

last Updated March 4, 2008					
Board Precedents and Related Court Decisions					
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Court Decisions Relating to Board Precedents		
Board Cite	Board Holding	Court Response
J- , 2 I&N Dec. 285 (1945)	for deportability based on admitting acts which constitute the essential elements of a crime, conduct must be a crime, alien must be advised in clear manner of the essential elements, alien must admit the conduct, and admission must be voluntary	<i>Pazcoguin v. Radcliffe</i> , 292 F.3d 1209 (9 th Cir. 2002) - cited with approval
M- , 3 I&N Dec. 850 (1950)	"Legal custody" can include "actual uncontested custody"	<i>Bagot v. Ashcroft</i> , 398 F.3d 252 (3d Cir. 2005) - adopts rationale
B- , 5 I&N Dec. 698 (1954)	Proxy marriage not recognized even where parties have lived together if marriage not consummated after the proxy marriage	<i>Moussa v. INS</i> , 302 F.3d 823(8 th Cir. 2002) - cited with approval
K- , 7 I&N Dec. 594 (1957)	for deportability based on admitting acts which constitute the essential elements of a crime, alien must have been furnished an understandable definition of the crime and all its elements	<i>Pazcoguin v. Radcliffe</i> , 292 F.3d 1209 (9 th Cir. 2002) - cited with approval
Grazley , 14 I&N Dec. 330 (BIA 1973):	Theft offense ordinarily involves moral turpitude only where taking is permanent; permanent taking may be reasonably presumed from facts.	<i>Wala v. Mukasey</i> , 511 F. 3d 102 (2d. Cir. 2007): cites with approval
MacCaud , 14 I&N Dec. 429 (1973)	Passport is evidence of citizenship, but not conclusive evidence	<i>Palavra v. INS</i> , 287 F.3d 690 (8 th Cir. 2002) - cites with approval
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<p>Winkens, 15 I&N Dec. 451 (1975)</p>	<p>parent's abandonment of lawful permanent resident status is imputed to minor child</p>	<p><i>Cuevas-Gaspar v. Gonzales</i>, 430 F.3d 1013 (9th Cir. 2005) - cites with approval, and extends, holding that lawful admission and permanent residence can be imputed to minor child to satisfy continuous physical presence for cancellation purposes</p>
<p>Medina, 15 I&N Dec. 611 (1976)</p>	<p>A. Conviction for aggravated assault with deadly weapon is crime involving moral turpitude B. Moral turpitude can lie in criminally reckless conduct</p>	<p>A. <i>Yousefi v. INS</i>, 260 F.3d 318 (4th Cir. 2001) - agrees with, and finds assault with dangerous weapon a crime involving moral turpitude B. <i>Knapik v. Ashcroft</i>, 384 F.3d 84 (3^d Cir. 2004) - upholds, finding conviction for attempted reckless endangerment is cimt</p>
<p>Volume 16</p>		
<p>Marin, 16 I&N Dec. 581 (BIA 1978)</p>	<p>Sets out discretionary factors to be considered in 212 (c) applications.</p>	<p><i>Guled v. Mukasey</i>, —F. 3d —, 2008 WL 248745 (8th Cir. 2008): cites with approval.</p>
<p>Anderson, 16 I&N Dec. 596 (1978)</p>	<p>for extreme hardship, consider length of residence, ties to U.S., involvement in community, immigration history, etc.</p>	<p><i>Chete Juarez v. Ashcroft</i>, 376 F.3d 944 (9th Cir. 2004) - cited generally with approval</p>
<p>Patel, 16 I&N Dec. 600 (1978)</p>	<p>Board remand is effective for stated purpose and all other matters IJ deems appropriate unless Board qualifies or limits the remand</p>	<p><i>Johnson v. Ashcroft</i>, 286 F.3d 696 (3^d Cir. 2002) - agrees with and interprets to require that for remand to be limited, Board must specifically retain jurisdiction and limit remand to specific purpose</p>
<p>Da Lomba, 16 I&N Dec. 616 (1978)</p>	<p>241(f) can forgive deportability under section 241 (c), a charge grounded squarely on 212(a)(19) fraud charge</p>	<p><i>Virk v. INS</i>, 295 F.3d 1055 (9th Cir. 2002) - cites with approval</p>
<p>Kaneda, 16 I&N Dec. 677 (1979)</p>	<p>state court motive of defeating deportability is a permissible purpose for first offender statute</p>	<p><i>Sandoval v. INS</i>, 240 F.3d 577 (7th Cir. 2001) - cites with approval</p>
<p>Volume 17</p>		

<p>Kong, 17 I&N Dec. 151 (BIA 1979)</p>	<p>To file a visa petition for a sibling, petitioner and beneficiary must establish they once qualified as children of a common parent, and that parent is still parent of each of them when visa petition adjudicated.</p>	<p><i>Kosak v. Aguirre</i>, — F. 3d —, 2008 WL 597928 (3d Cir. 2008): upholds as reasonable interpretation</p>
<p>Flores, 17 I&N Dec. 225 (1980)</p>	<p>forging immigration documents is a crime involving moral turpitude</p>	<p><i>Omagah v. Ashcroft</i>, 288 F.3d 254 (5th Cir. 2002) - finds decision reasonable</p>
<p>Garcia-Flores, 17 I&N Dec. 325 (1980)</p>	<p>regulatory violation by INS results in exclusion of evidence only where reg. benefits alien and violation resulted in prejudice to alien</p>	<p><i>Martinez-Camargo v. INS</i>, 282 F.3d 487 (7th Cir. 2002)- upholds</p>
<p>Zamora, 17 I&N Dec. 395 (1980)</p>	<p>intent of parent imputed to minor child</p>	<p><i>Cuevas-Gaspar v. Gonzales</i>, 430 F.3d 1013 (9th Cir. 2005) - cites with approval, and extends, holding that lawful admission and permanent residence can be imputed to minor child to satisfy continuous physical presence for cancellation purposes</p>
<p>Boromand, 17 I&N Dec. 450 (1980)</p>	<p>absent evidence of sham marriage, cannot deny adj based solely on non-viability of marriage at time of adj. Look to intent at time of marriage</p>	<p>1. <i>Hernandez v. Ashcroft</i>, 345 F.3d 824 (9th Cir. 2003) - cites with approval 2. <i>Cho v. Gonzales</i>, 404 F.3d 96 (1st Cir. 2005) - cites generally with approval</p>
<p>Ramirez-Sanchez, 17 I&N Dec. 503 (1980)</p>	<p>When name on INS records is same as respondent's , may infer they relate to him, absent a denial by the respondent</p>	<p><i>Guerrero-Perez v. INS</i>, 242 F.3d 727 (7th Cir. 2001) - cites generally with approval</p>
<p>McMullen, 17 I&N Dec. 542 (1980)</p>	<p>if persecution is by non-government entity, alien must show more than government "difficulty" in controlling it</p>	<p><i>Menjivar v. Gonzales</i>,416 F.3d 918 (8th Cir. 2005) - cited with approval</p>
<p>McMillan, 17 I&N Dec. 605 (1981)</p>	<p>visa preference based on stepchild relationship only requires a valid marriage, without further qualification</p>	<p><i>Medina-Morales v. Ashcroft</i>, 362 F.3d 1263 (9th Cir. 2004) - cited with approval, but finds that Board did not apply the ruling in this case</p>
<p>Volume 18</p>		

<p>Frentescu, 18 I&N Dec. 244 (1982)</p>	<p>sets forth criteria for determining whether crime is "particularly serious"</p>	<p>1. <i>Yousefi v. INS</i>, 260 F.3d 318 (4th Cir. 2001) - upholds the criteria, but finds not applied in this case</p> <p>2. <i>Steinhouse v. Ashcroft</i>, 247 F. Supp.2d 201 (D. Conn. 2003) - upholds criteria, but finds Board failed to consider the important criterion of whether the alien presents a danger to the community</p> <p>3. <i>Brue v. Gonzales</i>, 464 F.3d 1227 (10th Cir. 2006) - follows.</p> <p>4. <i>Morales v. Gonzales</i>, 478 F. 3d 972 (9th Cir. 2007)-upholds the criteria, but finds not followed in this case.</p>
<p>Volume 19</p>		
<p>Fedorenko, 19 I&N Dec. 57 (1984)</p>	<p>Board's function is to review, not create, the record, and it is not required to receive new evidence on appeal</p>	<p>1. <i>Ramirez-Alejandre v. Ashcroft</i>, 320 F.3d 858 (9th Cir. 2003)(en banc) - reversing its earlier decision in this case, holds Board should have considered new evidence</p> <p>2. <i>Ordonez v. INS</i>, 345 F.3d 777 (9th Cir. 2003) - rejects</p>
<p>Wadud, 19 I&N Dec. 182 (1984)</p>	<p>212(c) waiver not available where deportation ground (241(a)(5)) has no counterpart under INA §212(a).</p>	<p><i>Caroleo v. Gonzales</i>, 476 F. 3d 158 (3^d Cir. 2007)-follows</p>

Acosta, 19 I&N
Dec. 211 (1985)

A. "Particular social group" is group sharing
common, immutable characteristic

B. Asylum applicant must show country-wide
persecution

A.1. *Lukwago v. Ashcroft*, 329 F.3d
157 (3d Cir. 2003) **cites generally
with approval**

A.2. *Ahmed v. Ashcroft*, 348 F.3d
611 (7th Cir. 2003) - **cites with
approval**

A.3. *Lin v. Ashcroft*, 356 F.3d 1027
(9th Cir. 2004) - **cites with
approval**, also noting family as
potential particular social group

A.4. *Elien v. Ashcroft*, 364 F.3d 392
(1st Cir. 2004) - **cited with
approval**

A.5. *Thomas v. Gonzales*, 409 F.3d
1177 (9th Cir.2005) - **cites with
approval** for rule that kinship ties/
family can be particular social
group

A.6. *Tapiero-de Orejuela v.
Gonzales*, 423 F.3d 666 (7th Cir.
2005) - **cites with approval**

A.7 *Niang v. Gonzales*, 422 F.3d
1187 (10th Cir. 2005) - **adopts as
reasonable construction** of term

A.8. *Escobar v. Gonzales*, 417 F.3d
363 (3d Cir. 2005) - **cites with
approval, but** finds homeless
children in Honduras do not qualify
as psg

A.9. *Gao v. Gonzales*, 440 F.3d 62
(2nd Cir. 2006) - **cites with
approval**

A.10. *Delgado v. Mukasey*, — F.
3d ----, 2007 WL 4180134 (2d Cir.
2007): **follows**

		B. <i>Manzoor v. INS</i> , 254 F.3d 342 (1 st Cir. 2001) - cautions that burden is on INS, not alien, to show no nation-wide threat, if past persecution has been shown
Valencia , 19 I&N Dec. 354 (1986)	Summary dismissal ok where no brief and only generalized statement on Notice of Appeal	<i>Vargas-Garcia v. INS</i> , 287 F.3d 882 (9 th Cir. 2002) - does not reject, but criticizes the rigid requirements, saying the appeal form does not adequately warn of possible S/D
Torres , 19 I&N Dec. 371 (1986)	A. aliens in exclusion are not eligible for suspension B. Paroled aliens are properly in exclusion, not deportation proceedings	A.1. <i>Sherifi v. INS</i> , 260 F.3d 737 (7 th Cir. 2001) - upholds A.2. <i>Simeonov v. Ashcroft</i> , 371 F.3d 532 (9 th Cir. 2004) - cited generally with approval B. <i>Assa'ad v. U.S. Attorney General</i> , 332 F.3d 1321(11 th Cir. 2006/5/03) - cited generally with approval
Mogharrabi , 19 I&N Dec. 439 (1987)	asylum applicant must show more than civil strife; states what must be shown, and states alien must show persecutor "could easily become aware" of protected beliefs , etc.	1. <i>Eduard v. Ashcroft</i> , 379 F.3d 182 (5 th Cir. 2004) - cites with approval 2. <i>Segran v. Mukasey</i> , —F. 3d ----, 2007 WL 4171217 (1 st Cir. 2007): cites
A-G- , 19 I&N Dec. 502 (1987): (Board holding)	A. Generally, reasonable punishment for evasion of military conscription in not persecution. B. Exceptions to A: (a) in rare cases, where such punishment is disproportionately severe on account of protected asylum ground; or (b) where military service requires one to engage in internationally condemned inhuman conduct. C. Salim, 18 I&N Dec. 311, distinguishable because there, refusal was to serve in foreign occupying army.	<i>Kibinda v. U.S. Att’y Gen.</i> , 477 F.3d 113 (3 rd Cir. 2007): cites with approval , but found applicant failed to satisfy criteria.

<p>Balibundi, 19 I&N Dec. 606 (1988)</p>	<p>will not consider application for relief on the merits where alien fails to appear</p>	<p><i>Kaur v. INS</i>, 237 F.3d 1098 (9th Cir. 2001) - distinguished - here, alien appeared but declined to testify without chance to review evidence</p>
<p>Lozada, 19 I&N Dec. 637 (1988), affirmed (see cite)</p>	<p>imposes several requirements for making a claim of ineffective assistance of counsel</p>	<p>1. <i>Lozada v. INS</i>,* 857 F.2d 10 (1st Cir. 1988) - affirmed</p> <p>2. <i>Castillo-Perez v. INS</i>, 212 F.3d 518 (9th Cir. 2000) - Lozada reqs. "not sacrosanct" - substantial compliance may be sufficient</p> <p>3. <i>Lara v. Trominski</i>, 216 F.3d 487 (5th Cir. 2000) - upholds requirements</p> <p>4. <i>Hernandez v. Reno</i>, 238 F.3d 50 (1st Cir. 2001) - upholds requirements</p> <p>5. <i>Saakian v. INS</i>, 252 F.3d 21(1st Cir. 2001) - agrees with 9th Cir. that reqs. may not be "arbitrarily" applied</p> <p>6. <i>Stroe v. INS</i>, 256 F.3d 498 (7th Cir. 2001) - upholds, and rejects any exceptions to <i>Lozada</i> rules - also questions whether there is constitutional right to counsel in deportation proceedings</p> <p>7. <i>Lu v. Ashcroft</i>, 259 F.3d 127 (3^d Cir. 2001) - upholds requirements, BUT failure to file bar complaint not fatal if reas. explanation</p> <p>8. <i>Rodriguez-Lariz v. INS</i>, 282 F.3d 1218 (9th Cir. 2002) - Lozada reqs. need not always be "rigidly applied."</p>

9. *Melkonian v. Ashcroft*, 320 F.3d 1061(9th Cir. 2003) - **cited with approval, including req. that prejudice be shown**

10. *Hamid v. Ashcroft*, 336 F.3d 465 (6th Cir 2003) - **upholds** requirements

11. *Lo v. Ashcroft*, 341F.3d 934 (9th Cir. 2003) - makes clear that **9th Cir. will not rigidly apply the requirements**

12. *Azanor v. Ashcroft*, 364 F.3d 1013 (9th Cir. 2004) - 9th Cir. Will require affidavit regarding atty conduct where facts are not plain on the record, and also prejudice must be shown

13. *Dakane v. U.S. Attorney General*, 371 F.3d 771(11th Cir. 2004) - **cited with approval, including req. that prejudice be shown**

14. *Lara-Torres v. Ashcroft*, 2004wl1977670 (9th Cir. 2004) - **cites generally**, and finds erroneous advice regarding change in law did not taint fairness of proceedings

15. *Mohammed v. Gonzales*,400 F.3d 785 (9th Cir. 2005) - on prejudice req, states alien only need show "plausible grounds" for relief

16. *Hernandez-Moran v. Gonzales*, 408 F.3d 496 (8th Cir. 2005) - **cites with approval** and finds alien did not comply with requirements

