

APPENDIX 6E
CHECKLIST FOR BARS TO ASYLUM AND
WITHHOLDING OF REMOVAL

Bars to Asylum Only

- Safe Third Country.** If the applicant can be sent to a safe third country pursuant to a bilateral or multilateral agreement, he or she is ineligible to apply for asylum unless the Attorney General finds that it is in the public interest for the applicant to remain in the United States. To date, only one such agreement exists, between the United States and Canada.
- One-Year Deadline.** The applicant must file for asylum within one year of the date of his or her last arrival in the United States, unless he or she demonstrates changed circumstances that materially affect his or her eligibility for asylum or extraordinary circumstances relating to the delay in filing the application.
- Previous Denial.** If an immigration judge or the Board of Immigration Appeals previously denied an asylum application, the applicant is ineligible unless he or she demonstrates “the existence of changed circumstances which materially affect the applicant’s eligibility for asylum.”
- Firm Resettlement.** An applicant is ineligible for asylum if he or she firmly resettled in another country prior to arriving in the United States. To be firmly resettled in another country, the applicant must have received an offer of permanent residency, citizenship, or other permanent status in that country. An applicant is not firmly resettled if he or she entered that country as a necessary consequence of flight from persecution, remained in that country only so long as necessary to arrange onward travel, and did not establish significant ties to that country. An applicant also is not firmly resettled if he or she can establish that the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country that he or she was not in fact resettled.
- Terrorism.** An applicant is ineligible for asylum if he or she is described in INA §212(a)(3)(B)(i)(I)-(IV) or (VI) or INA §237(a)(4)(B). This may include, among other activities, engagement in terrorist activity (including providing “material support” to a terrorist organization, even *de minimis* support and even support provided under duress), connection to a terrorist organization via membership, association, otherwise, receiving training from or on behalf of a terrorist organization, or even being the spouse or child of someone who is inadmissible under INA §212(a)(3)(B). Most individuals who are barred for asylum under this ground will also be barred from withholding of removal for “reasonable grounds for regarding the [applicant] as a danger to the security of the United States” (see below). There is a narrow discretionary waiver available, as well as situational and group exemptions, which frequently change.

Bars to Asylum and Withholding of Removal

- Persecutor of Others.** An applicant is ineligible for asylum and withholding of removal if he or she “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

- Particularly Serious Crime.** An applicant is ineligible for asylum and withholding of removal if he or she was convicted by a final judgment of a particularly serious crime and therefore constitutes a danger to the community of the United States. An applicant convicted of an aggravated felony is deemed to have been convicted of a particularly serious crime for purposes of asylum and is automatically barred from asylum eligibility. For purposes of withholding of removal, however, the bar is not automatic. Rather, if an applicant has been convicted of an aggravated felony (or felonies) for which he or she was sentenced to an aggregate term of imprisonment of *at least five years*, he or she is deemed to have been convicted of a particularly serious crime and is automatically barred from withholding eligibility. Other crimes that are not aggravated felonies will be considered on a case-by-case basis to determine whether they are particularly serious crimes barring asylum and withholding of removal eligibility.

- Serious Nonpolitical Crime.** An applicant is ineligible for asylum and withholding of removal if there are serious reasons for considering that he or she has committed a serious nonpolitical crime outside of the United States prior to his or her arrival. Unlike particularly serious crimes, there is no requirement that the applicant was actually convicted of the serious nonpolitical crime. Even if the applicant did not personally carry out the act of harm, involvement in the serious nonpolitical crime may be sufficient. If the political aspects of the offense outweigh its common-law character, it may not bar the applicant from asylum or withholding of removal, unless it was atrocious in nature.

- Danger to the Security of the United States.** An applicant is ineligible for asylum and withholding of removal if “there are reasonable grounds for regarding the [applicant] as a danger to the security of the United States.” An applicant who is found to have engaged in terrorist activity as defined in INA §212(a)(3)(B) is deemed to be a danger to the security of the United States for purposes of withholding of removal.

Bars to Withholding of Removal Only

- Participation in Nazi Persecution.** An applicant is ineligible for withholding of removal if he or she, under the direction of the Nazi government of Germany, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, national origin, or political opinion between March 23, 1933, and May 8, 1945.

- Participation in Genocide.** An applicant is ineligible for withholding of removal if he or she engaged in genocide as defined in the International Convention on the Prevention and Punishment of Genocide.

Note that even if a bar mentioned above applies to the applicant, he or she may still be eligible for withholding or deferral of removal under the Convention Against Torture if it is more likely than not that he or she will be tortured upon removal to his or her home country. See chapter 4 for a detailed discussion of relief under the Convention Against Torture.

For more detailed discussions of each of these bars to asylum and withholding of removal, see chapter 3.