Asylum Office Staff

Guidance for Asylum Officers and

(ACA) Threshold Screening

Cooperation Agreement

US - Guatemala Asylum
Language added at 8 CFR § 208.30(e)(7)

equivalent protection is not eligible to apply for asylum in the U.S.
threatened and which has a full and fair process for determining a claim to asylum or
multilateral agreement to a country where the alien's life or freedom would not be
Under 208(e)(2)(A) of the INA, an alien who may be removed, pursuant to a bilateral or
the examination of protection claims;
Cooperation Agreement (ACA), "Agreement between the Government of the United States
AACA - On July 26, 2019, the U.S. and Guatemala entered into an agreement, the Asylum

Background/Legal Framework
affirmative asylum cases are NOT subject to the agreement.

Exceptions may apply.

United States on or after Tuesday, November 19, Implementing Regulations apply only prospectively to aliens who enter or arrive in the

individuals who are persecuted or tortured in Guatemala are exempt from the agreement.

Individuals who establish during an interview with an AG that they are more likely than not
certain populations are exempt from the agreement.

or on an intention to apply for asylum.

Individuals who express a fear of persecution or torture, a fear of return,

Appplies to individuals who are subject to expedited removal, regardless of whether the

allows the U.S. to remove them to Guatemala to seek protection.

Prohibits certain asylum seekers from pursuing a request for protection in the U.S., and

overiew of the ACA
the alien and give him or her an opportunity to correct errors
and at the end of the interview the AO must review the summary with
AO must create a summary of material facts as stated by the individual
Asylum Division will provide interpreter as needed
individual is not entitled to a consultant
effectively in the interview due to illness, fatigue, or other impediments
Officer may reschedule if the individual is unable to participate

Most Relevant CF Interview Procedures in 208.30(d) apply:

Interview Procedures
CBP refers the case to Asylum Receipts 1-213, 1-860, 1-867, Parts AGB, and Tear Sheet.

- CBP provides Tear Sheet with information about the threshold screening (similar to M-62).
- CBP makes an initial determination whether the individual is amenable to A/C A.
- CBP processes individual for ER and Generates 1-213, 1-860, 1-867, Parts AGB.

Threshold Screening Process
Guatemala. If they express a fear of removal to Guatemala, they will be afforded the appropriate

process. If they express a fear of removal to Guatemala or a fear of persecution or torture in

in the U.S. and will be removed to Guatemala where they may apply for asylum or protection.

If the aliens do not meet an exception to the Act, they may not apply for asylum or other protection

Interview will take place over the phone or in person.

Guatemala, ACA.

referred to an asylum officer for an assessment on whether they meet an exception to the U.S.

Republic of Guatemala on cooperation in the examination of Protection Claims. They will be

to the Agreement between the Government of the United States and the Government of the

The individual is potentially amenable to removal to Guatemala under section 208(a)(2)(B)

Explanations:

Tear Sheet
to determine if the individual is more likely than not to be persecuted or tortured in Guatemala

exception applies

determination, 2 validate CBP's determination of exception, 3) determine if public interest

AO interviews to: 1) verify Asylum Division-relevant aspects of CBP amenable population

processed together

The individual's accompanying spouse and qualifying children (immediately family members) are

case entry into Global

Asylum office receives 1-860, 1-867 AAB, I-213; and copy of tear sheet
persecuted on account of a protected ground or tortured in Guatemala.

he or she must show it is more likely than not that he or she will be

the individual affirmatively expresses a fear of removal to Guatemala,

she qualifies for an exception under the terms of the Agreement.

The individual must show by preponderance of the evidence that he or

Standard of Proof
AOS has determined if the alien meets a public interest/discretionary exception, has not been convicted of a felony in the U.S. or any crime in Guatemala, has not been admitted to the U.S., has not been returned to the U.S. from Canada under the STCA, is not a citizen or national of Guatemala, or is a national of Honduras or El Salvador.