		<p>17. <i>Zheng v. U.S. Dept. of Justice</i>, 409 F.3d 43 (2d Cir. 2005) - cites with approval and finds alien did not comply with requirements</p> <p>18. <i>Yang v. Gonzales</i>, 478 F. 3d 133 (2d Cir. 2007)-cites with approval, but holds only substantial compliance with requirements necessary. Remands for Board to consider evidence “too important to ignore.”</p> <p>19. <i>Grigoryan v. Keisler</i>, — F. 3d ----, 2007 WL 4095601 (9th Cir. 2007): cites</p> <p>20. <i>Wang v. BIA</i>, 508 F. 3d 710, (2d Cir. 2007): follows</p> <p>21. <i>Morales Apolinar v. Mukasey</i>, —F. 3d— , 2008 WL 191658 (9th Cir. 2008): follows, finds substantial compliance.</p> <p>22. <i>Ruiz-Martinez v. Mukasey</i>, — F. 3d —, 2008 WL 383228 (2d Cir. 2008): follows</p>
<p>Vizcaino, 19 I&N Dec. 644 (1988)</p>	<p>where statute was clearly intended to be generous, it should be generously interpreted</p>	<p><i>Cuevas-Gaspar v. Gonzales</i>, 430 F.3d 1013 (9th Cir. 2005) - cites with approval</p>
<p>Fuentes, 19 I&N Dec. 658 (1988)</p>	<p>A. dangers arising from employment as policeman is not persecution</p> <p>B. with regard to particular social group and immutable characteristics, makes distinction between current and former policemen</p>	<p>A.1. <i>Estrada-Escobar v. Ashcroft</i>, 376 F.3d 1042 (10th Cir. 2004) - upholds, and finds rationale applies to terrorist activities, including those of Shining Path.</p> <p>A.2. <i>Konan v. Attorney General</i>, 432 F.3d 497 (3rd Cir. 2005) - upholds, but finds Board did not apply to case.</p> <p>B. <i>Ahmed v. Ashcroft</i>, 348 F.3d 611 (7th Cir. 2003) - does not reject,</p>

		<p>but states that distinction "may have gone too far"</p> <p><i>C. Sepulveda v. Gonzalez</i>, 464 F.3d 770, 772 (7th Cir.2006) - cites with approval.</p>
<p>Canas, 19 I&N Dec. 697 (1988)</p>	<p>discrimination based on religion in enforcing conscription laws could constitute persecution</p>	<p><i>Ilchuck v. Attorney General</i>, 434 F.3d 618 (3d Cir. 2006) - cites with approval, and finds such persecution</p>
<p>Grijalva, 19 I&N Dec. 713 (BIA 1988)</p>	<p>Hearsay is admissible in deportation proceedings unless fundamentally unfair</p>	<p><i>Velasquez-Valencia v. INS</i>, 244 F.3d 48 (1st Cir. 2001) - cited with approval</p>
<p>Huang, 19 I&N Dec. 749 (1988)</p>	<p>to qualify as returning lawful permanent resident, alien must be returning from a temporary visit abroad</p>	<p>1. <i>Moin v. Ashcroft</i>, 335 F.3d 415 (5th Cir. 2003) - cited with approval</p> <p>2. <i>Khodagholian v. Ashcroft</i>, 335 F.3d 1003 (9th Cir. 2003) - cited with approval</p>
<p>Rodriguez-Majano, 19 I&N Dec. 811 (1988)</p>	<p>Activity related to civil war is not persecution unless the harm is shown to have been inflicted to overcome a belief or characteristic</p>	<p>A.. <i>Vukmirovic v. Ashcroft</i>, 362 F.3d 1247 (9th Cir. 2004) - cited with approval</p> <p>B. While membership in an organization, even one which engages in persecution, is not sufficient to bar one from relief as a persecutor of others, if one's action or inaction furthers that persecution in some way he would be barred from relief. It is the objective effect of an alien's actions which is controlling.</p> <p>B2. <i>Castaneda-Castillo v. Gonzales</i>, --- F.3d---, 2006 WL2789159 (1st Cir., September 29, 2006) - cites with approval</p>

Volume 20		
Chen , 20 I&N Dec. 16 (1989)	Alien who has suffered past persecution may be granted asylum for humanitarian reasons even without well-founded fear of future persecution	<p>1. <i>Lal v. INS</i>, 255 F.3d 998 (9th Cir. 2001) - upholds reasoning, but finds Board did not properly apply decision in this case - finds <i>Chen</i> does not require ongoing disability</p> <p>2. <i>Lukwago v. Ashcroft</i>, 329 F.3d 157 (3d Cir. 2003) cites with approval</p> <p>3. <i>Brucaj v. Ashcroft</i>, 381F.3d 602 (7th Cir. 2004) - cites with approval</p> <p>4. <i>Hamida v. Gonzales</i>, 478 F. 3d 734 (6th Cir. 2007) - cited with approval</p>
Anselmo , 20 I&N Dec. 25 (1989)	Board must follow circuit court precedent in cases arising in the circuit	<i>Abdulai v. INS</i> , 239 F.3d 542 (3d Cir. 2001) - generally cited
Soleimani , 20 I&N Dec. 99 (1989)	<p>A. alien not firmly resettled if presence in the U.S. is a consequence of his flight in search of refuge</p> <p>B. Foreign law is a matter to be proven by the party seeking to rely upon it</p> <p>C. Finding of firm resettlement does not bar asylum, but is only factor to consider in exercising discretion</p>	<p>A. <i>Ali v. Reno</i>, 237 F.3d 591(6th Cir. 2001) - generally cited, with approval</p> <p>B. <i>Abdille v. Ashcroft</i>, 242 F.3d 477 (3d Cir. 2001) - followed (on issue of burden of proof in proving foreign law)</p> <p>C. <i>Diallo v. Ashcroft</i>, 381 F.3d 687 (7th Cir. 2004) - notes no longer good law under asylum statute</p>
Villalta , 20 I&N Dec. 142 (1990)	where family and alien were singled out due to political beliefs, well-founded fear shown	<i>Corado v. Ashcroft</i> , 384 F.3d 945 (8 th Cir. 2004) - cites with approval
Barrett , 20 I&N Dec. 171 (1990)	state drug conviction can constitute "drug trafficking crime" under 18 USC § 924(c)(2) and thus be an ag fel if it would have been punishable under federal law as a felony	<i>Gerbier v. Holmes</i> , 280 F.3d 297 (3d Cir. 2002) - accepts analysis (<i>see also Davis</i> , 20 I&N Dec. 536, below)

<p>Edwards, 20 I&N Dec. 196 (1990)</p>	<p>212(c) applicant with serious criminal history has burden of showing unusual or outstanding equities to warrant grant</p>	<p><i>U.S. v. Gonzalez-Valerio</i>, 342 F.3d 1051(9th Cir. 2003) - cited with approval</p>
<p>Medrano, 20 I&N Dec. 216 (1991)</p>	<p>motion to reconsider based on legal argument that could have been raised on appeal will be denied</p>	<p><i>Alvarez-Santos v. INS</i>, 332 F.3d 1245 (9th Cir. 2003) - cited with approval</p>
<p>Sanchez, 20 I&N Dec. 223 (1990)</p>	<p>Proceedings begin when charging document is filed with Immigration Judge</p>	<p><i>Armendariz-Montoya v. Sonchik</i>, 291 F.3d 1116 (9th Cir. 2002) - cites with approval</p>
<p>Huete, 20 I&N Dec. 250 (1991)</p>	<p>for proper service of OSC by certified mail, need return receipt signed by alien or responsible person at his address</p>	<p>1. <i>Adeyemo v. Ashcroft</i>, 383 F.3d 558 (7th Cir. 2004) - distinguishes where certified mail receipt bears illegible signature - that is not sufficient to create presumption of delivery to alien or responsible person</p> <p>2. <i>Chaidez v. Gonzales</i>, 476 F. 3d 773 (9th Cir, 2007)-distinguishes where return receipt signed by someone unknown to respondent</p>
<p>Hernandez-Casillas, 20 I&N Dec. 262 (A. G. 1991)</p>	<p>212(c) is available in deportation proceedings only where there is comparable ground of exclusion</p>	<p>1. <i>Farquharson v. Ashcroft</i>, 246 F.3d 1317 11th Cir. 2001) - upholds</p> <p>2. <i>Sena v. Gonzales</i>, 428 F.3d 50 (1st Cir. 2005) - cites with approval</p> <p>3. <i>Vo v. Gonzales</i>, 482 F. 3d 363 (5th Cir. 2007)-cites with approval</p>
<p>Patel, 20 I&N Dec. 368 (1991)</p>	<p>"Entry" requires (1) crossing into U.S., (2) inspection and admission or EWI, and (3) freedom from official restraint</p>	<p><i>Sidhu v. Ashcroft</i>, 368 F.3d 1160 (9th Cir. 2004) - adopts the definition, citing cases from other circuits that have also done so</p>

<p>Balderas, 20 I&N Dec. 389 (1991)</p>	<p>212(c) only waives finding of deportability, but crimes do not disappear from record for immigration purposes</p>	<p>1. <i>Rodriguez-Munoz v. Gonzales</i>, 419 F.3d 245 (3d Cir. 2005) - cited with approval - crime waived for 212(c) can still bar cancellation as ag fel.</p> <p>2. <i>Munoz-Yeppez v. Gonzales</i>, --- F.3d ----, 2006 WL2483209 (8th Cir. August 30, 2006) - cites with approval.</p>
<p>Cerna, 20 I&N Dec. 399 (1991)</p>	<p>motions to reopen and motions to reconsider are fundamentally different with different requirements</p>	<p>1. <i>Zhao v. U.S. Dept. of Justice</i>, 265 F.3d 83 (2d Cir. 2001) - cites with approval</p> <p>2. <i>Li v. Mukasey</i>, —F. 3d—, 2008 WL 373447 (6th Cir. 2008): cites with approval</p>
<p>D-L- & A-M-, 20 I&N Dec. 409 (1991)</p>	<p>Aliens who lived and worked for 6 years in a third country as lawful temporary residents with option to become permanent residents were firmly resettled there.</p>	<p><i>Abdille v. Ashcroft</i>, 242 F.3d 477 (3d Cir. 2001) - cites with approval</p>
<p>Coelho, 20 I&N Dec. 464 (1992)</p>	<p>A. where motion to remand really in nature of motion to reopen, it must comply with motion to reopen requirements</p> <p>B. MTR should not be granted unless new evidence could not have been discovered earlier by "due diligence"</p>	<p>A.1. <i>Wang v. Ashcroft</i>, 260 F.3d 448 (5th Cir. 2001) - upholds</p> <p>A.2. <i>Sanusi v. Gonzales</i>, 445 F.3d 193 (2nd Cir. 2006) - cites with approval</p> <p>B. <i>Krougliak v. INS</i>, 289 F.3d 457 (7th Cir. 2002) - cites with approval</p>
<p>Arthur, 20 I. & N. Dec. 475 (1992) modified, Velarde, 23 I&N Dec. 253 (BIA 2002)</p>	<p>Motions to reopen for purposes of adjusting status based upon unadjudicated visa petitions governed by INA §§204(g) and 245(e) will not be granted.</p>	<p><i>Ilic-Lee v. Mukasey</i>, — F. 3d ----, 2007 WL 4063893 (6th Cir. 2007): cites</p>
<p>A-A-, 20 I&N Dec. 492 (1992)</p>	<p>5-year imprisonment bar to 212(c) relief applies to aliens regardless of when the conviction occurs (with exception regarding crimes added to af fel definition by IMMACT 1990, if crime committed before that Act)</p>	<p><i>Toia v. Fasano</i>, 334 F.3d 917 (9th Cir. 2003) - rejects, finding 5-year bar does not apply to aliens who pleaded guilty prior to 1990 Act, and who are otherwise eligible</p>

<p>Adetiba, 20 I&N Dec. 506 (1992)</p>	<p>reaffirms its historical approach to meaning of "single scheme of criminal misconduct"</p>	<p><i>Abdelqadar v. Gonzales</i>, 413 F.3d 668 (7th Cir. 2005) - upholds</p>
<p>Beltran, 20 I&N Dec. 521 (1992)</p>	<p>conviction for solicitation to commit a controlled substance offense renders alien deportable as one convicted of drug offense</p>	<p>1. <i>Peters v. Ashcroft</i>, 383 F.3d 302 (5th Cir. 2004) - upholds as reasonable interpretation</p> <p>2. <i>Coronado-Durazo v. INS</i>, 123 F.3d 1322 (9th Cir. 1997) - distinguishes, where Az solicitation statute encompasses underlying offenses that are not drug offenses</p>
<p>Davis, 20 I&N Dec. 536 (1992); modified Yanez, 23 I&N 390 (2002)</p>	<p>A. state drug conviction can be ag fel if analogous to felony under federal law and it contains a "trafficking element"</p> <p>B. where underlying offense is a crime involving moral turpitude, conspiracy or attempt to commit such crime is cimt</p>	<p>A. <i>Gerbier v. Holmes</i>, 280 F.3d 297 (3d Cir. 2002) - accepts analysis (<i>see also Barrett</i>, 20 I&N Dec. 171, above)</p> <p>B. <i>Knapik v. Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) - agrees with, but distinguishes where crime involves recklessness, because acting recklessly is inconsistent with <i>mens rea</i> required for attempt</p>
<p>Serna, 20 I&N Dec. 579 (1992)</p>	<p>possession of altered immigration documents not a CIMT unless there is intent to use them unlawfully</p>	<p><i>Omagah v. Ashcroft</i>, 288 F.3d 254 (5th Cir. 2002) - finds decision reasonable</p>
<p>Rodriguez-Cortes, 20 I&N Dec. 587 (1992)</p>	<p>sentence enhancement provisions of the California Penal Code imposing an additional term of imprisonment where any of the principals involved possessed a firearm does not constitute a separate firearms conviction</p>	<p><i>Vo v. Gonzales</i>, 482 F. 3d 363 (5th Cir. 2007)-cites with approval, rejects argument that decision held murderers may apply for 212(c), as this was not question before BIA</p>
<p>Rainford, 20 I&N Dec. 598 (1992)</p>	<p>firearms conviction does not preclude finding of admissibility in conjunction with application for adjustment</p>	<p><i>Drax v. Reno</i>, 338 F.3d 98 (2d Cir. 2003) - Generally cited and applied</p>

