Particular Social Group

Gang-based claims

- BIA:
  - Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014), and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014). In these companion decisions, the BIA clarified that the “social visibility” element of “particular social group” was never intended to require on-sight visibility and renamed the test “social distinction.” The BIA concluded that the determinative factor for purposes of social visibility is, and has always been, whether a group is meaningfully distinct in the society in question. The BIA emphasized that “social distinction” was a change in terminology and not a change in approach; therefore the BIA also stated that its past decisions on the topic remain good law. Additionally, the BIA pointed out in M-E-V-G- that particularity is a stand-alone requirement and that an applicant claiming membership in a “particular social group” must prove three elements: the group must be (1) comprised of persons with a common immutable characteristic, (2) defined with sufficient particularity, and (3) socially distinct within the society in question. 26 I&N Dec. at 240-41.
  - Additionally, Matter of W-G-R- and Matter of M-E-V-G- both addressed whose perspective controls for purposes of assessing whether a proposed group is socially distinct. Whether it is that of the national society or one of a secluded segment or region, the BIA explained, depends on the circumstances of each case, including whether the persecution itself is geographically confined.
    - Applying this understanding, the BIA determined in W-G-R- that the proposed group—former members of the Mara 18 gang in El Salvador who have renounced their gang membership—lacked social distinction. The BIA found no evidence that Salvadoran society considered such individuals to be a meaningfully distinct segment within the community. Concluding that the group was also too diffuse and subjective to satisfy the particularity requirement, the BIA dismissed the respondent’s appeal.
    - Similarly, in M-E-V-G-, the BIA held that “Honduran youth who have been actively recruited by gangs but who have refused to join because they oppose gangs” was not a viable particular social group. The BIA noted that gang violence is a “large societal problem in many countries” that affects a broad range of the population. 26 I&N Dec. at 250-51. Gang members “may target one segment of the population for recruitment, another for extortion, and yet others for kidnapping,” or other crimes, and “certain segments of a population may be more susceptible to one type of criminal activity than another.” Id. at 251. However, these victims of gang violence generally are not targeted on a protected basis, but “suffer from the gang’s criminal efforts to sustain its enterprise in the area.” Id.; see also W-G-R-, 26 I&N Dec. at 221-23 (finding that the putative social group “former members of the Mara 18 gang in El Salvador who have renounced their gang membership” lacked sufficient particularity and social distinction to constitute a cognizable social group); Matter of E-A-G-, 24 I&N Dec. 591, 594 (BIA 2008) (finding that a proposed social group of young persons who were resistant to gang membership lacked
the requisite social distinction). The BIA has also held that a proposed group of persons perceived to be affiliated with gangs did not constitute a particular social group for asylum purposes because “[t]reating affiliation as a criminal organization as being protected affiliation in a social group is inconsistent with the principles underlying the bars to asylum and withholding of removal based on criminal behavior.” *E-A-G*- , 24 I&N Dec. at 596; see also *W-G-R*- , 26 I&N Dec. at 215 n. 5.

- **Notably**, the BIA has emphasized that its holdings in these cases “should not be read as a blanket rejection of all factual scenarios involving gangs.” *M-E-V-G*- , 26 I&N Dec. at 251.

- Matter of *S-E-G*- , 24 I&N Dec. 579 (BIA 2008). The BIA held, “[M]embership in a purported social group requires that the group have particular and well-defined boundaries, and that it possess a recognized level of social visibility.” 24 I&N Dec. at 582. Regarding the “particularity” requirement, it stated, “[T]he key question is whether the proposed description is sufficiently ‘particular’ or is ‘too amorphous . . . to create a benchmark for determining group membership.’” *Id.* at 584 (internal citations omitted). Discussing the “social visibility” requirement, the BIA held, “The question whether a proposed group has a shared characteristic with the requisite ‘social visibility’ must be considered in the context of the country of concern and the persecution feared.” *Id.* at 586-87.

