



The Application of the “One Central Reason” Standard in Asylum and Withholding of Removal Cases

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Under the Immigration and Nationality Act (INA), a non-U.S. national (alien) who fears persecution in his native country may be eligible for [asylum](#) or [withholding of removal](#), two forms of relief from removal that potentially allow the alien to remain in the United States. Both applications require evidence linking the feared persecution to a statutorily protected ground. The asylum statute expressly requires the applicant to show that a protected ground is “one central reason” for the persecution (for applications filed after May 1, 2005). But the INA is silent as to whether this standard extends to withholding of removal. Nevertheless, most courts have—either expressly or by implication—extended the “one central reason” standard to withholding claims. In *Barajas-Romero v. Lynch*, however, the U.S. Court of Appeals for the Ninth Circuit held that Congress did not intend for the “one central reason” standard to apply to withholding of removal, creating a split among federal circuit courts regarding the extent and application of that standard.

As a matter of practice, an alien who fears persecution if removed to a particular country typically [applies](#) for both asylum and withholding of removal (as well as a separate form of protection under the United Nations [Convention Against Torture](#)). However, the eligibility requirements for asylum and withholding of removal, and the benefits that each form of relief confers, are different. In general, there is a [lower threshold](#) necessary to prove asylum [eligibility](#) than [withholding of removal](#). In addition, asylum recipients have a more permanent legal foothold in the country—including the ability to [adjust](#) to lawful permanent resident status after one year—than aliens granted withholding of removal, who may not adjust their status, and who [may still be removed](#) to a third country. And although certain aliens are statutorily barred from [asylum](#) and [withholding of removal](#) (e.g., certain criminal aliens, aliens who engaged in persecution), a broader category of these restrictions apply to asylum than withholding of removal.

Despite these key differences, both asylum and withholding of removal share [a major feature](#): the applicant must prove that the alleged persecution is tied to one of five characteristics – race, religion, nationality, membership in a particular social group, or political opinion. For many years, the courts confronted the question of how to adjudicate asylum and withholding applications where the alleged persecution is predicated on both statutorily protected *and* unprotected grounds (“mixed motive” cases),

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and developed various standards to resolve that question. Some courts, for example, determined that an applicant only had to show persecution based “in part” on a protected ground, while other courts required proof that the persecution was motivated “in meaningful part” by that ground.

In 2005, Congress passed the REAL ID Act, which, among other things, sought to clarify the burden of proof for asylum and withholding of removal. In an effort to create a uniform standard for assessing persecution claims in asylum applications, the legislation amended the INA to provide that an asylum applicant has to show that one of the protected grounds “was or will be at least one central reason” for his alleged persecution. Generally, the courts have interpreted this standard to mean that a protected ground must be an essential basis for the persecutor’s actions, and not merely “incidental, tangential, or superficial” to another reason for harm.

Notably, Congress did not explicitly indicate in the REAL ID Act whether the “one central reason” standard would also apply to withholding of removal applications. Instead, Congress amended the withholding of removal statute to provide that, in determining whether an alien’s life or freedom would be threatened for “a reason” enumerated in the statute, the trier of fact must evaluate the application under the new standards governing credibility and corroborating evidence found in the asylum statute. However, the amended withholding of removal statute made no reference to the asylum statute’s “one central reason” language.

In 2010, the Board of Immigration Appeals (BIA), the highest administrative body charged with interpreting and applying federal immigration laws, held in *Matter of C-T-L* that the “one central reason” standard applies to withholding of removal applications. Applying “settled principles of statutory construction,” the BIA determined that, because Congress intended to create “a single national standard” for evaluating a persecutor’s motive when it passed the REAL ID Act, that standard should be applied uniformly to both asylum and withholding claims to avoid “a bifurcated analysis on a single subissue in the overall case.” The BIA also held that, even in the absence of a clear congressional intent, applying the “one central reason” standard to withholding of removal claims was a reasonable interpretation of an ambiguous statute.

Apart from the BIA, the federal circuit courts of appeals have generally applied the “one central reason” standard to withholding of removal applications. While a majority of these courts have not addressed the BIA’s decision in *Matter of C-T-L*, the Third Circuit has determined that the BIA’s extension of the “one central reason” standard to withholding of removal was a sound conclusion, and agreed that Congress had intended to create a uniform standard to evaluate persecutory motives.

More recently, however, the Ninth Circuit in *Barajas-Romero* held that Congress did *not* intend for the “one central reason” standard to apply to withholding of removal. The court reasoned that, when Congress amended the withholding of removal statute in 2005, it incorporated the new asylum provisions on credibility and corroboration, but not the “one central reason” language. The court also noted that the amended withholding of removal statute made reference to “a reason” for persecution—an “unambiguously different” and “less demanding” standard than the “one central reason” language employed in the asylum statute. The court suggested that, given the higher burden of proof for withholding of removal, “Congress may have diluted the nexus requirement in order to afford more protection against mistaken deportations where a protected ground played into that likelihood.” Accordingly, the court held, a withholding applicant only had to prove that a protected ground was “a reason” for persecution.

The Department of Justice filed a petition for rehearing *en banc* in *Barajas-Romero*, but the Ninth Circuit denied that petition on May 12, 2017. To date, the government has not asked the Supreme Court to review the Ninth Circuit’s decision and resolve the circuit split over whether a withholding of removal applicant is required to show that a protected ground is “one central reason” for his persecution. Nevertheless, the 115th Congress has been considering legislation

that seeks to clarify the scope and application of the “one central reason” standard. For example, several months after the Ninth Circuit’s decision in *Barajas-Romero*, the House Judiciary Committee [approved](#) an amended version of the [Asylum Reform and Border Protection Act of 2017](#) (H.R. 391), which, among other things, imposes the “one central reason” standard on withholding of removal applications. Through the enactment of such legislation, the courts would employ a uniform standard to both asylum and withholding of removal applications. Absent further congressional action, the Supreme Court may be asked to assess whether existing statutes already provide for a uniform standard, as the BIA and several circuit courts have concluded, or whether, as the Ninth Circuit [declared](#), the omission of any reference to the “one central reason” standard in the withholding of removal statute was “the product of a deliberate choice, rather than a mere drafting oversight.”

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