<p>Montenegro, 20 I&N Dec. 603 (1992)</p>	<p>A. 212(c) waiver cannot cure 241(a)(2)(C) deportability for firearms conviction, even where conviction also falls under §212(a)(2)(A)(i)(I) as a CIMT.</p> <p>B. <i>Matter of Meza</i> is limited to question of eligibility for 212(c) by drug trafficking ag fel; does not alter general rule that deport ground must have comparable exclusion ground for 212(c) to apply.</p>	<p>A. <i>Vo v. Gonzales</i>, 482 F. 3d 363 (5th Cir. 2007)-cites with approval</p>
<p>R-, 20 I&N Dec. 621 (1992)</p>	<p>Asylum applicant must show country-wide persecution</p>	<p><i>Manzoor v. INS</i>, 254 F.3d 342 (1st Cir. 2001) - cautions that burden is on INS, not alien, to show no countrywide threat, if past persecution has been shown</p>
<p>Li, 20 I&N Dec. 700 (BIA 1993)</p>	<p>A. An adopted child may not confer immigration benefits on a natural parent.</p> <p>B. An adopted child may not confer immigration benefits on a biological sibling, as the common parent is no longer the parent of the adopted child for immigration purposes.</p>	<p><i>Kosak v. Aguirre</i>, — F. 3d —, 2008 WL 597928 (3d Cir. 2008): upholds as reasonable interpretation</p>
<p>Z-, 20 I&N Dec. 707 (1993)</p>	<p>"Entry" requires (1) crossing into U.S., (2) inspection and admission or EWI, and (3) freedom from official restraint</p>	<p>1. <i>Nyirenda v. INS</i>, 279 F.3d 620 (8th Cir. 2002) - adopts definition</p> <p>2. <i>Farquharson v. Ashcroft</i>, 246 F.3d 1317 11th Cir. 2001) - cites with approval</p>
<p>Jimenez-Lopez, 20 I&N Dec. 738 (1993)</p>	<p>Alien admitted for lawful temporary residence does not make later "entry" when he adjusts to lpr status</p>	<p>1. <i>Perez-Enriquez v. Gonzales</i>, 411 F.3d 1079 (9th Cir. 2006/14/05) - accepts reasoning, though in different context</p> <p>2. <i>Perez-Enriquez v. Gonzales</i>, --- F.3d ---, 2006 WL 2640530 (9th Cir. September 15, 2006) - upheld</p> <p>3. <i>Ruiz-Almanzar v. Ridge</i>, 485 F. 3d 193 (2d Cir. 2007)-upheld, but clarified that an applicant for adjustment remains a deportable alien until their status is actually adjusted</p>

<p>Gabryelsky, 20 I&N Dec. 750 (1993)</p>	<p>212(c) may be available in conjunction with adjustment for aliens deportable for drug and weapons offenses</p>	<p>1. <i>U.S. v. Gonzalez-Roque</i>, 165 F. Supp. 2d 577 (S.D.N.Y. 2001) - Generally cited and applied</p> <p>2. <i>Drax v. Reno</i>, 338 F.3d 98 (2d Cir. 2003)- Generally cited with approval and applied</p>
<p>Sosa-Hernandez, 20 I&N Dec. 762 (1993)</p>	<p>241(f) waives not only alien's deportability, but the underlying fraud, and alien is considered lawfully admitted for permanent residence</p>	<p><i>Virk v. INS</i>, 295 F.3d 1055 (9th Cir. 2002) - cites with approval</p>
<p>Alcantar, 20 I&N Dec. 801 (1994)</p>	<p>Conviction for involuntary manslaughter under Illinois law is "crime of violence" under 8USC §16, and thus an ag fel.</p>	<p>1. <i>Park v. INS</i>, 252 3d 1018 (9th Cir. 2001) - reaches same conclusion , in case involving California involuntary manslaughter statute (mentions <i>Alcantar</i> in fn)</p> <p>2. <i>Omar v. INS</i>, 298 F.3d 710 (8th Cir. 2002) - cites with approval in finding that criminal vehicular homicide under Minn. law is a crime of violence</p>
<p>Toboso-Alfonso, 20 I&N Dec. 819 (1990)</p>	<p>sexual orientation can form basis for asylum application</p>	<p>1. <i>Hernaes v. INS</i>, 244 F.3d 752 (9th Cir. 2001) - cited with approval</p> <p>2. <i>Amanfi v. Ashcroft</i>, 328 F.3d 719 (3d Cir. 2003) - cited with approval, but finds Board did not properly apply</p>
<p>Franklin, 20 I&N Dec. 867 (1994), aff'd (see cite)</p>	<p>A. Missouri conviction for involuntary manslaughter is CIMT - statute required gross deviation from reasonable person's standard of care</p> <p>B. Crime is CIMT if accompanied by corrupt mind or vicious motive</p>	<p>A. <i>Franklin v. INS</i>, 72 F.3d 571 (8th Cir. 1995), affirmed</p> <p>B. <i>Partyka v. Attorney General of the United States</i>, 417 F.3d 408 (3d Cir. 2005) - cited generally with approval</p>

<p>Burbano, 20 I&N Dec. 874 (1994)</p>	<p>Board may adopt or affirm Immigration Judge's decision in brief order that indicates agreement with reasoning and result</p>	<p><i>Paripovic v. Gonzales</i>, 418 F.3d 240 (3d Cir. 2005) - in footnote, states that <i>Burbano</i> orders are entitled to deference</p> <p>2. <i>Abebe v. Gonzales</i>, 432 F. 3d 1037 (9th Cir. 2005): follows, holding that where the BIA cites <i>Burbano</i> and does not express disagreement with any part of the IJ's decision, the BIA adopts the IJ's decision in its entirety.</p> <p>3. <i>Wala v. Mukasey</i>, 511 F. 3d 102 (2d. Cir. 2007): follows</p>
<p>Volume 21</p>		
<p>Esposito, 21 I&N Dec. 1 (1995)</p>	<p>A. sentence is "actually imposed" where criminal court suspends the <i>execution</i> of a sentence; but not where the <i>imposition</i> of the sentence is suspended.</p> <p>B. 212(c) will not waive deportability for a firearm offense even where the firearms offense is one of two or more crimes which may render alien inadmissible under INA §212(a)(10).</p>	<p>B. <i>Vo v. Gonzales</i>, 482 F. 3d 363 (5th Cir. 2007)-cites with approval</p>
<p>Xiu Hong Li, 21 I&N Dec. 13 (BIA 1995)</p>	<p>If INA section 101(b)(1)(E) was invoked for an immigration benefit, biological relationships will not be recognized for immigration purposes even after adoptive relationship is terminated.</p>	<p><i>Kosak v. Aguirre</i>, — F. 3d —, 2008 WL 597928 (3d Cir. 2008): upholds as reasonable interpretation</p>
<p>Grijalva, 21 I&N Dec. 27 (1995)</p>	<p>Where service of OSC is by certified mail, there is strong presumption of effective service</p>	<p>1. <i>Salta v. INS</i>, 314 F.3d 1076 (9th Cir. 2002) - distinguished, because under later statute, service of notice may be by regular mail</p> <p>2. <i>Ghounem v. Ashcroft</i>, 378 F.3d 740 (8th Cir. 2004) -distinguished, because strong presumption of delivery cannot be applied under later statute only requiring delivery by regular mail</p> <p>3. <i>Adeyemo v. Ashcroft</i>, 383 F.3d 558 (7th Cir. 2004) - distinguishes where certified mail receipt bears</p>

		<p>illegible signature - that is not sufficient to create presumption of delivery to alien or responsible person</p> <p>4. <i>Chaidez v. Gonzales</i>, 476 F. 3d 773 (9th Cir. 2007)-distinguished presumption for service of hearing notice vs. OSC; found no presumption of effective service without signature of “responsible person” for OSCs</p> <p>5. <i>Sembiring v. Gonzales</i>, 499 F. 3d 981 (9th Cir. 2007): distinguishes; applies weaker presumption service for OSC sent by regular mail (following Salta); lower burden to rebut, with “practical, commonsensical” test</p> <p>6. <i>Santana v. U.S. Att’y Gen.</i>, —F. 3d—, 2007 WL 3052783 (3rd Cir. 2007): distinguishes; adopts Salta and Sembiring holdings</p>
<p>Arreguin de Rodriguez, 21 I&N Dec. 38 (1995)</p>	<p>in exercising discretion, will not give substantial weight to arrest report, absent conviction or corroborating evidence</p>	<p><i>Billike-Tolosa v. Ashcroft</i>, 385 F.3d 708(6th Cir. 2004) - cites with approval, but finds IJ/Board did not apply it</p>
<p>B-, 21 I&N Dec. 66 (1995) (ID 3251)</p>	<p>asylum granted due to compelling circumstances despite no well-founded fear</p>	<p><i>Lal v. INS</i>, 255 F.3d 998 (9th Cir. 2001) - cited with approval, but finds Board did not properly apply decision in this case - finds grant of asylum under <i>Chen</i> does not require ongoing disability</p>
<p>D-V-, 21 I&N Dec. 77 (1993)</p>	<p>rape can constitute persecution to support asylum claim</p>	<p><i>Zubeda v. Ashcroft</i>, 333 F.3d 463 (3d Cir. 2003) - cited with approval</p>

<p>L-G-, 21 I&N Dec. 89 (1995) (ID 3254), modified Yanez, 23 I&N 390 (2002)</p>	<p>For immigration purposes, a state drug offense qualifies as a "drug trafficking crime," under 18 USC 924(c), and thus as an ag fel, only if punishable as a felony under federal drug laws.</p>	<p>1. <i>U.S. v. Hernandez-Avalos</i>, 251F.3d 505 (5th Cir. 2001) - rejects Board interpretation of § 924(c) as "plainly incorrect."</p> <p>2. <i>Gerbier v. Holmes</i>, 280 F.3d 297 (3d Cir. 2002) - accepts analysis (see also <i>Barrett</i>, 20 I&N Dec. 171, and <i>Davis</i>, 20 I&N Dec. 536, above)</p>
<p>Rivera-Claros, 21 I&N Dec. 232 (1996)</p>	<p>automatic stay that is granted when filing MTR in absentia hearing continues during appeal from denial of such motion</p>	<p><i>Kay v. Ashcroft</i>, 387 F.3d 664 (7th Circuit. 2004) - cites with approval</p>
<p>Mendez-Morales, 21 I&N Dec. 296 (1996)</p>	<p>Discusses factors to consider in adjudicating application for discretionary relief under section 212 (h)</p>	<p><i>Virk v. INS</i>, 295 F.3d 1055 (9th Cir. 2002) - cites with approval in 241 (f) case</p>
<p>Pichardo, 21 I&N Dec. 330 (1996) (ID 3275)</p>	<p>Board won't look behind record of conviction to factual circumstances of crime</p>	<p>1. <i>Sui v. INS</i>, 250 F.3d 105 (2d Cir. 2001) - cites with approval (in footnote)</p> <p>2. <i>Tokatly v. Ashcroft</i>, 371 F.3d 613 (9th Cir. 2004) - cited with approval, and followed</p> <p>3. <i>Conteh v. Gonzales</i>, 461 F.3d 45 (1st Cir., 2006) - cited with approval.</p>
<p>H-, 21 I&N Dec. 337(1996) (ID 3276)</p>	<p>A. asylum may be granted due to compelling circumstances despite no well-founded fear</p> <p>B. Membership in a clan can constitute membership in a particular social group</p>	<p>A.1. <i>Lal v. INS</i>, 255 F.3d 998 (9th Cir. 2001) - cites with approval, but finds Board did not properly apply decision in this case - finds grant of asylum under <i>Chen</i> does not require ongoing disability</p> <p>A.2. <i>Huang v. INS</i>, 436 F.3d 89 (2nd Cir. 2006) - cites with approval but finds IJ and Board did not properly apply decision in this case</p> <p>B.1. <i>Hagi-Salad v. Ashcroft</i>, 359 F.3d 1044 (8th Cir. 2004) - cites</p>

		<p>generally with approval</p> <p>B.2. <i>Mohamed v. Ashcroft</i>, 396 F.3d 999 (8th Cir. 2005) - cites generally with approval</p>
<p>Kasinga, 21 I&N Dec. 357 (1996)</p>	<p>FGM can be the basis for a persecution claim</p>	<p>1. <i>Olowo v. Ashcroft</i>, 368 F.3d 692 (7th Cir. 2004) - cites with approval, but does not extend to allow derivative asylum based on fear that her daughters (lprs) will be subject to the practice if they return with her, with court emphasizing that they do not have to return</p> <p>2. <i>Abay v. Ashcroft</i>, 368 F.3d 634 (6th Cir. 2004) - cites with approval, and asylum granted where alien fears she will not be able to protect her daughter (also in proceedings) from the practice</p> <p>3. <i>Balogun v. Ashcroft</i>, 374 F.3d 492 (7th Cir. 2004) - distinguishes, because alien came here several times before first making her FGM asylum claim</p> <p>4. <i>Mohammed v. Gonzales</i>, 400 F.3d 785 (9th Cir. 2005) - approves, and finds part. social group could be defined as Somali tribe or all Somali women. Also, presumption of well-founded fear cannot be rebutted because harm is ongoing</p> <p>5. <i>Niang v. Gonzales</i>, 422 F.3d 1187 (10th Cir. 2005) - cites with approval, but remands on question of credibility and govt ability to control</p>

<p>L-O-G-, 21 I&N Dec. 413 (1996)</p>	<p>A. Reopening may be had where new facts indicate reasonable likelihood of success on merits, so that hearing would be worthwhile</p> <p>B. Board may deny MTR where regulatory requirements not met, or no prima facie showing of eligibility for relief sought</p>	<p>A. <i>Kay v. Ashcroft</i>, 387 F.3d 664 (7th Cir. 2004) - cites with approval</p> <p>B. <i>Kay v. Ashcroft</i>, 387 F.3d 664 (7th Cir. 2004) - cites with approval</p>
<p>Grijalva-Barrera, 21 I&N 472 (1996) (ID 3284)</p>	<p>Ineffective assistance of counsel may be "exceptional circumstance" excusing failure to appear (where MTR is timely), and notes that prejudice need not be shown</p>	<p>1. <i>Saakian v. INS</i>, 252 F.3d 21(1st Cir. 2001) - cites with approval</p> <p>2. <i>Monjaraz-Munoz v. INS</i>, 327 F.3d 892 (9th Cir. 2003) cites with approval</p> <p>3. <i>Lo v. Ashcroft</i>, 341 F.3d 934 (9th Cir 2003) - cites no prejudice req. with approval</p> <p>4. <i>Aris v. Mukasey</i>, —F. 3d —, 2008 WL 441800 (2d Cir. 2008): cites with approval; finds Board failed to follow</p>
<p>S-P-, 21 I&N Dec. 486 (1996) (ID 3287)</p>	<p>A. Asylum applicant must show reasonable person would fear persecution OAO, but motivation for persecution need not be shown to a certainty.</p> <p>B. persecution for "imputed" grounds can satisfy refugee definition</p>	<p>A. <i>Velasquez-Valencia v. INS</i>, 244 F.3d 48(1st Cir. 2001) - cites with approval</p> <p>B. <i>Amanfi v. Ashcroft</i>, 328 F.3d 719 (3d Cir. 2003) - cites with approval, but finds Bd. did not properly apply rule in case involving person people believed to be homosexual</p>

Shaar, 21 I&N Dec. 541 (1996) (ID 3290), **affirmed** (see cite), aff'd, 141 F.3d 953 (9th Cir.1998).

filing MTR during VD time not an "exceptional circumstance"

1. *Shaar v. INS**, 141 F.3d 953 (9th 1998)- **affirmed**

2. *Mardones v. McElroy*, 197 F.3d 619 (2d Cir. 1999) - **cited with approval**

3. *Azarte v. Ashcroft*, 394 F.3d 1278 (9th Cir. 2005) - **rejects Shaar post-IIRIRA**, holds that where MTR is filed within voluntary departure time, voluntary departure is tolled while Board considers motion

4. *Barrios v. Attorney General*, 399 F.3d 272 (3d Cir. 2005) - **rejects**, finds MTR filed within voluntary departure time constitutes "exceptional circumstance" to forgive failure to depart, even in pre-IIRIRA case

5. *Sidikhouya v. Gonzales*, 407 F.3d 950 (8th Cir. 2005) - **rejects post-IIRIRA**, agreeing with *Azarte*, above

6. *Kanivets v. Gonzales*, 424 F.3d 330 (3d Cir. 2005) - **rejects post-IIRIRA**, agreeing with *Azarte*, above

7. *Banda-Ortiz v. Gonzales*, 445 F.3d 387 (5th Cir. 2006) - **cited with approval**, rejects *Azarte*, above.