- Applying this standard, the BIA denied the respondents’ proposed particular social group, “(1) Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang’s values and activities; and (2) family members of such Salvadoran youth.” *Id.* at 581. The BIA held that the both groups lacked social visibility because they were “too amorphous.” *Id.* at 585. Additionally, the BIA explained the groups lacked particularity because “they make up a potentially large and diffuse segment of society, and the motivation of gang members in recruiting and targeting young males could arise from motivations quite apart from any perception that the males in question were members of a class.” *Id.* at 585. The BIA explained that the proposed groups lacked social visibility because there was “little in the background evidence of record to indicate that Salvadoran youth who are recruited by gangs but refuse to join (or their family members) would be ‘perceived as a group’ by society, or that these individuals suffer from a higher incidence of crime than the rest of the population.” *Id.* at 587.

- Matter of *A-M-E-* & *J-G-U*- , 24 I&N Dec. 69 (BIA 2007). In discussing the “social visibility” requirement, the BIA held, “[W]hether a proposed group has a shared characteristic with the requisite ‘social visibility’ must be considered in the context of the country of concern and the persecution feared.” *Id.* at 74.

- **Circuit courts:**

- *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011). The Fourth Circuit found that the petitioners’ proposed group, “family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses,” constituted a particular social group. The court held the group satisfied Acosta’s immutability
requirements because “family bonds are innate and unchangeable.” Id. at 124. The group satisfied the particularity requirement because the “family unit—centered here around the relationship between an uncle and his nephew—possesses boundaries that are at least as ‘particular and well-defined’ as other groups whose members have qualified for asylum.” Id. at 125. Finally, the court held that the group also met the requisite social visibility requirement because “[s]ocial groups based on innate characteristics such as . . . family relationship are generally easily recognizable and understood by others to constitute social groups.” Id. at 125-26 (citing Matter of C-A-, 23 I&N Dec. 951, 959 (BIA 2006)).

Orellana-Monson v. Holder, 685 F.3d 511, 519 (5th Cir. 2012). The Fifth Circuit held that the BIA’s test for particular social group determination, requiring the elements of “particularity” and “social visibility,” was entitled to deference. Id. at 521. The court also upheld the BIA’s denial of petitioners’ proposed particular social groups. Id. The two proposed particular social groups were: (1) “Salvadorian males, ages 8 to 15, who have been recruited by Mara 18 but have refused to join due to a principled opposition to gangs,” and (2) “siblings of members of [petitioner’s] social group or, alternatively, family members of [petitioner] and that Mara 18 likely would impute [petitioner’s] anti-gang political opinion to him.” Id. at 515-16. The court held that the first proposed group lacked particularity because it was “exceedingly broad and encompasses a diverse cross section of society.” Id. at 521. The proposed group also lacked social visibility because there was insufficient evidence to show that the individuals of this group “would be ‘perceived as a group’ by society.” Id. at 522.

Benitez Ramos v. Holder, 589 F.3d 426 (7th Cir. 2009). The Seventh Circuit reversed the BIA’s holding, which had found that the petitioner had failed to establish eligibility for withholding of removal on the grounds that he was not a member of a particular social group, “tattooed former Salvadoran gang members.” Id. at 429. The court reversed the BIA because “[a] gang is a group, and being a former member of a group is a characteristic impossible to change, except perhaps by rejoining the group.” Id. The court also stated that the petitioner “was a member of a specific, well-recognized, indeed notorious gang, the former members of which do not constitute a ‘category . . . far too unspecific and amorphous to be called a social group.” Id. at 431.

Notably, in the Second Circuit, there is some support for the notion that witnesses to gang violence who cooperate with authorities may constitute a particular social group. In Gashi v. Holder, the Second Circuit held that the proposed social group—persons who witnessed war crimes committed by a resistance group and cooperated with authorities investigating those crimes—constitutes a particular social group. 702 F.3d 130, 136 (2d Cir. 2012). In so holding, the court found that this proposed group shares immutable characteristics, is socially distinct, and sufficiently particular. Id. at 136-38. It is immutable because individuals in the group share a past experience—namely, having witnessed war crimes and having cooperated with authorities. It is socially distinct in that a public list of potential witnesses existed, and it is sufficiently particular because “[t]he number of persons who have given interviews to, or otherwise cooperated with, official war crimes investigators is finite, and undoubtedly quite limited.” Id. at 137. This analysis can be translated to the gang context and
used to support a finding that witnesses to gang violence who cooperate with investigating authorities constitutes a particular social group.