Conduct a threshold screening to determine amenable population, meaning the

AOS Amenable Population and Exceptions
Legal Guardian in the United States (as defined in 8 CFR 208.30(6)(D)(III))

UACs are unmarried, under 18 years of age, and do not have a parent or

USCIS for ACA Threshold Screening

UACs are not subject to INA § 208(a)(2)(A) and should not be referred to

Exception 1: Unaccompanied Alien Child
of Visa Waiver Program (VWP) countries

2. He or she was not required to obtain a travel document – citizens or nationals not mean the visa was not validly issued.
Validity issued = Genuine and issued by the U.S. Government.

3. He or she arrived in the U.S. with a validly issued visa or other valid admission document, other than for transit.

The individual demonstrates:

Visa or no visa Required

Exception 2: Validly Issued
Exception 3: Public Interest

- The Director of USCIS or his or her designee determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the individual to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the U.S.

- Public interest is undefined in U.S. regulations and agreement

- AO must elicit relevant testimony and evidence

- Complete “Decision Memorandum: Review of Public Interest Exception Determination”

- HQASM concurrence required
Supervisor must review determination affirmatively claimed.
Complete Worksheet and Notice if no fear of Guatemala.
Document interview and exceptions in Global.

Post Interview Processing

withholding of the alien 's right, or could be subject to persecution. \textit{INS} v. \textit{Stefic'},

be threatened in the country to which he would be deported; it does not require

[This standard provides for protection] only if the alien 's life or freedom would,

- More likely than not standard also used in MPP assessments
- More likely than not standard beyond a reasonable doubt
- Lower than higher than well-founded fear but
- More likely than not standard - standard is higher than well-founded fear but

Burden is on individual to establish credibility and meet standard of proof

Fear of removal to Guatemala

- If individual affirmatively expresses a fear of removal to Guatemala, A.G. assess
All other circuits: "one central reason"

reason to "at least in part, which is similar to "a reason."

1. Parussimova v. Mukasey, 555 F.3d 734 (9th Cir. 2009) (compares "one central"

2. Barajas-Romero, 846 F.3d 351 (9th Cir. 2017)

9th Circuit: "a reason"

We primarily see cases in the 5th and 9th Circuits - OA Case Law ENCN

Relevant Case Law - Nexus
Credibility

- In conducting the interview, the asylum officer should take into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer.
May not make a positive assessment solely on past persecution or other serious harm

establish unless persecutor is government or government-sponsored

Internal Relocation – If individual has not established past burden is on individual to

considered strong evidence of likelihood of future persecution

If past persecution established, presumption would not apply, but past persecution would be

Government actor OR Government Unable/Unwilling to Control Private Actor

Nexus to one of the five grounds is required

Proof

Alien’s testimony, if credible, may be sufficient for the individual to meet his or her burden of

Persecution Claims
Convention Against Torture (CAT)

Assessment that there is no basis for statutory withholding does not necessarily mean the individual is ineligible for CAT protection.

AO must make separate CAT assessment if withholding of removal based on persecution is not established.

Evidence to Consider

1. Past Torture
2. Internal Relocation
4. Other Relevant Information

Standard is more likely than not No presumption of future torture if past torture established

No nexus to a protected ground required
See the RAIO Research Unit's Guatemala Resource Guide at:
https://ecn.uscisdhs.gov/team/raio/research/ru-resources
SitePages/Resources%20-%20Guatemala.aspx.
No IJ Review of Threshold Screening, including fear of removal to Guatemala

- CBP will serve the Guatemala ACA Assessment Notice to the individual
- Guatemala ACA Threshold Screening Worksheet
- Guatemala ACA Threshold Screening Worksheet

CBP Record:

- HQ Reviews Public Interest Exception Cases
- SAO Reviews Worksheet and Assessment Notice
- AO Prepares Worksheet and Assessment Notice
- Document Guatemala Fear Interview in Global
Return to his or her country and be removed to his or her country under an EF order.

Individual may withdraw or dissolve his or her request for asylum or protection from a claim(s).

Cooperation Agreement for consideration of his or her asylum or other protection.

1. The individual is not subject to removal to Guatemala and will be screened for credible fear.

2. The individual is subject to removal to Guatemala under the U.S.-Guatemala Asylum Cooperation Agreement

Next Steps