigration Court Level

Even when an applicant's PSG claim appears unlikely to succeed before the immigration judge, practitioners must carefully preserve the record for potential appeal. This requires: (1) ensuring the I-589 clearly articulates the proposed PSG with specificity; (2) offering comprehensive evidence supporting PSG cognizability, including country conditions evidence and expert testimony where appropriate; (3) establishing clear nexus between the persecution and the applicant's PSG membership through testimony and documentary evidence; (4) developing alternative protected grounds (political opinion, religion, etc.) if applicable; and (5) creating a detailed hearing transcript through court reporting or other means.

The BIA's holding in [Matter of W-Y-C- & H-O-B-] [1][25] requires that the PSG be articulated before the immigration judge; therefore, even if the immigration judge denies the PSG claim, the applicant preserves the ability to appeal on the ground that the immigration judge erred in rejecting the cognizability or nexus analysis. Introducing a new PSG on appeal that was not articulated before the immigration judge forfeits appellate review.

BIA Appeal vs. Certification Strategy

Following a denial of asylum based on rejection of a PSG claim, practitioners must decide whether to appeal to the BIA or, in limited circumstances, to certify the case to the Attorney General for certification consideration (now only available in extraordinary circumstances involving questions certified by the BIA itself). Most cases proceed by traditional BIA appeal, which requires filing a Notice of Appeal within 30 days of the immigration judge's decision and preparing a written brief addressing the immigration judge's errors. [14]

In briefs appealing PSG denials, practitioners should: (1) cite controlling BIA precedent establishing the

three-prong test; (2) present country conditions evidence and expert evidence supporting social distinction; (3) distinguish adverse precedent where possible; (4) highlight evidence supporting immutability and particularity; and (5) clearly explain nexus between the persecution and PSG membership, addressing the government's strongest arguments on mixed motives or alternative persecutor motivations.

Federal Court Habeas Review

Following BIA denial, practitioners may pursue federal habeas corpus petition under 28 U.S.C. § 2241 in the appropriate federal circuit court (for Northern California, the Ninth Circuit). Federal habeas review is limited: the court may not reweigh evidence or substitute its judgment for the BIA's, but may review whether the BIA's decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Habeas petitions challenging PSG denials are most likely to succeed where: (1) the BIA failed to apply the correct legal standard (e.g., applied a more restrictive standard than established precedent); (2) the BIA failed to analyze record evidence supporting the applicant's claim; (3) the decision contradicts controlling circuit precedent; or (4) newly discovered evidence would likely affect the outcome. Northern California practitioners should be aware that the Ninth Circuit has shown greater receptivity to PSG claims and has not adopted the restrictive approaches of some other circuits (such as the Fifth Circuit's more demanding social visibility requirement, which the Ninth Circuit has not endorsed).

Conclusion: Strategic Approach to I-589 Completion and PSG Claims

Establishing asylum eligibility through membership in a particular social group requires meticulous attention to both substantive legal standards and procedural requirements. The Form I-589 is not merely an administrative document but rather the foundation upon which an applicant's entire asylum claim rests. Practitioners must ensure that the I-589 is completed with specificity addressing each of the three prongs of PSG cognizability, clearly articulating the proposed group's boundaries, explaining immutability, establishing social distinction through country conditions evidence, demonstrating particularity through specific definitional boundaries, and establishing nexus between the persecution and PSG membership.

The legal landscape in 2025-2026 presents both opportunities and substantial risks. While controlling BIA and circuit precedent continue to recognize PSG as a viable protected ground, recent decisions have narrowed the application of PSG law in specific contexts (family-based PSG, former employment-based PSG) and administrative changes have introduced new procedural obstacles (prepermission without a merits hearing, administrative holds, and re-review requirements). Practitioners must anticipate these challenges through rigorous I-589 preparation, comprehensive evidence presentation, and strategic preservation of alternative protected grounds.

For Northern California practitioners, the convergence of significant Central American asylum populations, sympathetic circuit precedent (the Ninth Circuit), and robust immigration advocacy infrastructure creates conditions supporting viable PSG claims. However, these advantages are offset by current administrative enforcement priorities, enhanced scrutiny of applicants from designated countries, and increasingly rigorous adjudication standards. Success requires combining substantive legal expertise in PSG doctrine with meticulous procedural compliance and strategic evidence development that anticipates adjudicator skepticism while building compelling records for appellate review if necessary.

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Note: This report reflects the current legal landscape as of February 3, 2026. Immigration law is subject to rapid change through administrative action, BIA precedent, and circuit court decisions. Practitioners should consult the most recent USCIS Policy Manual updates, EOIR policy memos, BIA decisions, and circuit court rulings before finalizing litigation strategy or advising clients. This report is provided for educational and informational purposes and does not constitute legal advice for any specific case.