**Family based & domestic violence claims**

- **Circuit courts:**
  - *Jorge-Tzoc v. Gonzales*, 435 F.3d 146 (2d Cir. 2006). The Second Circuit held that it was error for the IJ not to consider the fact that the respondent was a small child when his family was subject to numerous incidents of harm. *Id.* at 150.
  - *Jiang v. Gonzales*, 500 F.3d 137, 141 (2d Cir. 2007). The Second Circuit held, “As a general principle, an asylum applicant cannot claim past persecution based solely on harm that was inflicted on a family member on account of that family member's political opinion or other protected characteristic.” *See also Melgar de Torres v. Reno*, 191 F.3d 307, 313 n. 2 (2d Cir. 1999).
    - However, in *Jiang*, the court also held an applicant may be able to claim past persecution based solely on harm that was inflicted on a family member if the applicant can demonstrate that “he not only shares (or is perceived to share) the characteristic that motivated persecutors to harm the family member, but was also within the zone of risk when the family member was harmed, and suffered some continuing hardship after the incident.” 500 F.3d at 141.
  - *Mendoza-Pablo v. Holder*, 667 F.3d 1308 (9th Cir. 2012). The Ninth Circuit emphasized that “an infant can be the victim of persecution, even though he has no present recollection of the events that constituted his persecution.” *Id.* at 1313. In *Mendoza-Pablo*, it was legal error for the BIA to not consider the harm that Mendoza-Pablo suffered when in his mother’s womb, as the court noted, “[His] pregnant mother . . . fled from her home village as a result of her (eminently-reasonable) belief that her life—as well the life of the child in her womb—was in severe and immediate danger because Guatemalan military forces had specifically targeted the village's inhabitants on the basis of their racial and ethnic background.” *Id.* at 1314. The Ninth Circuit concluded, “on the particular facts of this case . . . where a pregnant mother is persecuted in a manner that materially impedes her ability to provide for the basic needs of her child, where that child's family has undisputedly suffered severe persecution, and where the newborn child suffers serious deprivations directly attributable not only to those facts, but also to the material ongoing threat of continued persecution of the child and the child's family, that child may be said to have suffered persecution and therefore be eligible for asylum under the INA.” *Id.* at 1315.

- **BIA:**
  - *Matter of R-A-*, 22 I&N Dec. 906, 911 (BIA 1999). The BIA denied asylum to an applicant for failure to establish that “Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination” constituted a particular social group. *Id.* at 911. In 2001, the Attorney General vacated *R-A-* and ordered the BIA to stay reconsideration of the case until new regulations governing domestic violence claims were published. *Matter of R-A-*, 22 I&N Dec. 906 (A.G. 2001). In 2003, the new Attorney General certified the matter to himself and directed briefing on the respondent’s eligibility for
relief. In a brief to the Attorney General, DHS asserted that the respondent was eligible for asylum based on her membership in the particular social group of “married women in Guatemala who are unable to leave the relationship.” In January 2005, the new Attorney General remanded the matter to the BIA. The proposed regulations remained pending and, in 2008, the new Attorney General certified the case to himself, lifted the stay, and remanded the case back to the BIA. Matter of R-A-, 24 I&N Dec. 629 (A.G. 2008). The BIA subsequently remanded the case back to the immigration court on a joint motion by the parties, and the respondent was granted relief in an order without a detailed legal analysis.

- Applicable regulations have not yet been published and there is currently no precedent decision by the BIA regarding domestic violence issues in asylum cases. However, on April 13, 2009, DHS submitted a brief in another case before the BIA, Matter of L-R-, clarifying the agency’s position with regard to domestic violence claims. DHS’s brief argued that “Mexican women in domestic relationships who are unable to leave” and “Mexican women who are viewed as property by virtue of their positions within a domestic relationship” were each social groups that meet the current requirements for PSGs.¹

**Sexual orientation**

- **BIA:**
  - Matter of Toboso-Alfonso, 20 I&N Dec. 819, 822-23 (BIA 1990). The BIA held that individuals identified by the Cuban government as “homosexuals” were a particular social group.