8. *Ugokwe v. U.S. Attorney General*, 453 F.3d 1325 2006 WL 1752339 (11th Cir. 2006) - **rejects post-IIRIRA**, agreeing with *Azarte*, above

		<p>9. Dekoladenu v. Gonzales, 459 F.3d 500 (4th Cir. 2006) - upheld. Rejects Azarte.</p> <p>10. Naeem v. Gonzales, 469 F.3d 33 (1st Cir. 2006) - generally approves - questions continued vitality, but finds that motion to reopen filed outside of VD period but within 90 days does not toll voluntary departure.</p> <p>11. <i>Ilic-Lee v. Mukasey</i>, — F. 3d ----, 2007 WL 4063893 (6th Cir. 2007): cites.</p>
<p>Rivera-Claros, 21 I&N Dec. 599 (1996) (ID 3296)</p>	<p>A. MTR in absentia hearing based on ineffective assistance claim denied where <i>Lozada</i> requirements not satisfied</p> <p>B. A showing of prejudice is not required to obtain relief from an in absentia order</p>	<p>A.1. <i>Lara v. Trominski</i>, 216 F.3d 487 (5th Cir. 2000) - cited with approval</p> <p>A.2. <i>Saakian v. INS</i>, 252 F.3d 21 (1st Cir. 2001) - cites with approval, and distinguishes b/c <i>Lozada</i> satisfied on appeal to Board</p> <p>A.3. <i>Lu v. Ashcroft</i>, 259 F.3d 127 (3d Cir. 2001) - cautions that failure to file bar complaint is not always fatal to ineffective assistance claim</p> <p>B.1. <i>Lo v. Ashcroft</i>, 341 F.3d 934 (9th Cir. 2003) - cites with approval</p>

<p>X-P-T-, 21 I&N Dec. 634 (1996)</p>	<p>alien forced to have an abortion or undergo sterilization is eligible for asylum and withholding</p>	<p>1. <i>Qu v. Gonzales</i>, 399 F.3d 1195 (9th Cir. 2005) - upholds, as to both asylum and withholding</p> <p>2. <i>Li v. Gonzales</i>, 405 F.3d 171 (4th Cir. 2005) - does not cite <i>X-P-T-</i>, but does not extend refugee status to alien forced to have IUD inserted - but cautions such insertion could under some facts be persecution</p> <p>3. <i>Huang v. U.S. INS</i>, 421 F.3d 125 (2^d Cir. 2005) - does not actually cite, but finds alien did not show well-founded fear based on two children born here (first one a girl)</p> <p>4. <i>Zheng v. Gonzales</i>, 415 F.3d 995 (8th Cir. 2005) - does not actually cite, but finds Board should have considered evidence indicating children born abroad are counted like those born in China</p> <p>5. <i>Yang v. U.S. Attorney General</i>, 418 F.3d 1198 (11th Cir. 2005) - finds having forcibly inserted IUD removed could be "other resistance to family planning policies</p>
<p>S-M-J-, 21 I&N Dec. 722 (1997) (ID 3303)</p>	<p>A. even where alien is credible, may need corroborating evidence in asylum case where reasonable to expect, or provide explanation for absence of such evidence.</p> <p>B. Immigration Judge and Service have role in providing evidence in asylum cases</p>	<p>A.1. <i>Ladha v. INS</i>, 215 F.3d 889 (9th Cir. 2000) corroboration req. "disapproved" if credible testimony</p> <p>A.2. <i>Diallo v. INS</i>, 232 F.3d 279 (2^d Cir. 2000) - upholds corrob. req. (though remands on facts)</p> <p>A.3. <i>Kataria v. INS</i>, 232 F.3d 1107 (9th Cir. 2000) - reiterates its disapproval of <i>S-M-J-</i></p> <p>A.4. <i>Abdulai v. INS</i>, 239 F.3d 542 (3^d Cir. 2001) - corrob. req. is not</p>

per se invalid (but remands on facts)

A.5. *Kayembe v. Ashcroft*, 334 F.3d 231(3d Cir. 2003) - **cites with approval, upholding requirements**

A.6. *Miah v. Ashcroft*, 346 F.3d 434 (3d Cir. 2003) - **cites reqs. generally with approval**

A.7. *Dia v. Ashcroft*, 353 F.3d 228 (3d Cir. 2003) - **cites requirements for requiring corrob. with approval**

A.8. *Balogun v. Ashcroft*, 374 F.3d 492 (7th Cir. 2004) - **cites generally with approval, but** notes also Board's holding that corroboration required only as to "material facts"

A.9. *Berishaj v. Ashcroft*, 378 F.3d 314 (3d Cir. 2004) - **cites with approval, but** notes 3-part inquiry necessary for corroboration

A.10. *El-Sheikh v. Ashcroft*, 388 F.3d 643(8th Cir. 2004) - **upholds, but** emphasizes 3-part inquiry for requiring corrob.

A.11. *Gontcharova v. Ashcroft*, 384 F.3d 873 (7th Cir. 2004) - **upholds, but** notes rule depends on reasonableness of expecting evidence

A.12. *Dorosh v. Ashcroft*, 398 F.3d 379 (6th Cir. 2004) - **upholds corrob req.**

A.13. *Dawoud v. Gonzales*, 424

		<p>F.3d 608 (7th Cir. 2005) - cautions that credible asylum claim cannot be rejected solely for lac of corrob evidence</p> <p>A.14. <i>Kheireddine v. Gonzales</i>, 427 F.3d 80 (1st Cir. 2005) - cites with approval, and finds Board properly applied case</p> <p>B. <i>Mulanga v. Ashcroft</i>, 349 F.3d 123 (3d Cir. 2003) - cites with approval</p>
<p>C-A-L-, 21 I&N Dec. 754 (1997)(ID 3305)</p>	<p>need to show country-wide fear of persecution</p>	<p>1. <i>Abdille v. Ashcroft</i>, 242 F.3d 477 (3d Cir. 2001) - follows</p> <p>2. <i>Manzoor v. INS</i>, 254 F.3d 342 (1st Cir. 2001) - cautions that burden is on INS, not alien, to show no country-wide threat, if past persecution has been shown</p>
<p>T-M-B-, 21 I&N Dec. 775 (1997) (ID 3307), reversed (see cite)</p>	<p>A. criminal extortion is not persecution "on account of" political opinion where reasonable to conclude those who did the harm were not motivated by the applicant's political beliefs</p> <p>B. DOS Opinions owed considerable deference, absent contradictory evidence.</p>	<p>A. <i>Borja v. INS*</i>, 175 F.3d 732 (9th Cir. 1999) - reversed; finds motivation was in part political</p> <p>B. <i>Manzoor v. INS</i>, 254 F.3d 342 (1st Cir. 2001) - appears to reject - says DOS opinions not binding</p>
<p>V-T-S-, 21 I. & N. Dec. 792 (BIA 1997)</p>	<p>A. The seriousness of a crime (kidnapping) is not dispositive in proving persecution, which does not include all treatment which society finds unfair, unjust, unlawful or unconstitutional.</p> <p>B. There may be many reasons for a kidnapping; the asylum applicant bears the burden of establishing that one motive bears a nexus to an enumerated ground.</p>	<p><i>Delgado v. Mukasey</i>, 508 F. 3d 702 (2d Cir. 2007): cites with approval, explains and distinguishes finding Board incorrectly applied.</p>
<p>N-K- & V-S-, 21 I&N Dec. 879 (1997)</p>	<p>If <i>Lozada</i> reqs met, claim of ineffective assistance of counsel can form basis for MTR after alien ordered excluded in absentia</p>	<p><i>Osei v. INS</i>, 305 F.3d 1205 (10th Cir. 2002) - cited with approval</p>

Fuentes-Campos, 21 I&N Dec. 905 (1997) (ID 3318)

aliens in exclusion still 212(c) eligible post-AEDPA, even though those in deportation are not

1. *U.S. v. Estrada-Torres*, 179 F. 3d 776 (9th Cir. 1999) - **rejects reasoning** of *Fuentes-Campos*; "it makes no sense" to bar 212(c) in dep. proc., but not in excl. - finds the relief eliminated for both (post-AEDPA OSC and conviction)

2. *De Sousa v. Reno*, 190 F.3d 175 (3d Cir. 1999) - "**assumes, without deciding,**" **that decision is correct** because both parties agreed

3. *Turkhan v. Perryman*, 188 F.3d 814 (7th Cir. 1999) - **upholds** - no equal protection violation

4. *Jurado-Gutierrez v. Greene*, 190 F.3d 1135 (10th Cir. 1999) - **upholds** - no equal protection violation

5. *Almon v. Reno*, 192 F.3d 28 (1st Cir. 1999) - **upholds** - no equal protection violation

6. *Domond v. INS*, 244 F.3d 81 (2d Cir. 2001) - **reaches same conclusion** (no equal protection violation), but does not cite Board case.

7. *Servin-Espinoza v. Ashcroft*, 309 F.3d 1193 - **rejects reasoning**, pursuant to *U.S. v. Estrada-Torres*, 179 F. 3d 776 (9th Cir. 1999) (see above), and remands for 212(c) in limited category of cases

C-Y-Z-, 21
I&N Dec. 915
(1997) (ID 3319)

alien whose spouse was forced to undergo abortion or sterilization may qualify as refugee, and is eligible for asylum and withholding

1. *Zhao v. U.S. Dept. of Justice*, 265 F.3d 83 (2d Cir. 2001) - **accepts**, but finds precedent not properly applied here

2. *Qiu v. Ashcroft*, 329 F.3d 140 (2d Cir. 2003) - **cited generally with approval**

3. *Jie Lin v. Ashcroft*, 356 F.3d 1027 (9th Cir. 2004), amended at 377 F.3d 1014 (2004) - **cites with approval, raises question of extension to children**

4. *Ma v. Ashcroft*, 361 F.3d 553 (9th Cir. 2004) - **extends holding** to husbands whose traditional marriages are not recognized in China because underage

5. *Chen v. Ashcroft*, 381 F.3d 221 (3d Cir. 2004) - **finds it reasonable to limit Board holding to married couples** (rejecting *Ma*, above)

6. *Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. 2005) - **upholds**, as to both asylum and withholding

7. *Zhang v. Ashcroft*, 395 F.3d 531 (5th Cir. 2004) - **finds it reasonable to limit Board holding to married couples** (rejecting *Ma*, above)

8. *Zhang v. Gonzales*, 408 F.3d 1239 (9th Cir. 2005) - **finds NO presumption that child of sterilized alien qualifies** for asylum (*see Jie Lin*, above), but based on facts, child could qualify.

9. *Wang v. Gonzales*, 405 F.3d 134

		<p>(3d Cir. 2005) - finds it reasonable to not extend holding to children of sterilized alien</p> <p>10. <i>Huang v. U.S. INS</i>, 421 F.3d 125 (2d Cir 2005) - does not actually cite, but finds alien did not show well-founded fear based on two children born here (first one a girl)</p> <p>11. <i>Zheng v. Gonzales</i>, 415 F.3d 995 (8th Cir. 2005) - does not actually cite, but finds Board should have considered evidence indicating children born abroad are counted like those born in China</p> <p>12. <i>Yuan v. U.S. Department of Justice</i>, 416 F.3d 192 (2d Cir. 207/26/05) - declines to extend to parents of person subjected to coercive birth control</p> <p>13. <i>Zhang v. Gonzales</i>, 434 F.3d 993 (7th Cir. 1/19/06) - extends holding to husbands whose marriages are not recognized in China</p> <p>14. <i>Zhu v. Gonzales</i>, ---F.3d ---- (7th Cir. September 29, 2006) - cites with approval. Does not extended refugee definition to unmarried partners.</p>
<p>Gonzales-Camarillo, 21 I&N Dec. 937 (1997)</p>	<p>alien deportable per INA §§ 241(a)(2)(A)(iii) and (B)(i) (post AEDPA) not eligible for 212(c) waiver whether requested alone or in conjunction with adjustment application</p>	<p><i>Ruiz-Almanzar v. Ridge</i>, 485 F. 3d 193 (2d Cir. 2007)- upholds</p>

<p>J-J-, 21 I&N Dec. 976 (1997) (ID 3323)</p>	<p>A. Board will reopen sua sponte despite filing defects in motion only where there is an exceptional situation, not to cure filing defects or circumvent motions restrictions</p> <p>B. Appeal or motion is deemed filed when received by the Board</p>	<p>A. 1. <i>Socop-Gonzalez v. INS</i>, 272 F.3d 1176 (9th Cir. 2001) (en banc) - cited generally with approval</p> <p>Also see on need for exceptional circumstances, <i>Wang v. Ashcroft</i>, 260 F.3d 448 (5th Cir. 2001)</p> <p>A. 2. <i>Johnson v. Ashcroft</i>, 286 F.3d 696 (3d Cir. 2002) - cites with approval</p> <p>A. 3. <i>Ekimian v. INS</i>, 303 F.3d 1153 (9th Cir. 2002) - cites with approval</p> <p>A.4. <i>Tamenut v. Mukasey</i>, —F. 3d —, 2008 WL 637617 (8th Cir. 2008): defers to Board’s discretion; finds no jurisdiction to review.</p> <p>B. <i>Smith v. Connor</i>, 250 F.3d 277 (5th Cir. 4/25/01) - upholds</p>
<p>S-A-, 21 I&N Dec. 1050 (1997)</p>	<p>Heavy traffic is not reasonable cause for failure to appear at exclusion hearing</p>	<p><i>De Jimenez v. Ashcroft</i>, 370 F.3d 783 (8th Cir. 2004) - distinguished, because alien gave detailed description of a number of factors that caused the failure to appear</p>
<p>Dillingham, 21 I&N Dec. 1001 (1997) (ID3325), reversed (see cite)</p>	<p>foreign expungement of foreign drug conviction not effective for immigration purposes, even if alien would have been eligible for first offender treatment here</p>	<p><i>Dillingham v. INS</i>,* 267 F.3d 996 (9th Cir. 2001) - reversed</p>
<p>Yewondwosen, 21 I&N Dec. 1025 (1997) (ID 3327)</p>	<p>BIA may grant MTR even if alien fails to submit application for relief in support of the motion where INS actually joins the motion: Board has authority to reopen even where there are technical deficiencies</p>	<p>1. <i>Konstantinova v. INS</i>, 195 F.3d 528 (9th Cir. 1999) - cited with approval (and goes somewhat further)</p> <p>2. <i>Iavorski v. INS</i>, 232 F.3d 124 (2d Cir. 2000) - generally cited for Board's power to reopen sua sponte</p>

<p>Collado-Munoz, 21 I&N Dec. 1061 (1998)</p>	<p><i>Fleuti</i> doctrine did not survive the passage of IIRIRA</p>	<p>1. <i>Tineo v. Ashcroft</i>, 350 F.3d 382 (3d Cir. 2003) - upholds</p> <p>2. <i>Malagon de Fuentes v. Gonzales</i>, 462 F.3d 498(5th Cir. 2006) - cites with approval</p>
<p>O-D-, 21 I&N Dec. 1079 (1998)</p>	<p>A. Presenting false ID can indicate overall lack of credibility</p> <p>B. Use of false docs by asylum seeker for entry purposes does not necessarily show lack of credibility</p>	<p>A.1. <i>Kourski v. Ashcroft</i>, 355 F.3d 1038 (7th Cir. 2004) - holds false ID can't be used against alien if he has no reason to know document is forged</p> <p>A.2. <i>Selami v. Gonzales</i>, 423 F.3d 621 (6th Cir. 9/16/05) -agrees with reasoning</p> <p>A.3. <i>Borovikova v. U.S. Department of Justice</i>, 435 F.3d 151 (2nd Cir. 2006) - cites generally with approval</p> <p>A.4. <i>Niang v. Mukasey</i>, 511 F. 3d 138 (2d Cir. 2007): distinguishes where record fails to establish that the applicant knows or has reason to suspect document is false.</p> <p>B.1. <i>Akinmade v. INS</i>, 196 F.3d 951 (9th Cir. 1999) -agrees with concept of two classifications of false documents</p> <p>B. 2.<i>Dong v. Gonzales</i> , 421 F.3d 573 (7th Cir. 2005) - cites generally with approval</p>

