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【"Refugee"の定義】

INA 第 101 条(a)(42) (8 U.S.C. § 1101(a)(42))

The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country 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, ...

【狭義の Refugee】

INA 第 207 条(a)(2) (8 U.S.C. § 1157(a)(2))

Except as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

【Asylee】

INA 第 208 条(a)(1) (8 U.S.C. § 1158(a)(1))

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

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【BIA の権限】

8 C.F.R § 1003.1

(d) Powers of the Board –

(1) Generally. The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it. The Board shall resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the immigration judges,

and the general public on the proper interpretation and administration of the Act and its implementing regulations.

...

(3) Scope of review.

(i) The Board will not engage in de novo review of findings of fact determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.

(ii) The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges de novo.

...

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【司法長官への付託】

8 C.F.R § 1003.1

(h) Referral of cases to the Attorney General.

(1) The Board shall refer to the Attorney General for review of its decision all cases that:

(i) The Attorney General directs the Board to refer to him.

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【BIA 裁決と司法長官裁決の先例拘束力】

INA 第 103 条(a) (8 U.S.C. § 1103(a))

(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: Provided, however, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

8 C.F.R § 1003.1

(g) Decisions as precedents

(1) In general. Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding

on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.

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UNCHR のガイドライン¹

【「特定の社会的集団」】

29. Thus, a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

【関連性】

21. In cases where there is a risk of being persecuted at the hands of a non-State actor (e.g. husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.

¹ GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01 (May 7, 2002).

第116議会（2019-2020）に提出されている法案²

TITLE I—ADMISSION AND PROTECTION OF REFUGEES, ASYLUM SEEKERS, AND
OTHER VULNERABLE INDIVIDUALS

Subtitle A—Refugees And Asylum Seekers

SEC. 101. MODIFICATION OF DEFINITION OF REFUGEE.

(a) In General.—Section 101(a)(42) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)) is amended to read as follows:

...

(C) For purposes of determinations under this Act— 【「特定の社会的集団」】

...

(iii) the term ‘particular social group’ means, without any additional requirement not listed below, any group whose members—

(I) share—

(aa) a characteristic that is immutable or fundamental to identity, conscience, or the exercise of human rights; or

(bb) a past experience or voluntary association that, due to its historical nature, cannot be changed; or

(II) are perceived as a group by society.

(D)

【関連性】

...

(ii) To establish that the applicant is a refugee, persecution—

(I) shall be on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(II) may be established by demonstrating that—

(aa) a protected ground is at least one reason for the applicant’s persecution or fear of persecution;

(bb) the persecution or feared persecution would not have occurred or would not occur in the future but for a protected ground; or

(cc) the persecution or feared persecution had or will have the effect of harming the person because of a protected ground.

(E) Where past or feared persecution by a nonstate actor is unrelated to a protected asylum ground, the causal nexus link is established if the state’s failure to protect the asylum applicant from the nonstate actor is on account of a protected asylum ground.

² Refugee Protection Act of 2019 (H.R.5210).

[<https://www.congress.gov/bill/116th-congress/house-bill/5210/text#toc-HC4EFE459F7284E1EA1737584129A3CD5>]