Economic Persecution

- **BIA:**
  - *Matter of T-Z*, 24 I&N Dec. 163 (BIA 2007): In the BIA’s most recent case discussing economic persecution at length, it clarified elements of the caselaw and reasserted the use of the *Laipenieks* standard, “deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or essentials of life.” *Id.* at 171 (citing *Matter of Laipenieks*, 18 I&N Dec. 433, 457 (BIA 1983) (emphasis added). In reasserting this standard, the BIA rejected the Ninth Circuit’s formulation of “deliberate imposition of substantial economic disadvantage,” in *Kovac v. INS*, 407 F.2d 102, 107 (9th Cir. 1969) (emphasis added) (discussed below). The BIA went on to note that “[g]overnment sanctions that reduce an applicant to an impoverished existence may amount to persecution even if the victim retains the ability to afford the bare essentials of life,” *id.* at 174, and listed a number of examples of what may amount to persecution: “A particularly onerous fine, a large-scale confiscation of property, or a sweeping limitation of opportunities to continue to work in an established profession or business may amount to persecution even though the applicant could otherwise survive.” *Id.*

  The BIA pointed to the Third Circuit case of *Li v. Attorney General of the U.S.* to illustrate another application of this standard—how various forms of economic sanction in combination amount to persecution. There, the Third Circuit found that "[i]n the aggregate, a fine of more than a year and half's salary; blacklisting from any government employment and from most other forms of legitimate employment; the loss of health benefits, school tuition and food rations; and the confiscation of household furniture and appliances from a relatively poor family constitute deliberate imposition of severe economic disadvantage which could threaten [the] family's freedom if not their lives" amounted to persecution. *Matter of T-Z*, 24 I&N Dec. at 174-75 (quoting 400 F.3d 157, 169 (3d Cir. 2005)).

  The BIA explained that the respondent’s financial situation should be examined relative to others and a determination made regarding whether imposition of economic disadvantage is severe enough to amount to persecution. *T-Z*, 24 I&N Dec. at 169 (holding that an abortion is forced by threats of harm when a reasonable person would objectively view the threats for refusing the abortion to be genuine, and the threatened harm, if carried out, would rise to the level of persecution, and that nonphysical forms of harm, such as deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life, may amount to persecution). Thus the BIA has held that persecution “is not limited to physical harm or threats of physical harm and may include economic harm, so long as the threats, if carried out, would be of sufficient severity that they amount to past persecution.” *Id.* The BIA specifically noted that the harm must be “of a deliberate and severe nature and such that it is condemned by civilized governments.” *Id.* As an example a fine leveled against a wealthy individual may be a substantial economic disadvantage even if the person remains wealthy and does not experience a meaningful change in life style or standard of living, yet this sort of one-time fine is unlikely to be viewed as a severe economic disadvantage. *Id.* at 169 n.10.
Matter of Acosta, 19 I&N Dec. 211 (BIA 1985) (citing Salama and Dunat v. Hurney, 297 F.2d 744, 746 (3d Cir. 1962) (discussed below)). The BIA noted that persecution “could consist of economic deprivation or restrictions so severe that they constitute a threat to an individual's life or freedom,” so long as it was “inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor sought to overcome.” 19 I&N Dec. at 222.

Matter of Laipenieks, 18 I&N Dec. 433 (BIA 1983), rev'd on other grounds, 750 F.2d 1427 (9th Cir. 1985). When discussing what actions by an applicant suspected of collaborating with the Nazi government in occupied Latvia constituted persecution, the BIA quoted a Congressional report on an amendment to the INA that noted “[t]he harm or suffering need not [only] be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life.” Id. at 457.