<p>Michel, 21 I&N Dec. 1101(1998) (ID 3335)</p>	<p>212(h) now available to ag fels only if they are non-lprs, not lprs</p>	<p>1. <i>United States v. Arrieta</i>, 224 F.3d 1076 (9th Cir. 2000) - cited generally, but appears to accept Board ruling</p> <p>2. <i>Lara-Ruiz v. INS</i>, 241 F.3d 934 (7th Cir. 2001)- finds no equal protection violation in allowing only non-lprs to get 212(h) relief</p> <p>3. <i>Moore v. Ashcroft</i>, 251 F.3d 919 (11th Cir. 2001) - does not cite <i>Michel</i>, but finds no equal protection violation</p> <p>4. <i>Lukowski v. INS</i>, 279 F.3d 644 (8th Cir. 2002) - accepts decision, finds no equal protection violation</p> <p>5. <i>Jankowski-Burczyk v. INS</i>, 291 F.3d 172 (2d Cir. 2002) - accepts decision, finds no equal protection violation</p> <p>6. <i>DeLeon-Reynoso v. Ashcroft</i>, 293 F.3d 633 (3d Cir. 2002) - accepts decision, finds no equal protection violation</p> <p>7. <i>Taniguchi v. Schultz</i>, 303 F.3d 950 (9th Cir. 8/23/02) - does not cite <i>Michel</i>, but finds no equal protection violation</p>
<p>A-S-, 21 I&N Dec. 1106 (1998)</p>	<p>Board generally defers to Immigration Judge credibility findings</p>	<p><i>Mayo v. Ashcroft</i>, 317 F.3d 867 (8th Cir. 1/27/03, amended 6/25/03) - cited generally with approval</p>

<p>Y-B-, 21 I&N Dec. 1136 (1998)</p>	<p>general, meager testimony not enough in asylum case, and the weaker the testimony, the greater the need for corroboration</p>	<p>1. <i>Mukamasoni v. Ashcroft</i>, 390 F.3d 110 (1st Cir. 2004) - distinguishes on facts</p> <p>2. <i>Mohamed v. Ashcroft</i>, 396 F.3d 999 (8th Cir. 2005) - cites generally with approval</p> <p>3. <i>Kheireddine v. Gonzales</i>, 427 F.3d 80 (1st Cir. 2005) cites generally with approval</p>
<p>A-E-M-, 21 I&N Dec. 1157 (1998) (ID 3338)</p>	<p>reasonableness of fear of persecution reduced when family remains behind without difficulty</p>	<p>1. <i>Aguilar-Solis v. INS</i>, 168 F.3d 565 (1st Cir. 1999) - generally cited for rule regarding family left behind</p> <p>2. <i>Rios v. Ashcroft</i>, 287 F.3d 895 (9th Cir. 2002) - Without citing <i>A-E-M-</i>, cautions that continuing safety of family members is a relevant factor in assessing fear, but not sufficient as basis for finding of no well-founded fear</p> <p>3. <i>Eduard v. Ashcroft</i>, 379 F.3d 182 (5th Cir. 2004) - cites with approval, and states that holding is not limited to cases where persecutor operates regionally</p>
<p>M-D-, 21 I&N Dec. 1180 (1998) (ID 3339), remanded (see cite)</p>	<p>failure to provide corroborating evid where "reasonable to expect it" means failure to meet burden of proof in asylum case</p>	<p>1. <i>Ladha v. INS</i>, 215 F.3d 889 (9th Cir. 2000) - corroboration req. "disapproved" if credible testimony</p> <p>2. <i>Diallo v. INS*</i>, 232 F.3d 279 (2^d Cir. 2000) - upholds corrob. req (though remands on facts)</p> <p>3. <i>Miah v. Ashcroft</i>, 346 F.3d 434 (3^d Cir. 2003) -cites generally with approval</p> <p>4. <i>Dorosh v. Ashcroft</i>, 398 F.3d 379</p>

		(6 th Cir. 2004) - cites generally with approval
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<p>Magallanes-Garcia, 22 I&N Dec. 1 (ID 3341) (1998); overruled Ramos, 23 I&N 336 (2002)</p>	<p>conviction under Az. law for aggravated driving while under the influence is conviction of a "crime of violence," and thus an ag fel</p>	<p>1. <i>Tapia-Garcia v. INS</i>, 237 F.3d 1216 (10th Cir. 2001) - generally cited, with approval</p> <p>2. <i>U.S. v. Chapa-Garza</i>, 243 F.3d 92, reh. en banc denied (with dissent), 262 F.3d 479 (5th Cir. 2001) - without citing <i>Magallanes</i>, calls reasoning into question</p> <p>3. <i>Bazan-Reyes v. INS</i>, 256 F.3d 600 (7th Cir. 2001) - rejects definition of crime of violence</p> <p>4. <i>Dalton v. Ashcroft</i>, 257 F.3d 200 (2d Cir. 2001) - rejects definition of crime of violence</p> <p>5. <i>U.S. v. Trinidad-Aquino</i>, 259 F.3d 1140 (9th Cir. 2001) - in sentence enhancement case, finds DUI with injury to another not a crime of violence (does not actually cite <i>Magallanes-Garcia</i>)</p> <p>6. <i>Francis v. Reno</i>, 269 F.3d 162 (3d Cir. 2001) - distinguished, because conviction here (under Pa. law) did <u>not</u> involve DUI</p>
<p>O-Z- & I-Z-, 22 I&N Dec. 23 (1998)</p>	<p>Board finds harassment of Jews on account of religion rose to the level of persecution - looked to cumulative effect of incidents</p>	<p>1. <i>Abdille v. Ashcroft</i>, 242 F.3d 477 (3d Cir. 2001) - distinguished on facts</p> <p>2. <i>Voci v. Gonzales</i>, 409 F.3d 607 (3d Cir. 2005) - cites with approval and relies on</p>

<p>J-P-, 22 I&N Dec. 33 (ID 3348) (1998)</p>	<p>headache not exceptional circumstance excusing failure to appear where no medical or other evidence to support claim</p>	<p>1. <i>Singh v. INS</i>, 213 F.3d 1050 (9th Cir. 2000) - upholds generally (but see <i>B-A-S-</i> case, below)</p> <p>2. <i>Celis-Castellano v. Ashcroft</i>, 298 F.3d 888 (9th Cir. 2002) - cites generally - finds asthma attack 4 days before hearing did not excuse failure to appear</p>
<p>B-A-S-, 22 I&N Dec. 57 (ID 3350) (1998)</p>	<p>sore foot not exceptional circumstance where alien did not submit affidavit from doctor or employer, or contact court immediately</p>	<p>1. Singh v. INS*, 213 F.3d 1050 (9th Cir. 2000) - remands this precedent decision, finding Board imposed new requirements without notice</p> <p>2. <i>Celis-Castellano v. Ashcroft</i>, 298 F.3d 888 (9th Cir. 2002) - cites generally, noting that here, no notice problems as in <i>Singh</i> (above) - asthma attack 4 days before hearing did not excuse failure to appear</p>
<p>X-G-W-, 22 I&N Dec. 71 (1998)(ID 3352), superseded, G-C-L- 23 I&N 359 (2002)</p>	<p>Board reopens despite time and number restrictions where fundamental change in law (China population case)</p>	<p>1. <i>Lucacela v. Reno</i>, 161 F.3d 1055 (7th Cir. 1998) - generally cited for rule that Board can reopen <i>sua sponte</i> to serve interests of justice</p> <p>2. <i>Ekimian v. INS</i>, 303 F.3d 1153 (9th Cir. 2002) - generally cited for rule that Board can reopen <i>sua sponte</i> to serve interests of justice</p>
<p>Mancera-Monroy, 22 I&N Dec. 79 (1998)</p>	<p>No time limit on MTR in absentia hearing where lack of notice of hearing is shown</p>	<p><i>Andia v. Ashcroft</i>, 359 F.3d 1181 (9th Cir. 2004) - cited with approval</p>

<p>Lei, 22 I&N Dec. 113 (1998) (ID 3356)</p>	<p>Claim of ineffective assistance of counsel does not constitute an exception to 180 limit for filing MTR in an in absentia case</p>	<p>1. <i>Behar v. Ashcroft</i>, 324 F.3d 127 (3d Cir. 2003) - upholds Board ruling</p> <p>2. <i>Lopez v. INS</i>, 184 F.3d 1097 (9th Cir. 1999) -without citing <i>Lei</i>, holds ineff. assistance of counsel can toll time limits for in absentia MTR</p> <p>3. <i>Iavorski v. INS</i>, 232 F.3d 124 (2d Cir. 2000) - without citing <i>Lei</i>, holds ineff. assistance of counsel can toll time limits for in absentia MTR</p> <p>4. <i>Riley v. INS</i>, 310 F.3d 1253 (10th Cir. 2002) - without citing <i>Lei</i>, holds ineff. assistance of counsel can toll time limits for in absentia MTR</p> <p>5. <i>Borges v. Gonzales</i>, 402 F.3d 398 (3d Cir. 2005) - holds ineff. assistance of counsel can toll time limits for in absentia MTR - distinguishes <i>Bejar</i>, above, saying only that time limit can be <u>tolled</u>, not that ineffective assistance is an <u>exception</u> to time limit</p>
<p>Punu,22 I&N Dec. 224 (ID 3364) (1998)</p>	<p>A. After IIRIRA, the third "finality" prong of <i>Ozkok</i> for determining if conviction exists, no longer exists</p> <p>B. Deferred adjudication of guilt under Texas law where probation is imposed is a conviction for immigration purposes</p>	<p>A. <i>Moosa v. INS</i>, 171 F.3d 994 (5th Cir. 1999) - upholds Board</p> <p>B. <i>Griffiths v. INS</i>, 243 F.3d 45 (1st Cir. 2001) - Board's holding a "permissible construction" of statute. "Guilty-filed" disposition under Mass. law can be a conviction for immigration purposes - but case remanded on facts.</p>

<p>G-N-C-, 22 I&N Dec. 281 (ID 3366) (1998)</p>	<p>A. Decision by INS to institute proceedings is not subject to review by Immigration Judge or Board.</p> <p>B. Without discussion, applies IIRIRA's reinstatement of removal provisions § 241(a)(5) to alien who reentered prior to IIRIRA's effective date.</p>	<p>A. <i>Cortez-Felipe v. INS</i>, 245 F.3d 1054 (9th Cir. 2001) - cites with approval</p> <p>B. 1. <i>Castro-Cortez, et al. v. Reno</i>, 239 F.3d 1037(9th Cir. 2001) - rejects application of the statute to such aliens</p> <p>B. 2. <i>Velasquez-Gabriel v. Crocetti</i>, 263 F.3d 102 (4th Cir. 2001)- finds 241(a)(5) does apply to aliens who reenter prior to statute's effective date (does not cite <i>G-N-C-</i>)</p> <p>B. 3. <i>Bejjani v. INS</i>, 271 F.3d 670 (6th Cir. 2001) - rejects application of statute to such aliens (cites <i>G-N-C-</i> in footnote, noting Board did not address issue)</p>
<p>B-B-, 22 I&N Dec. 309 (ID 3367) (1998)</p>	<p>No ineffective assistance of counsel where counsel made tactical decision, and no egregious conduct</p>	<p><i>Saakian v. INS</i>, 252 F.3d 21(1st Cir. 2001) - cites with approval, and distinguishes</p>
<p>N-M-A-, 22 I&N Dec. 312 (ID 3368) (1998)</p>	<p>A. asylum may be granted due to compelling circumstances despite no well-founded fear (though no compelling circumstances here)</p> <p>B. Asylum applicant has burden to show new source of persecution if no longer well-founded fear from original source</p>	<p>A.1. <i>Lal v. INS</i>, 255 F.3d 998 (9th Cir. 2001) - cites with approval, but finds Board did not properly apply decision in this case - finds grant of asylum under <i>Chen</i> does not require ongoing disability</p> <p>A. 2. <i>Brucaj v. Ashcroft</i>, 381 F.3d 602 (7th Cir. 2004) - cites with approval, but finds that decision did <u>not</u> set forth specific types of evidence necessary for humanitarian asylum claims</p> <p>B.1. <i>Hasalla v. Ashcroft</i>, 367 F.3d 799 (8th Cir. 2004) - cited with approval</p> <p>B.2. <i>Abrha v. Gonzales</i>, 433 F.3d</p>

		1072 (8 th Cir. 2006) - cited with approval
<p>M-S-, 22 I&N Dec. 349 (ID 3369) (1998)</p>	<p>A. requirements for rescission of in absentia order not applicable to MTR that does not seek rescission</p> <p>B. cannot deny discretionary relief without receiving oral notice of consequences of failure to appear</p>	<p>A.1. <i>Lopez v. INS</i>, 184 F.3d 1097 (9th Cir. 1999) - cited with approval in footnote</p> <p>A.2. <i>Wu v. INS</i>, 436 F.3d 157 (2nd Cir. 2006) - cited with approval and applies to relief available due to change in law</p> <p>B. <i>Ordonez v. INS</i>, 345 F.3d 777 (9th Cir. 2003) - cited with approval</p>
<p>Lettman, 22 I&N Dec. 365 (ID 3370) (1998), affirmed (see cite)</p>	<p>alien convicted of ag fel subject to deportation regardless of date of conviction if placed in deportation proceedings on or after 3/1/91, and crime is within ag fel definition</p>	<p>1. <i>Lettman v. INS*</i>, 207 F.3d 1368 (11th Cir. 2000) - affirmed</p> <p>2. <i>Lewis v. INS</i>, 194 F.3d 539 (4th Cir. 1999) - upholds</p> <p>3. <i>Bell v. Reno</i>, 218 F.3d 86 (2^d Cir. 2000) - rejects Board and 11th and 4th Circuits' legal analysis, but agrees with conclusion that alien is deportable as ag fel</p>
<p>Palacios, 22 I&N Dec. 434 (1998)</p>	<p>Alaska conviction for arson un first degree is crime of violence</p>	<p><i>Tran v. Gonzales</i>, 414 F.3d 464 (3^d Cir. 2005) - rejects, following <i>Leocal v. Ashcroft</i>, 125 S.Ct. 377 (2004), and also distinguishes because Alaska statute had intent requirement and Pa. statute here does not.</p>
<p>S-S-, 22 I&N Dec. 458 (ID 3374) (1999); strongly criticized Y-L-, A-G-, R-S-R-, 23 I&N 270 (AG2002)</p>	<p>determination whether an alien convicted of an ag fel is barred from withholding due to PSC (where sentenced to less than 5 years) requires individual examination of the offense</p>	<p><i>Chong v. INS</i>, 264 F.3d 378 (3^d Cir. 2001) - cited with approval, and notes actual individual <u>hearing</u> on issue of PSC <u>not</u> required</p>

