

**Immigration Court: BIA****Case:** Matter of Acosta, 19 I&N Dec. 211 (BIA 1985)**Date:** March 1, 1985**Adjudicated by:** 5X BIA members**Tags:** Asylum, particular social group, persecution, well-founded fear, immutability**Questions Presented:**

- (1) Is applicant eligible for a discretionary grant of asylum?
- (2) Is applicant a member of a “particular social group” (i.e., Taxi drivers & others involved in the transportation industry of El Salvador)?
- (3) How shall we construe “PSG”?

**Holdings:**

- (1) Applicant is not eligible for asylum.
- (2) Applicant did not describe a cognizable particular social group.
- (3) “particular social group” has to do with “an immutable characteristic: a characteristic that either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not to be required to be changed.” (233)

**Rationale:**

- (1) Applicant’s fear of future persecution has not been proven well-founded.
- (2) One’s job is not immutable; therefore, the group described is not a “particular social group.”
- (3) Compare “PSG” to other protected grounds to get shared immutable characteristic. PSG might be sex, color, kinship ties, shared past experience, military leadership, land ownership.

**Facts:** Native and citizen of El Salvador found deportable; appealed denial of asylum grant and withholding of deportation. Had been a founder of a Taxi cooperative in San Salvador, which had become the target of guerillas.

**Appeals to Statute & Precedent:**

- **8 U.S.C. §1101(a)(42)(A):** statutory standard of eligibility for asylum:
  - **Fear of persecution**
  - **Well-founded fear**
  - **On protected grounds (race, religion, nationality, PSG, political opinion)**
  - **Unable/unwilling to return to country because of persecution**

**Relevant U.S./Immigration Law History:**

- Alien bears burden of proof for well-founded fear of persecution.

**Quotes:**

- “A grant of asylum is a matter of discretion.” (218)
- “It may be unfortunate that the respondent either would have had to change his means of earning a living or cooperate with the guerillas in order to avoid their threats. However, the internationally accepted concept of a refugee simply does not guarantee an individual a right to work in the job of his choice.” (234)

**Commentary:**

- Is “well-founded fear” of persecution the same as the “clear probability” standard for withholding deportation, or is it to be construed more generously? The Circuit Courts disagree at this time.
- Precedential for articulation of “the burden of persuasion an alien must meet in order to convince the trier of fact of the truth of the allegations that form the basis of the claim for asylum or withholding of deportation.” (215)
  - “preponderance of the evidence”
  - DHS must prove deportability by “clear, unequivocal, and convincing evidence” (215 n.2)
- **Fear:** “a genuine apprehension or awareness of danger” (not merely “dissent or disagreement” or “desire to experience greater economic advantage or personal freedom”).
- **Persecution:** “harm or suffering had to be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor sought to overcome.” (222)
  - Had to be inflicted by state or by others whom the state was unable or unwilling to control.
  - Not the same as military or civil disturbances. (“Refugee” is not the same as people displaced because of these conditions.)
- **Well-Founded Fear:** not just subjective apprehension. Objective evidence usually necessary. Also, likelihood that there will be persecution in the country in the future.
  - It’s necessary to show that the persecutor is abusing the victim on account of one of the protected grounds; that the persecutor is aware of the characteristic; that the persecutor has the ability to hurt the victim; and that the persecutor has the inclination to continue violent action against the victim.