Matter of D-L & A-M, 20 I&N Dec. 409 (BIA 1991). The BIA cited Dunat, 279 F.3d at 753, for the proposition that an applicant would have been persecuted had he shown “that the Cuban Government had placed him in a situation so severe as to deprive him of a livelihood.” Id. at 414. The Cuban Government had refused to allow the man to return to his job after a period in detention, but the BIA rejected claims that this was economic persecution because the man earned a living growing rice on land he owned. Id.

Matter of Salama, 11 I&N Dec. 536 (BIA 1966). The BIA upheld an order of a special inquiry officer finding that a Jewish Egyptian would be persecuted on religious grounds where “evidence that the Medical Association of Egypt had directed the Egyptian populace to refrain from consulting Jewish surgeons and physicians for any cause, and that Jewish professional men have been dropped from the rolls of professional societies.” Id. at 536. Not citing any other evidence, the BIA found that this treatment constituted persecution.

Circuit courts:

Mirzoyan v. Gonzales, 457 F.3d 217 (2d Cir. 2006). In Mirzoyan, the Second Circuit appeared concerned that the BIA was applying three different standards to economic persecution claims: (1) cases following Kovac v. INS, 407 F.2d 102 (9th Cir. 1969) ("deliberate imposition of substantial economic disadvantage"); (2) cases following Dunat v. Hurney, 297 F.2d 744 (3d Cir. 1962) ("denial of an opportunity to earn a livelihood"), which construed a subsequently amended version of the statute that required "physical persecution" (these BIA cases tend to be older, but include Matter of D-L & A-M, 20 I&N Dec. 409 (BIA 1991)); and (3) cases following Matter of Acosta, 19 I&N Dec. 211(BIA 1985) ("economic deprivation or restrictions so severe that they constitute a threat to an individual's life or freedom"). The Court remanded to the BIA to articulate the proper standard for economic persecution claims. Id. at 223.

Damko v. INS, 430 F.3d 626 (2d Cir. 2005). The Second Circuit in Damko cited the restrictive economic persecution standard laid out in Matter of Acosta, 19 I&N Dec. 211 (BIA 1985). Damko, 430 F.3d at 634-636 (citing Acosta for the proposition that economic persecution requires a showing of “economic deprivation or restrictions so severe that they constitute a threat to an individual's life or freedom"). Under this standard, the Court analyzed the petitioner’s past experiences and did not find that the
deprivations were so severe as to constitute a threat to her life or freedom. The Albanian petitioner was dismissed from her studies at a university for contacting with her U.S. relatives. 430 F.3d at 629. She then worked for an industrial plant for twenty years, and claimed she was fired from that job for political reasons. Id. at 629-30. Subsequently, the petitioner worked as a seamstress. Id. The Second Circuit did not find the petitioner’s past experiences and economic deprivation sufficiently severe as to constitute a threat to her life or freedom. Id. at 631. The Second Circuit subsequently vacated and superseded its initial decision in Damko v. INS, 178 F. App’x 85 (2nd Cir. 2006) (“Damko II”). This decision does not cite Acosta. In Damko II, the Court avoided the issue of whether the petitioner’s past experience amounted to persecution. Instead, the decision rests solely on the issue of changed conditions in Albania. Id. at 87. The court agreed that changed country conditions were a valid basis to deny the claim. Id.

- **Alvarado-Carillo v. INS**, 251 F.3d 44 (2d Cir. 2001). In Alvarado-Carillo, the Second Circuit remanded to the BIA to reconsider the petitioner’s asylum claim based in part upon the fact that he was a trained accountant who was reduced to selling food from a street cart. Id. at 47-48.

- **Cheng Kai Fu v. INS**, 386 F.2d 750 (2d Cir. 1967): The Second Circuit, in discussing a claim from mainland Chinese anticommunists exiled in Hong Kong, noted that “[t]heir status in Hong Kong as exiles from the mainland of China will not distinguish them from thousands of others, and the physical hardship or economic difficulties. They claim they will face will be shared by many others. Those difficulties do not amount to the kind of particularized persecution that justifies a stay of deportation,” 386 F.2d at 753, requiring that economic persecution, like any other form, be particularly targeted at an individual and not be a function of general conditions.