<p>Ruiz-Romero, 22 I&N Dec. 486 (ID 3376) (1999), affirmed (see cite)</p>	<p>alien convicted of transporting illegal aliens within the U.S. subject to deportation as ag fel</p>	<p>Ruiz-Romero v. Reno*, 205 F.3d 837 (5th Cir. 2000) - affirmed</p>
<p>Roldan, 22 I&N Dec. 512 (ID 3377) (1999), reversed in part (see cite)</p>	<p>no effect to be given in immigration proceedings to expungements, etc.</p>	<p>1. Lujan-Armendariz v. INS and Roldan-Santoyo v. INS*, 222 F.3d 728 (9th 2000) - reversed, but only insofar as Board decision relates to Federal First Offenders Act or state counterparts</p> <p>2. Herrera-Inirio v. INS, 208 F.3d (1st Cir. 2000) - upholds</p> <p>3. Sandoval v. INS, 240 F.3d 577 (7th Cir. 2001) - distinguishes because sentence modification here, not expungement (and notes <i>Roldan</i> has been "called into question")</p> <p>4. Murillo-Espinoza v. INS, 261F.3d 771(9th Cir. 2001) - upholds as "plausible" construction the Board's holding that state rehabilitative expungements will not be given effect (but see #1 above, for exception)</p> <p>5. Vasquez-Velezmoro v. INS, 281 F.3d 693 (8th Cir. 2002) - upholds, and specifically declines to adopt reasoning of <i>Lujan-Armendariz</i></p> <p>6. Gill v. Ashcroft, 335 F.3d 574 (7th Cir. 2003) - upholds, and specifically rejects <i>Lujan-Armendariz</i> (see #1 above)</p> <p>7. Resendiz-Alcaarez v. U.S. Attorney General, 383 F.3d 1262 (11th Cir. 2004) - upholds</p>

		8. <i>Cruz-Garza v. Ashcroft</i> , 396 F.3d 1125 (10 th Cir. 2005) - upholds rationale , but finds conviction here was not a felony
Onyido , 22 I&N Dec. 552 (ID 3379) (1999)	"Attempt," as used in section 101(a)(43)(U) of the Act is not limited to crimes formally called "attempts." Intent to defraud plus "substantial step" to commit fraud may be sufficient for attempt under (U).	<i>Sui v. INS</i> , 250 F.3d 105 (2d Cir. 2001) - accepts legal holding , but finds no substantial step here (i.e. distinguishes on facts)
Cervantes-Gonzales , 22 I&N Dec. 560 (ID 3380) (1999), affirmed (see cite)	IIRIRA amendment to 212(i), adding hardship requirement, applies to cases pending when IIRIRA was enacted	<i>Cervantes-Gonzales v. INS</i>,* 244 F.3d 1001 (9th Cir. 2000) - affirmed
Rosas-Ramirez , 22 I&N Dec. 616 (1999)	alien convicted of ag fel after adjustment of status is deportable as alien convicted of ag fel "after admission"	1. <i>Shivaraman v. Ashcroft</i> , 360 F.3d 1142 (9 th Cir. 2004) - distinguishes , finding that alien admitted as lawful nonimmigrant who later adjusts should not have the later adjustment date used as his "admission" date in determining if crime involving moral turpitude was within 5 years of admission 2. <i>Abdelqadar v. Gonzales</i> , 413 F.3d 668 (7 th Cir. 2005) - rejects Board reasoning 3. <i>Martinez v. Mukasey</i> , —F. 3d—, 2008 WL 642565 (5 th Cir. 2008): rejects Board reasoning

Nolasco, 22
I&N Dec. 632
(ID 3385) (1999)

No continuous physical presence for suspension if
OSC is served less than 7 years after entry

1. *Appiah v. INS*, 202 F.3d 704 (4th Cir. 2000) - **upholds** (finds stop-time rule constitutional)
2. *Gonzalez-Torres*, 213 F.3d 899 (5th Cir. 2000) - **upholds** (stop-time rule constitutional)
3. *Rivera-Jimenez v. INS*, 214 F.3d 1213 (10th Cir. 2000) - **upholds** *Nolasco*, but remands on facts re: brief, casual and innocent departure
4. *Afolayan v. INS*, 219 F.3d 784 (8th Cir. 2000) - **upholds**
5. *Ayoub v. INS*, 222 F.3d 214 (5th Cir. 2000) - **upholds** (characterizes *Gonzalez-Torres*, above, as dicta)
6. *Angel-Ramos v. INS*, 227 F.3d 942 (7th Cir. 2000) - **upholds**
7. *Ashki v. INS*, 233 F.3d 913 (6th Cir. 2000) - **upholds**
8. *Rojas-Reyes v. INS*, 235 F.3d 115 (2^d Cir. 2000) - **upholds**
9. *Bartoszewska-Zajac v. INS*, 237 F.3d 710 (6th Cir. 2001) - **upholds**, and rejects equal protection arguments
10. *Ram v. INS*, 243 F.3d 510 (9th Cir. 2001) - **upholds**
11. *Guadalupe-Cruz v. INS*, 240 F.3d 1209 (9th Cir. 2001) - **distinguished**, because Immigration Judge incorrectly applied stop-time law before its effective date

		<p>12. <i>Sad v. INS</i>, 246 F.3d 811(6th Cir. 2001) - upholds, and also rejects retroactivity and equal protection arguments</p> <p>13, <i>Pinho v. INS</i>, 249 F.3d 183 (3d Cir. 2001) - upholds</p> <p>14. <i>See also Tefel v. Reno</i>, 180 F.3d 1286 (11th Cir. 1999) - without citing <i>Nolasco</i>, finds stop-time rule constitutional</p>
<p>L-S-, 22 I&N Dec. 645 (ID 3386) (1999)</p>	<p>determination whether an alien convicted of an ag fel is barred from withholding due to PSC (where sentenced to less than 5 years) requires individual examination of the offense</p>	<p>1. <i>Chong v. INS</i>, 264 F.3d 378 (3d Cir. 2001) - cited with approval, and notes actual individual <u>hearing</u> on issue of PSC <u>not</u> required</p> <p>2. <i>Bosede v. Ashcroft</i>, 309 F.3d 441 (7th Cir. 2002) - cited generally with approval</p> <p>3. <i>Morales v. Gonzales</i>, 478 F. 3d 972 (9th Cir. 2007)-upholds the criteria, but finds not followed in this case</p>
<p>Perez, 22 I&N Dec. 689 (ID 3389) (1999)</p>	<p>continuous physical presence for cancellation of removal ends on date offense is committed</p>	<p>1. <i>Henry v. Ashcroft</i>, 175 F.Supp. 2d 688 (S.D.N.Y 2001) - rejects, holding application of new IIRIRA provision to offense committed pre-IIRIRA has improper retroactive effect</p> <p>2. <i>Sinotes-Cruz v. Gonzales</i>, 468 F.3d 1190 (9th Cir. 2006) - rejects.</p> <p>3. <i>Reid v. Gonzales</i>, 478 F. 3d 510 (2d Cir 2007) -follows</p>

<p>Sweetser, 22 I&N Dec. 709 (BIA 1999)</p>	<p>where statute includes some offenses that are ag fels and some that are not, it is necessary to look at the record of conviction</p>	<p>1. <i>Jaggernaut v. U.S. Attorney General</i>, 432 F.3d 1346 (11th Cir. 2005) - cited with approval</p> <p>2. <i>Larin-Ulloa v. Gonzales</i>, 462 F.3d 456 (5th Cir. 2006) - cites with approval.</p>
<p>Alvarado-Alvino, 22 I&N Dec. 718 (ID 3391) (1999)</p>	<p>Ag fel under 101(a)(43)(N) includes only convictions under 8 U.S.C. § 1324(a), not § 1325(a)</p>	<p><i>Rivera-Sanchez v. Reno</i>, 198 F.3d 545 (5th Cir. 1999) - upheld</p>
<p>H-A-, 22 I&N Dec. 728 (ID 3394) (1999); modified Velarde, 23 I&N 253 (2002)</p>	<p><i>Arthur</i>, 20 I&N Dec. 475 (1992), requiring approved visa petition prior to reopening for adjustment, survives regulations imposing MTR time limits (but Arthur modified by Velarde, 23 I&N 253 (2002))</p>	<p><i>Balwinder Singh v. Quarantillo</i>, 92 F.Supp. 2d 386 (D.N.J. 2000) - rejects Board majority and adopts dissent rationale</p>
<p>Ponce-Hernandez, 22 I&N Dec. 784 (ID 3397) (1999)</p>	<p>Form I-213 is an inherently trustworthy, admissible document</p>	<p><i>Guerrero-Perez v. INS</i>, 242 F.3d 727 (7th Cir. 2001) - cites generally with approval</p>
<p>R-S-J-, 22 I&N Dec. 863 (1999)</p>	<p>false statements to asylum officer can constitute false testimony for purposes of 101(f)(6)</p>	<p>1. <i>Ramos v. INS</i>, 246 F.3d 1264 (9th Cir. 2001) (8th Cir. 7/16/04) - cites with approval</p> <p>2. <i>Medina v. Gonzales</i>, 404 F.3d 628 (2d Cir. 2005) - upholds</p>
<p>Ajami, 22 I&N Dec. 949 (1999)</p>	<p>gives general crime involving moral turpitude defin as conduct that is vile, base, depraved, etc.</p>	<p>1. <i>Chanmouny v. Ashcroft</i>, 376 F.3d 810 (8th Cir. 2004) - defin. cited generally with approval</p> <p>2. <i>Obasohan v. U. S. Att’y Gen.</i>, 479 F. 3d 785 (11th Cir. 2007)- cited with approval, but finds not followed where IJ relied on PSI and not actual conviction to determine ag fel</p>

<p>L-V-K-,22 I&N Dec. 976 (I&N DEC. 3409 (1999), vacated (see cite)</p>	<p>A. motion to remand filed while appeal of denial of MTR proceedings that are administratively final is pending is untimely if filed more than 90 days after the final order</p> <p>B. In absentia order becomes final when alien waives appeal or appeal time expires</p>	<p>A.1. Konstantinova v. INS* (9th Cir. 4/3/00) - in unpublished order, without explanation, Board's precedent was vacated. Earlier, published decision, at 195 F.3d 528 (9th Cir. 1999), did not deal with Board's precedent decision</p> <p>A.2. Wang v. Ashcroft, 260 F.3d 448 (5th Cir. 2001) - upholds and applies to case</p> <p>A.3. Krougliak v. INS, 289 F.3d 457 (7th Cir. 2002) - upholds</p> <p>B. Kay v. Ashcroft, 387 F.3d 664 (7th Circuit. 2004) - cites with approval</p>
<p>Rodriguez-Rodriguez, 22 I&N Dec. 991 (1999)</p>	<p>crime of indecency with a child by exposure under section 21.11(a)(2) of Texas law is sexual abuse of a minor and thus an ag fel</p>	<p>1. U.S. v. Zavala-Sustaita, 214 F.3d 601(5th Cir. 2000) - upheld</p> <p>2. Guerrero-Perez v. INS, 242 F.3d 727(7th Cir. 2001) - upholds (conviction was for "criminal sexual abuse" under Illinois law)</p> <p>3. Emile v. INS, 244 F.3d 183 (1st Cir. 2001) - cites with approval (conviction was for indecent assault and battery on a child under 14 under Mass. law)</p> <p>4. Lara-Ruiz v. INS, 241 F.3d 934 (7th Cir. 2001) - cites with approval</p> <p>5. Bahar v. Ashcroft, 264 F.3d 1309 (11th Cir. 2001) - Cites with approval (conviction in N.C. for crime of taking indecent liberties with a minor)</p> <p>6. Gattem v. Gonzales, 412 F.3d</p>

		<p>758 (7th Cir. 2005) - cites with approval (Ill conviction for soliciting a minor)</p> <p>7. <i>Loeza-Dominguez v. Gonzales</i>, 428 F.3d 1156 (8th Cir. 2005) - cites with approval Board's "broad construction" of term "child abuse"</p>
H-N- , 22 I&N Dec. 1039 (1999)	IJs and the BIA have jurisdiction to adjudicate INA §209(c) waivers following initial denial by INS	<i>Perez-Vargas v. Gonzales</i> , 478 F.3d 191 (4 th Cir. 2007): cited with approval
Puente , 22 I&N Dec. 1006 (ID 3412) (1999); overruled Ramos , 23 I&N 336 (2002)	conviction of driving while intoxicated under Texas law is a crime of violence and thus an ag fel	<p>1. <i>Tapia Garcia v. INS</i>, 237 F.3d 1216 (10th Cir. 2001) - upholds Board decision as reasonable</p> <p>2. <i>U.S. v. Chapa-Garza</i>, 243 F.3d 921, reh. en banc denied (with dissent), 262 F.3d 479 (5th Cir. 2001) - without citing <i>Puente</i>, rejects holding</p> <p>3. <i>Bazan-Reyes v. INS</i>, 256 F.3d 600 (7th Cir. 2001) - rejects</p> <p>4. <i>Dalton v. Ashcroft</i>, 257 F.3d 200 (2^d Cir. 2001) - rejects definition of crime of violence</p> <p>5. <i>U.S. v Trinidad-Aquino</i>, 259 F.3d 1140 (9th Cir. 2001) - in sentence enhancement case, finds DUI with injury to another not a crime of violence (does not actually cite <i>Puente</i>)</p>
K-V-D- , 22 I&N Dec. 1163 (ID 3422) (1999), overruled, Yanez , 23 I&N 390 (2002)	court interpretation of "ag fel" for sentence enhancement purposes does not control interpretation for immigration purposes	<i>U.S. v. Hernandez-Avalos</i> , 251 F.3d 505 (5 th Cir. 2001) - rejects holding

<p>Lopez-Meza, 22 I&N Dec. 1188 (1999)</p>	<p>A. Arizona offense of aggravated DUI is a CIMT where the person knew he was prohibited from driving</p> <p>B. Simple DUI, without more, is not CIMT</p>	<p>A. <i>Hernandez-Martinez v. Ashcroft</i>, 329 F.3d 1117 (9th Cir. 2003) - rejects, finding statute is divisible and not all conduct covered by the statute is a</p> <p>CIMT</p> <p>B. <i>Knapik v. Ashcroft</i>, 384 F.3d 84 (3d Cir. 2004) - agrees with</p>
<p>Mendoza-Sandino, 22 I&N Dec. 1238 (2000)</p>	<p>alien may not accrue 7 years continuous physical presence for suspension after service of OSC</p>	<p>1. <i>Afolayan v. INS</i>, 219 F.3d 784 (8th Cir. 2000) - upholds as reasonable interpretation (<i>see also Escudero-Corona v. INS</i>, 244 F.3d 608 (8th Cir. 2001) - same result</p> <p>2. <i>McBride v. INS</i>, 238 F.3d 371 (5th Cir. 2001) - upholds as reasonable interpretation</p> <p>3. <i>Ram v. INS</i>, 243 F.3d 510 (9th Cir. 2001) - upholds</p> <p>4. <i>Najjar v. Ashcroft</i>, 257 F.3d 1262 (11th Cir. 2001) - upholds</p> <p>5. <i>Okeke v. Gonzales</i>, 407 F.3d 585 (3d Cir. 2005) - distinguishes, in case where alien departed U.S. after charging document issued and bases continuous physical presence on time after his return</p>