- **El-Labaki v. Mukasey**, 544 F.3d 1 (1st Cir. 2008). El-Labaki involved the asylum claim of a Greek Orthodox Christian male born in Lebanon who was a twenty-three-year resident of Saudi Arabia. Id. at 2-3. El-Labaki resided in Saudi Arabia because the Lebanese economy was poor and he could not find a job in Lebanon that would pay him enough to support his family or what he used to earn. Id. at 3. Between 1977 and 2000, El-Labaki lived in Saudi Arabia where he worked for five different companies. Id. at 3. During this period, he traveled back to Lebanon frequently to visit family. Id. During his travels, he claimed to have been harassed at checkpoints by Syrians. Id. El-Labaki also claimed that as a Greek Orthodox Christian he was viewed as a Lebanese Christian Forces sympathizer. Id. at 6. El-Labaki returned to Lebanon before arriving in the U.S. because his employer had given him notice of a fifty percent salary reduction. Id. at 3. Before the IJ, El-Labaki claimed his motive for coming to the U.S. was that "he wanted to live a life of freedom and comfort and democracy because in Lebanon there is no security." Id.

- The Court found that El-Labaki failed to prove that he would be in danger by government entities. Id. at 6. In addition, his family, practicing Christians, continued to reside in Lebanon. Id. Petitioner solely alluded to economic factors. When specifically questioned regarding why he had not moved his family to another part of Lebanon, such as Beirut, El-Labaki explained that he had not considered such alternatives because relocation was expensive and there were few jobs available in other parts of the country. Id. at 3, 8. Thus, as correctly concluded by the IJ, El-
Labaki's relocation to Lebanon and subsequent entry into the United States were prompted more by economic reasons than by political reasons or by fear of persecution. *Id.* at 6-7, 8.

- *Li v. Att’y Gen. of the U.S.*, 400 F.3d 157 (3d Cir. 2005). In *Li*, the Third Circuit found that, “[i]n the aggregate, a fine of more than a year and a half's salary; blacklisting from any government employment and from most other forms of legitimate employment; the loss of health benefits, school tuition, and food rations; and the confiscation of household furniture and appliances from a relatively poor family constitute deliberate imposition of severe economic disadvantage which could threaten his family's freedom if not their lives.” *Id.* at 169.

- *Dunat v. Hurney*, 297 F.2d 744 (3d Cir. 1962). The court overturned a special hearing officer’s ruling of what constituted “physical persecution” in a former version of INA § 243. The court noted that “[t]he denial of an opportunity to earn a livelihood in a country such as the one involved here is the equivalent of a sentence to death by means of slow starvation and none the less final because it is gradual” in holding that economic sanctions can constitute persecution. *Id.* at 746.

- *Majd v. Gonzales*, 446 F.3d 590 (5th Cir. 2005). The court noted that persecution does not include all treatment that is considered unfair, unjust, unlawful, or unconstitutional in our society. *Id.* at 595. The court continued, “If persecution were defined that expansively, a significant percentage of the world's population would qualify for asylum in this country—and it seems most unlikely that Congress intended such a result.” *Id.* (quoting *Al-Fara v. Gonzales*, 404 F.3d 733 (3d Cir. 2005)).

- *Abdel-Masieh v. INS*, 73 F.3d 579, 583 (5th Cir. 1996). The court discussed that the harm or suffering resulting from persecution does not have to be physical, but can take other forms “such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life.” *Id.* at 583 (quoting *Matter of Laipenieks*, 18 I&N Dec. 433, 456-57 (BIA 1983)).

- *Rojas v. INS*, 937 F.2d 186 (5th Cir. 1991). The court sustained the BIA’s denial of one of the respondent’s claim that he suffered persecution, in part, because he was fired from his job. *Id.* at 190.

- *Daneshvar v. Ashcroft*, 355 F.3d 615 (6th Cir. 2004). The court cited to *Acosta* and recognizing that “[e]conomic deprivation constitutes persecution only when the resulting conditions are sufficiently severe.” *Id.* at 625 n.9 (citing *Acosta*, 19 I&N Dec. at 222.)