<p>S-V-, 22 I&N Dec. 1306 (2000)</p>	<p>For CAT relief, govt must be "willfully accepting" of the torturous activities</p>	<p>1. <i>Zheng v. Ashcroft</i>, 332 F.3d 1186 (9th Cir. 2003) - rejects, and holds that CAT's "acquiescence" requirement only requires that the govt. have "awareness" of the torture, not actual knowledge or willful acceptance of it</p> <p>2. <i>Khouzam v. Ashcroft</i>, 361 F.3d 161 (2nd Cir. 2004) - rejects reasoning, agrees with <i>Zheng</i></p> <p>3. <i>Amir v. Gonzales</i>, 467 F.3d 921 (6th Cir. 2006) - rejects reasoning</p> <p>4. <i>Silva-Rengifo v. U.S. Att'y Gen.</i>, 473 F. 3d 58 (3^d Cir. 2007)-rejects reasoning, agrees with <i>Zheng</i> and <i>Khouzam</i></p> <p>5. <i>Ilic-Lee v. Mukasey</i>, — F. 3d ----, 2007 WL 4063893 (6th Cir. 2007): cites</p>
<p>Perez, 22 I&N Dec. 1352 (ID 3432) (2000)</p>	<p>burglary of a vehicle not a "burglary offense" within section 101(a)(43)(G) ag fel definition</p>	<p>1. <i>Ye v. INS</i>, 214 F.3d 1128 (9th Cir. 2000) - decided 3 days after <i>Perez</i>, reaches same conclusion</p> <p>2. <i>Lopez-Elias v. Reno</i>, 209 F.3d 788 (5th Cir. 2000) -decided a month before <i>Perez</i>, reaches same conclusion</p>
<p>S-A-, 22 I&N Dec. 1328 (2000)</p>	<p>persecution inflicted by family member can form basis for asylum claim</p>	<p><i>Faruk v. Ashcroft</i>, 378 F.3d 940 (9th Cir. 2004) - cited with approval</p>
<p>V-Z-S-, 22 I&N Dec. 1338 (2000)</p>	<p>offense is "theft offense" under section 101(a)(43) (G) if there is intent to deprive owner of property, even if deprivation is less than total or permanent</p>	<p><i>Hernandez-Mancilla v. INS</i>, 246 F.3d 1002 (7th Cir. 2001) upholds (court dealt with Ill. crime of possession of stolen vehicle)</p> <p><i>Jaggernaut v. U.S. Attorney General</i>, 432 F.3d 1346 (11th Cir. 2005) - cited with approval but finds conviction not an ag fel</p>

<p>Devison, 22 I&N Dec. 1362 (2001)</p>	<p>NY adjudication as youthful offender is equiv. to federal juvenile delinquency determination and does not constitute conviction for immigration purposes</p>	<p><i>Uritsky v. Gonzales</i>, 399 F.3d 728 (6th Cir. 2005) - agrees with, but distinguishes, in interpreting Michigan statute</p>
<p>Rodriguez-Ruiz, 22 I&N Dec. 1378 (2000)</p>	<p>conviction that is <u>vacated</u>, not expunged, does not constitute conviction for immigration purposes</p>	<p>1. <i>Sandoval v. INS</i>, 240 F.3d 577 (7th Cir. 2001) - generally cited, with approval</p> <p>2. <i>Johnson v. Ashcroft</i>, 378 F.3d 164 (2d Cir. 2004) - generally cited, with approval</p>
<p>Bahta, 22 I&N Dec. 1381 (ID 3437) (2000)</p>	<p>conviction for attempted possession of stolen property is conviction of receipt of stolen property, and a theft offense and thus an ag fel</p>	<p>1. <i>U.S. v. Vasquez-Flores</i>, 265 F.3d 1122 (10th Cir. 2001) - generally upholds specifically adopts 7th Circuit reasoning in <i>Hernandez-Mancilla</i> (see below) - sentencing enhancement case</p> <p>2. <i>Hernandez-Mancilla v. INS</i>, 246 F.3d 1002 (7th Cir. 2001) - generally upholds, but reads "theft offense" somewhat more broadly (court dealt with Ill. crime of possession of stolen vehicle)</p>
<p>Davis, 22 I&N Dec. 1411 (2000), affirmed (see cite)</p>	<p>alien is ineligible for 212(c) if served more than 5 years in prison, even if AEDPA section 440(d) does not apply</p>	<p>1. <i>Toia v. Fasano</i>, 334 F.3d 917 (9th Cir. 2003) - rejects (without actually citing), finding 5-year bar does not apply to aliens who pleaded guilty prior to 1990 Act, and who are otherwise eligible</p> <p>2. <i>Davis v. Ashcroft</i>, 2003 WL 289624 (S.D.N.Y. 2/10/03) affirmed (but not reported in F. Supp. 2d)</p>
<p>Vasquez-Muniz, 22 I&N Dec. 1415 (ID 3440) (2000); overruled Vasquez-Muniz, 23 I&N 207 (2002)</p>	<p>Possession of firearm by felon under Calif. law is not an ag fel.</p>	<p><i>United States v. Castillo-Rivera</i>, 244 F.3d 1020 (9th Cir. 2001) - without citing Board ID, reaches opposite conclusion (case involves same Calif. law) - finds it is an ag fel.</p>

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Crammond , 23 I&N Dec. 9 (2001) vacated , 23 I&N Dec. 179 (2001)	conviction for sexual abuse of a minor must be for felony offense to be ag fel under 101(a)(43)(A), but decision vacated	<i>Guerrero-Perez v. INS</i> , 256 F.3d 546 (7 th Cir. 2001) - rejects (holds it could be misdemeanor offense)
Torres-Varela , 23 I&N Dec. 78 (2001)	Arizona conviction for aggravated DUI with two or more priors is not CIMT	<i>Hernandez-Martinez v. Ashcroft</i> , 329 F.3d 1117 (9 th Cir. 2003) - cites with approval , on holding that where statute is divisible, must determine whether all conduct covered by the statute is a CIMT
Rodriguez-Tejedor , 23 I&N Dec. 153 (2001)	person who was over 18 on effective date of Child Citizenship Act of 2000 not eligible for automatic citizenship	1. <i>Hughes v. Ashcroft</i> , 255 F.3d 752 (9 th Cir. 2001) - without citing, reaches same conclusion 2. <i>Nehme v. INS</i> , 252 F.3d 415 (5 th Cir. 2001) - without citing, reaches same conclusion 3. <i>Ali v. Ashcroft</i> , 395 F.3d 722 (7 th Cir. 2005) - follows
Song , 23 I&N Dec. 173 (2001)	where state court vacates sentence and resentences alien to less than 1 year, not ag fel conviction	<i>Garcia-Lopez v. Ashcroft</i> , 334 F.3d 840 (9 th Cir. 2003) - cites with approval
G-Y-R- , 23 I&N Dec. 181 (2001)	in absentia order inappropriate where alien did not receive, or cannot be charged with receiving, NTA	1. <i>Dominguez v. INS</i> , 284 F.3d 1258 (11 th Cir. 2002) - without citing Board case, calls holding into question - notice to last address formally provided is sufficient 2. <i>Kohli v. Gonzales</i> , 473 F. 3d 1061 (9 th Cir. 2007): followed
Vasquez-Muniz , 23 I&N Dec. 207 (BIA 2002)	A. A state or foreign offense may qualify as an agg fel as an offense described in a federal statute, even if it lacks the jurisdictional element of the federal statute. B. Possession of a firearm by a felon under California law is an agg fel.	Negrete-Rodriguez v. Mukasey , — F. 3d —, 2008 WL 553518 (7 th Cir. 2008): upholds as reasonable interpretation

Velarde-Pacheco, 23 I&N Dec. 253 (2002)

MTR for adjustment based on marriage that occurred after alien was in proceedings may be granted without visa petition approval in some limited circumstances

1. *Malhi v. INS*, 336 F.3d 989 (9th Cir. 2003) - cited with approval, upholding denial of motion for failure to make prima facie showing of valid marriage

2. *Conteh v. Gonzales*, 461 F.3d 45 (1st Cir., 2006) - cites with approval.

3. *Sarr v. Gonzales*, 485 F. 3d 354 (6th Cir. 2007): **interprets** as a MTR may be granted when certain factors are present, but does not necessarily hold that motion must be denied in the absence of any one factor.

4. *Ilic-Lee v. Mukasey*, 507 F. 3d 1044 (6th Cir. 2007): **cites favorably**

5. *Melnitsenko v. Mukasey*, —F. 3d —, 2008 WL 339344 (2d Cir. 2008): **modifies** holding in that Board cannot deny motion based solely on the fact of the DHS's objection; if Board denies on the merits of such objection, it must provide adequate reasoning.

6. *Kalilu v. Mukasey*, —F. 3d —, 2008 WL 383267 (9th Cir. 2008): **cites favorably**, but finds not followed in this case.

<p>Y-L-, A-G-, R-S-R-, 23 I&N Dec. 270 (A.G. 2002)</p>	<p>A. CAT protection requires that the torture be inflicted "under color of law"</p> <p>B. Ag. fels. involving drug trafficking are presumptively particularly serious crimes</p>	<p>A.1. <i>Zheng v. Ashcroft</i>, 332 F.3d 1186 (9th Cir. 2003) - rejects, and holds that CAT's "acquiescence" requirement only requires that the govt. have "awareness" of the torture, not actual knowledge or willful acceptance of it</p> <p>A.2. <i>Khouzam v. Ashcroft</i>, 361 F.3d 161 (2d Cir. 2004) - disapproves of requirement of official "consent or approval" of torture</p> <p>B. <i>Ali v. Ashcroft</i>, 395 F.3d 722 (7th Cir. 2005) - applies presumption, but remands to give alien chance to rebut</p> <p>B.2.: <i>Lavira v. U.S. Att'y Gen.</i>, 478 F. 3d 158 (3rd Cir. 2007): follows, but finds likely factual error by IJ.</p>
<p>J-E-, 23 I&N Dec. 291 (2002)</p>	<p>A. substandard prison conditions in Haiti do not constitute torture where no evidence authorities create and maintain such conditions to inflict torture</p> <p>B. Torture must be by or with consent or acquiescence of public official who has custody or physical control of victim</p> <p>C. Detaining returning criminals is lawful sanction as Haiti has right to protect its citizens from criminals</p> <p>D. Torture must be intentionally inflicted</p>	<p>A.1. <i>Zubeda v. Ashcroft</i>, 333 F.3d 463 (3d Cir. 2003) - distinguishes</p> <p>A.2. <i>Saint Fort v. Ashcroft</i>, 223 F. Supp.2d 343 (D. Mass. 2002) - distinguishes on facts, finding Board did not consider evidence presented</p> <p>A.3. <i>Elien v Ashcroft</i>, 364 F.3d 392 (1st Cir. 2004) - upholds generally, but notes that respondent had not shown that torture is widespread in Haitian prisons</p> <p>A.4. <i>Cadet v. Bulger</i>, 377 F.3d 1173 (11th Cir. 2004) - upholds</p> <p>A.4. <i>Khouzam v. Ashcroft</i>, 361 F.3d 161 (2d Cir. 2004) - distinguishes, because Board has found widespread torture in Egypt's prison (and warns that <i>J-E-</i> was</p>

cited by the Board in this case for a broader, and erroneous, proposition)

A.5. *Alemu v. Gonzales*, 403 F.3d 572 (8th Cir. 2005) - **cites generally with approval**

A.6. *Theagene v. Gonzales*, 411 F.3d 1107 (9th Cir. 2005) - **upholds** as reasonable interpretation

B. *Azanor v. Ashcroft*, 364 F.3d 1013 (9th Cir. 2004) - **rejects** holding that public official must have custody or physical control of victim

B.2. *Morales v. Gonzales*, 478 F.3d 972 (9th Cir. 2007)-**rejects reasoning**, follows *Azanor*.

C.1. *Elien v Ashcroft*, 364 F.3d 392 (1st Cir. 2004) - **upheld** (but notes indefinite detention might not be lawful)

C.2. *Cadet v. Bulger*, 377 F.3d 1173 (11th Cir. 2004) - **upholds** (even if indefinite detention)

D.1. *Alemu v. Gonzales*, 403 F.3d 572 (8th Cir. 2005) - **cites generally with approval**

A-D. *Auguste v. Ridge*, 395 F.3d 123 (3^d Cir. 2005) - **Upholds all parts of J-E**-and finds part of *Zubeda*, above, dicta

A, D: *Lavira v. U.S. Att’y Gen.*, 478 F. 3d 158 (3rd Cir. 2007): **follows**, citing *Auguste*, but distinguishes where prison conditions intentionally used to

		inflict pain and suffering on individual applicant.
Ramos , 23 I&N Dec. 336 (2002)	DUI a crime of violence under § 16(b) only if committed at least recklessly and involves substantial risk force will be used	<p>1. <i>Omar v. INS</i>, 298 F.3d 710 (8th Cir. 2002) - distinguishes from conviction under Minn. law for criminal vehicular homicide</p> <p>2. <i>U.S. v. Lucio-Lucio</i>, 347 F.3d 1202 (10th Cir. 2003) - cites with approval</p> <p>3. <i>Leocal v. Ashcroft</i>, 125 S. Ct. 377 (2004) - reserves question of DUI as crime of violence where statute requires proof of reckless conduct, but finds DUI that causes serious bodily injury is not a crime of violence</p>
G-A- , 23 I&N Dec. 366 (2002)	In ruling on CAT claim, should consider relevant country conditions	<i>Mostafa v. Ashcroft</i> , 395 F.3d 622 (6 th Cir. 2005) - cites with approval, but finds Board did not apply case
Jean , 23 I&N Dec. 373 (A.G. 2002)	aliens convicted of violent or dangerous criminal acts will not be allowed to adjust their status under §§ 1159(c) except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of status adjustment would result in exceptional and extremely unusual hardship.	<p>1. <i>Jean v. Gonzales*</i>, 452 F.3d 392, 396 (5th Cir.2006) - affirms.</p> <p>2. <i>Ali v. Achim</i>, 468 F.3d 462 (7th Cir. 2006) - upholds.</p> <p>3. <i>Rivas-Gomez v. Gonzales</i>, 441 F.3d 1072 (9th Cir.2006) - upholds.</p>
Yanez-Garcia , 23 I&N Dec. 390 (2002)	whether state drug offense is drug trafficking crime ag fel shall be decided based on circuit law	<p>1. <i>Cazarez-Gutierrez v. Ashcroft</i>, 382 F.3d 905 (9th Cir. 2004) - cites with approval, and follows 2d and 3d Circuits in finding state felony drug poss conviction that would be misd under federal law is not ag fel</p> <p>2. <i>Liao v. Rabbett</i>, 398 F.3d 389 (6th Cir. 2005) - cites generally, and finds felony drug conviction not ag fel where not punishable under state law by imprisonment for more than 1 year</p>

3. *Tostado v. Carlson*, 437 F.3d 706 (8th Cir. 2006) - cites generally, and **finds Illinois conviction that is felony under state law but not federal law is ag fel** for immigration purposes

4. *Berhe v. Gonzales*, --F.3d--, 2006 WL 2729689 (1st Cir. September 26, 2006) - **cites with approval.**

5. 1. *Lopez v. Gonzales*, 549 U.S. --- , -- S.Ct. -- , 127 S.Ct. 625 (2006), - **clarifies**, adopts hypothetical federal felony approach - federal state offense that is a felony under state law but a misdemeanor under the Controlled Substances Act [CSA] is not a "felony punishable under the CSA" and therefore not an aggravated felony within the meaning of section 101(a)(43)(B) of the Act..