- *Borca v. INS*, 77 F.3d 210 (7th Cir. 1996). The Seventh Circuit found in *Borca* that an applicant could establish a well-founded fear of economic persecution by demonstrating that "she faces a probability of deliberate imposition of substantial economic disadvantage on account of" one of the five statutory grounds. *Id.* at 216.

- *Minwalla v. INS*, 706 F.2d 831 (8th Cir. 1983). The court provided, “Persecution requires a showing of a threat to one's life or freedom. Mere economic detriment is not sufficient.” *Id.* at835 (internal citations omitted). The court concluded that the fact that the petitioner will have to carry a national ID card in Pakistan, which he failed to do and which will then have attached criminal sanctions, was not alone a “substantial curtailment of his freedom.” *Id.* Additionally, the petitioner did not
establish he would suffer substantial economic persecution, as there was no evidence he would be unable to obtain a private sector job. *Id.*

- *Ghaly v. INS*, 58 F.3d 1425 (9th Cir. 1995). In *Ghaly*, the Ninth Circuit found that the respondent, a Coptic Christian from Egypt, had demonstrated that he would be subject to discrimination if removed. *Id.* at 1431. However, it upheld the BIA finding that he lacked a well-founded fear of persecution. *Id.* It noted that persecution is an “extreme concept” and does not include every sort of mistreatment that our society deems offensive. *Id.*

- *Saballo-Cortez v. INS*, 761 F.2d 1259 (9th Cir. 1985). The court upheld the BIA’s finding that the “denial of special privileges to purchase food or obtain more desirable employment” did not constitute persecution. *Id.* at 1265-64. The court recognized that such sanctions may be legitimate under the laws of the applicant’s home country. *Id.* at 1265.

- *Kovac v. INS*, 407 F.2d 102 (9th Cir. 1969): The court held that, after 1965 amendments to INA § 243(h) which eliminated the word “physical” and “generally liberalized” the INA established that “a probability of deliberate imposition of substantial economic disadvantage upon an alien” would qualify them for a discretionary withholding of deportation. *Id.* at 105-06.

- *Shoaei v. INS*, 704 F.2d 1079 (9th Cir. 1983). The court held that the petitioner’s showing that “his family’s political fortunes have declined” in Iran did not constitute persecution. *Id.* at 1084.

- *Raass v. INS*, 692 F.2d 596 (9th Cir. 1982). The court held, “The relief of asylum in the United States depends on something more than generalized economic disadvantage at the destination.” *Id.* The petitioners’ claim that in Tonga, they “would be deprived of rights to land because they do not have the right lineal history” did not constitute persecution. *Id.*
Medical and Mental Health Issues and Membership in a Particular Social Group

- **Asylum:** Courts have considered whether aliens with medical or mental conditions/illnesses represent a “particular social group” for asylum purposes.
  - *Temu v. Holder,* 740 F.3d 887 (4th Cir. 2014). The court concluded that the applicant was persecuted because of membership in a particular social group of “individuals with bipolar disorder who exhibit erratic behavior.”
  - *Cf. Mendoza-Alvarez v. Holder,* 714 F.3d 1161, 1165 (9th Cir. 2013). The court addressed the various social groups that respondent identified—“all disabled persons; all insulin-dependent diabetics; and all insulin-dependent diabetics who suffer from mental illnesses”—and found that they lacked particularity because these groups “include large numbers of people with different conditions and in different circumstances.” *Id.* at 1164. The court concluded, “As the BIA and the courts have recognized, an inadequate healthcare system is not persecution and is not harm inflicted because of membership in a particular social group.” *Id.* at 1165.
  - *Khan v. Att’y Gen.,* 691 F.3d 488, 499 (3d Cir. 2012). The court upheld the BIA’s denial of the petitioners’ claim, who had argued that they feared returning to Pakistan, in part, because of their medical conditions. The court held, “The lack of access to mental health treatment alone, however, does not create a well-founded fear of persecution.” *Id.* at 499 (citing *Ixtlilco-Morales v. Keisler,* 507 F.3d 651 (8th Cir. 2007)).
  - *Raffington v. INS,* 340 F.3d 720, 723 (8th Cir. 2003). The court held that “mentally ill Jamaicans, or mentally ill female Jamaicans, do not qualify as a ‘particular social group’ for asylum purposes” because it is a group “too large and diverse.” *Id.* at 723. Moreover, the court found that the evidence failed to establish “that the mentally ill or mentally ill females are being or have been persecuted in Jamaica on account of this shared characteristic” and reports “that Jamaica devotes limited resources to treating those who are mentally ill do not establish a pattern of persecution on account of this disability.” *Id.*
  - *Castro–Martinez v. Holder,* 674 F.3d 1073, 1082 (9th Cir. 2011). The court upheld the BIA’s denial of the petitioner’s claim that he was persecuted because he was homosexual or because of his HIV-positive status. Additionally, the court found that the record did not support his claim of a well-founded fear of returning to Mexico because recent country reports demonstrated the Mexican’s government’s efforts at curbing discrimination and violence against homosexuals. *Id.* at 1082. The court also addressed the petitioner’s claim that he would not be unable to receive HIV treatment in Mexico because he is homosexual. The court concluded that he did not establish a well-founded fear of persecution on account of this status because a “lack of access to HIV drugs is a problem suffered not only by homosexuals but by the Mexican population as a whole.” *Id.*
  - *Ixtlilco–Morales v. Keisler,* 507 F.3d 651, 655–56 (8th Cir. 2007). The court concluded there was substantial evidence to uphold the BIA’s denial of the petitioner’s claim that the “inadequacies in health care for HIV-positive individuals in Mexico was an attempt to persecute those with HIV.” *Id.* at 655-56.
• **Convention Against Torture (CAT) protection:**
  
  o *Pierre v. Att’y Gen.*, 528 F.3d 180, 188-89 (3d Cir. 2008). The court held that pain and suffering that alien was likely to experience in Haitian prison due to lack of medical care for his esophagus injury would not be due to specific intent to torture, and he thus was not eligible for relief under CAT, where his imprisonment would be due to Haiti’s “blanket policy of imprisoning ex-convicts who were deported to Haiti in order to reduce crime,” and lack of medical care would be unintended consequence of poor conditions resulting from Haiti’s extreme poverty. *Id.* at 188-89. “Rather, the conditions prevalent in the Haitian prison are due to ‘Haiti’s economic and social ills.’” *Id.* at 191 (citing *Auguste v. Ridge*, 395 F.3d 123, 153 (3d Cir. 2005)).

  o *Villegas v. Mukasey*, 523 F.3d 984 (9th Cir. 2008). The court held that the petitioner, who was bipolar and claimed he would be unable to afford medications in Mexico and thus would likely be confined to the poor conditions of the Mexican mental health system if removed, failed to establish CAT eligibility. The court explained the conditions of the mental health system existed not out of deliberate intent to inflict harm, but “because of officials’ historical gross negligence and misunderstanding of nature of psychiatric illness.” *Id.* 989.

  o See Gloria Moscoso Caba, A36 690 219 (BIA January 7, 2008) (unpublished). The BIA upheld the IJ’s finding that the applicant did not warrant protection under CAT, as she claimed that because of her mental illness and drug dependency, she will likely be unable to procure medication or other forms of treatment in the Dominican Republic. The BIA held that the indifference of Dominican officials, or their inability to procure her medications, for her mental illness and drug dependency was insufficient for a grant of protection pursuant to CAT.

  o *Joseph v. Att’y Gen.*, 392 F. App’x 934, 937-38 (3d Cir. 2010). The court held that basic conditions of detention of mentally ill detainees in Haiti, although deplorable, did not amount to torture for purposes of CAT relief because such conditions resulted from gross negligence and misunderstanding of nature of psychiatric illnesses, and not because of the requisite specific intent to torture on part of Haitian authorities. *Id.* at 937-38.