2. *Smith v. Gonzales*, --- F.3d ----, 468 F.3d 272 (5th Cir. 2006), follows hypothetical federal felony approach

Romalez, 23 I&N Dec. 423 (2002)

for cancellation, cont. physical presence ends with departure made under threat of institution of deportation or removal proceedings

1. *Vasquez-Lopez v. Ashcroft*, 315 F.3d 1201 (9th Cir. 2003), *amended* 343 F.3d 961 - **upheld**

2. *Mirales-Valdez v. Ashcroft*, 349 F.3d 213 (5th Cir. 2003) - **upheld**

3. *Palomino v. Ashcroft*, 354 F.3d 942 (8th Cir. 2004) - **upheld**

4. *Morales-Morales v. Ashcroft*, 384 F.3d 418 (7th Cir. 2004) - **distinguished**, where alien was simply turned back at the border

		<p>5. <i>Ortiz-Cornejo v. Gonzales</i>, 400 F.3d 610 (8th Cir. 2005) - distinguished, where alien was simply turned back at the border</p> <p>6. <i>Mendez-Reyes v. Attorney General of the United States</i>, 428 F.3d 187 (3^d Cir. 2005) - agrees with, and applies where alien got permission to withdraw application for admission to U.S.</p> <p>7. <i>Ibarra-Flores v. Gonzales</i>, 439 F.3d 614 (9th Cir. 2006) - distinguished</p>
<p>Small, 23 I&N Dec. 448 (2002)</p>	<p>offense is not a crime of violence if it does not involve as an element the use of violent or destructive physical force</p>	<p><i>Chrzanoski v. Ashcroft</i>, 327 F.3d 188 (2^d Cir. 2003) - cited generally with approval</p>
<p>Martin, 23 I&N Dec. 491 (2002)</p>	<p>third degree assault under Connecticut law is a crime of violence and thus an ag fel</p>	<p>1. <i>Chrzanoski v. Ashcroft</i>, 327 F.3d 188 (2^d Cir. 2003) - rejected: offense found not to be crime of violence</p> <p>2. <i>Flores v. Ashcroft</i>, 350 F.3d 666, (7th Cir. 2003) - rejects, and finds Indiana battery conviction not a crime of violence</p> <p>3. <i>Singh v. Ashcroft</i>, 386 F.3d 1228 (9th Cir. 2004) - distinguishes because <i>Martin</i> dealt with state stature that required intent to inflict physical injury</p>
<p>Gomez-Gomez, 23 I&N Dec. 522 (BIA 2002)</p>	<p>The INS met its burden in an in absentia removal proceeding of establishing a minor respondent's removability where (1) a Record of Deportable/ Inadmissible Alien (Form I-213) was submitted, documenting the respondent's identity and alienage, the respondent made no challenge to the admissibility of the Form I-213, and there were no grounds for a finding that that admission of the Form I-213 would be fundamentally unfair.</p>	<p><i>Almeida-Amaral</i>, 461 F.3d 231 (2^d Cir. 2006) - cites with approval</p>

<p>Mejia-Andino, 23 I&N Dec. 533 (2002)</p>	<p>Service of notice of hearing for minor under 14 must be made on near relative - service on uncle not sufficient where service of parent possible</p>	<p><i>Flores-Chavez v. Ashcroft</i>, 362 F.3d 1150 (9th Cir. 2004) - without mentioning case, appears to modify to cover minors up to age 18</p>
<p>Koloamatangi, 23 I&N Dec. 548 (BIA 2003)</p>	<p>an alien who acquired permanent resident status through fraud or misrepresentation has never been "lawfully admitted for permanent residence" and is therefore ineligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229b(a) (2000).</p>	<p>1. <i>Savoury v. Atty. Gen.</i>, 449 F.3d 1307 (11th Cir. 2006) - cites with approval.</p>
<p>Navas-Acosta, 23 I&N Dec. 586 (2003)</p>	<p>person can become "national" of the U.S. only by birth or naturalization, not by filing oath of allegiance with natz application</p>	<p>1. <i>Perdomo-Padilla v. Ashcroft</i>, 333 F.3d 964 (9th Cir. 2003) - agrees with holding</p> <p>2. <i>Salim v. Ashcroft</i>, 350 F.3d 307 (3^d Cir. 2003) - agrees with holding</p> <p>3. <i>Sebastian-Soler v. U.S. Attorney General</i>, 409 F.3d 1280 (11th Cir. 2005) - agrees with</p> <p>4. <i>Marquez-Almanzar v. INS</i>, 418 F.3d 210 (2^d Cir. 2005) - agrees with</p> <p>5. <i>Abou-Haider v. Gonzales</i>, 437 F.3d 206 (1st Cir. 2006) - agrees with holding</p>
<p>Y-T-L-, 23 I&N Dec. 601 (2003)</p>	<p>where past pers. is shown based on forced sterilization or abortion, presumption of future pers. is not rebutted on theory that no further threat is faced</p>	<p>1. <i>Qu v. Gonzales</i>, 399 F.3d 1195 (9th Cir. 2005) - upholds, as to both asylum and withholding</p> <p>2. <i>Cao v. U.S. Department of Justice</i>, 421F.3d 149 (2^d Cir. 2005) - cites with approval</p> <p>3. <i>Zhang v. Gonzales</i>, 434 F.3d 993 (7th Cir. 2006) - extends holding to man whose wife was forced to have abortion, even where marriage was not recognized in China, and</p>

<p>Pickering, 23 I&N Dec. 621 (2003)</p>	<p>If conviction vacated solely for rehabilitation or immigration reasons, alien remains convicted for immigration purposes</p>	<p>couple is no longer together</p> <p>1. Pickering v. Gonzales,* __ F.3d __ 2006 WL 1976043 (6th Cir. July 17 2006) - reverses, agreeing with Board's construction but finding that BIA did not properly apply facts to law</p> <p>a. Pickering v. Gonzales, __ F.3d __ 2006 WL 2818970 (6th Cir. October 4, 2006) - reversed. Agreed with rational, but found Board misapplied facts to law.</p> <p>2. <i>Ali v. Ashcroft</i>, 395 F.3d 722 (7th Cir. 2005) - finds Board's construction reasonable and defers to it</p> <p>3. <i>Rumierz v. Gonzales</i>, __ F.3d __ 2006 WL 2169431 (1st Cir. August 3, 2006) - cites with approval</p> <p>4. <i>Cardoso-Tlaseca v. Gonzales</i>, 460 F.3d 1102, 1107 (9th Cir.2006) - follows.</p> <p>5. <i>Puello v. BCIS</i>, 511 F. 3d 324 (2d Cir. 2007): cites with approval</p>
<p>Cisneros-Gonzalez, 23 I&N Dec. 668 (2004)</p>	<p>Service of charging document in prior proceedings does not end continuous physical presence with regard to cancellation application filed in later proceedings</p>	<p><i>Okeke v. Gonzales</i>, 407 F.3d 585 (3d Cir. 2005) - cites with approval, and applies to case where alien lawfully reentered U.S. after becoming inadmissible, finds clock restarted after the reentry (no separate charging documents in this case)</p>

<p>Blake, 23 I&N Dec. 722 (BIA 2005)</p>	<p>alien convicted of sexual abuse of a minor and removable as an ag fel under INA §101(a)(43)(A) ineligible for 212(c) because no counterpart ground of inadmissibility under §212(a)</p>	<p>1. <i>Caroleo v. Gonzales</i>, 476 F. 3d 158 (3d Cir. 2007)-cites with approval</p> <p>2. <i>Avilez-Granados v. Gonzales</i>, 481 F. 3d 869 (5th Cir. 2007)-follows</p> <p>3. <i>Vo v. Gonzales</i>, 482 F. 3d 363 (5th Cir. 2007)-cites with approval</p> <p>4. <i>Blake v. Carbone</i>, 489 F. 3d 88 (2d Cir. 2007): reversed. Rejected Board’s “similar language” approach to determining statutory counterpart; holds if offense would render an LPR excludable, than 212 (c) is available in deportation proceedings.</p>
<p>Shanu, 23 I&N Dec. 754 (2005)</p>	<p>alien may be removable for committing one crime involving moral turpitude within 5 years of <u>any</u> admission, including date a previously admitted alien is adjusted to permanent residence status</p>	<p><i>Abdelqadar v. Gonzales</i>, 413 F.3d 668 (7th Cir. 2005) - does not cite <i>Shanu</i> (which was decided shortly before court decision), but rejects reasoning</p>
<p>Brieva-Perez, 23 I&N Dec. 766 (BIA 2005)</p>	<p>alien who is removable on the basis of his conviction for a crime of violence is ineligible for a waiver under former section 212(c) because the aggravated felony ground of removal with which he was charged has no statutory counterpart in the grounds of inadmissibility under section 212(a) of the Act.</p>	<p>1. <i>Kim v. Gonzales</i>, 468 F.3d 58 (1st Cir. 2006) - cites with approval.</p> <p>2. <i>Caroleo v. Gonzales</i>, 476 F. 3d 158 (3d Cir. 2007) -cites with approval</p> <p>3. <i>Dalombo Fontes v. Gonzales</i>, 483 F. 3d 115 (1st Cir. 2007): cites with approval</p> <p>4. <i>Brieva-Perez v. Gonzales</i>, 482 F. 3d 356 (5th Cir. 2007): affirmed;</p> <p>5. <i>Blake v. Carbone*</i>, 489 F. 3d 88 (2d Cir. 2007): rejects Board’s “similar language” analysis to determine 212(c) eligibility in deportation proceedings</p>

<p>A-H-, 23 I&N Dec. 774 (A.G. 2005)</p>	<p>“Danger to the security of the United States” means any nontrivial risk to U.S. defense, foreign relations or economic interests; there are “reasonable grounds for regarding” an alien as a danger to the national security where there is information that would permit a reasonable person to believe that s/he may pose such a danger.</p>	<p><i>Yusopov v. Atty. Gen.</i>, — F. 3d —, 2008 WL 681851 (3d Cir. Mar. 14, 2008): rejects latter interpretation—“may pose a danger” not found consistent with statutory language “is a danger”</p>
<p>Ortega-Cabrera, 23 I&N Dec. 793 (2005)</p>	<p>cancellation application is continuing application, so good moral character is calculated backward from date application is finally adjudicated by Immigration Judge or Bd.</p>	<p><i>Cuadra v. Gonzales</i>, 417 F.3d 947 (8th Cir. 2005) - does not cite (probably not aware of), but rejects reasoning, and holds good moral character must be demonstrated for the time period required, as measured backward from date application is filed</p>
<p>Avilez-Nava, 23 I&N Dec. 799 (2005)</p>	<p>no break in continuous physical presence where refused admission at port of entry, without threat of being placed in proceedings</p>	<p>1. <i>Morales-Morales v. Ashcroft</i>, 384 F.3d 418 (7th Cir. 2004) - without citing, agrees with, where alien was simply turned back at the border</p> <p>2. <i>Reyes-Vasquez v. Gonzales</i>, 395 F.3d 903 (8th Cir. 2005) - without citing, agrees with, where alien was simply turned back at the border</p> <p>3. <i>Tapia v. Gonzales</i>, 430 F.3d 993 (9th Cir. 2005) - cites generally, may go further, indicating break in presence occurs where there is formal agreement with the govt where terms of departure specified</p> <p>4. <i>Ibarra-Flores v. Gonzales</i>, 439 F.3d 614 (9th Cir. 2006) - distinguished</p>

<p>Perez Vargas, 23 I&N Dec. 829 (2005)</p>	<p>IJs lack authority to determine continued validity of employment-based visas under INA §204(j) after alien changes job or employer</p>	<p>1. <i>Perez-Vargas v. Gonzales*</i>, 478 F. 3d 191 (4th Cir. 2007): reverses, holds IJs have such jurisdiction</p> <p>2. <i>Sung v. Keisler</i>, —F. 3d—, 2007 WL 3052778 (5th Cir. 2007): without citing, follows <i>Perez-Vargas v. Gonzales</i> holding of 4th Cir. and finds IJ has jurisdiction over §204(j) determinations</p>
<p>Smriko, 23 I. & N. Dec. 836, 842 (BIA.2005)</p>	<p>Removal proceedings may be commenced against an alien who was admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, 8 U.S.C. §§ 1157 (2000), without prior termination of the alien’s refugee status.</p>	<p>1. <i>Romanishyn v. Atty. Gen'l of U. S.</i>, 455 F.3d 175, 185 (3d Cir.2006) - upholds.</p> <p>2. <i>Kaganovich v. Gonzales</i>, --- F.3d ---, 2006 WL 3598535 (9th Cir. 2006 - upholds.</p>
<p>Torres-Garcia, 23 I&N Dec. 866 (BIA 2006)</p>	<p>A. An alien who reenters the U.S. after removal is inadmissible under INA section 212(a)(9)(C)(i)(II), even where s/he obtained permission to reapply for admission prior to the illegal reentry.</p> <p>B. One barred under such section is ineligible for a waiver until 10 yrs. from the last departure from the U.S.</p>	<p><i>Ramirez-Canales v. Mukasey</i>, —F. 3d —, 2008 WL 507987 (6th Cir. 2008): cites favorably</p>
<p>Adamiak, 23 I&N Dec. 878 (BIA 2006)</p>	<p>A conviction vacated for failure of the trial court to advise the alien defendant of the statutorily required possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes.</p>	<p><i>Alim v. Gonzales</i>, 446 F.3d 1239 (11th Cir. 2006) - cites with approval</p>
<p>Alcantara-Perez, 23 I&N Dec. 882 (BIA 2006)</p>	<p>A. When the BIA remands for completion of background checks and new info that may affect eligibility is revealed, the IJ has discretion as to whether to conduct additional hearings before entering order.</p> <p>B. If checks reveal no new info after remand, IJ should enter order granting relief.</p>	<p><i>Vakker v. Atty. Gen.</i>, — F. 3d —, 2008 WL 681849 (3d Cir. 2008): cites favorably</p>

<p>C-C-, 23 I&N Dec. 889 (BIA 2006)</p>	<p>alien seeking to reopen removal proceedings based on a claim that the birth of a second child in the United States will result in the alien’s forced sterilization in China cannot establish prima facie eligibility for relief where the evidence submitted with the motion and the relevant country conditions reports do not indicate that Chinese nationals returning to that country with foreign-born children have been subjected to forced sterilization in the alien’s home province.</p>	<p>1. <i>Chen v. U.S. Dept. of Justice</i>, 468 F.3d 109 (2nd Cir. 2006) - distinguished, relying on documents submitted by alien and documents from China submitted in another case.</p> <p>2. <i>Yu v. U.S. Att’y. Gen.</i>, ---F. 3d—, 2008 WL 126632 (3d. Cir. 2008): follows</p>
<p>J-F-F-, 23 I&N Dec. 912 (A.G. 2006)</p>	<p>An applicant for CAT deferral of removal cannot establish eligibility by stringing together a series of suppositions where evidence does not establish that each hypothetical event in the chain is more likely than not to occur.</p>	<p><i>Savchuk v. Mukasey</i>, —F. 3d —, 2008 WL 564959 (2d Cir. 2008): cites favorably</p>
<p>Wang, 23 I&N Dec. 924 (BIA 2006):</p>	<p>One who entered U.S. EWI is not eligible to adjust under CSPA, and cannot later move to amend or renew under INA §245(i).</p>	<p><i>Ri Kai Lin v. BCIS</i>, —F. 3d —, 2008 WL 216288 (2d Cir. 2008): follows, finding Board’s holding reasonable.</p>
<p>C-A-, 23 I&N Dec. 951 (BIA 2006)</p>	<p>non-criminal informants working against the Cali drug cartel in Colombia are not members of a particular social group</p>	<p>1. <i>Castillo-Arias v. U.S. Attorney General</i>,* 446 F.3d 1190 (11th Cir. 2006) - affirmed</p> <p>2. <i>Pavlyk v. Gonzales</i>, --- F.3d ----, 2006 WL 3477863 (7th Cir., December 4, 2006) - cites with approval.</p> <p>3. <i>Ucelo-Gomez v. Mukasey</i>, 509 F. 3d 70 (2d Cir. 2007): follows</p>
<p>Sanudo, 23 I&N Dec. 968,973 (2006)</p>	<p>A. An alien’s conviction for domestic battery in violation of sections 242 and 243(e)(1) of the California Penal Code does not qualify categorically as a conviction for a “crime involving moral turpitude” within the meaning of section 237(a)(2) (A)(ii) of the Immigration and Nationality Act, 8 U. S.C. §§ 1227(a)(2)(A)(ii) (2000).</p> <p>B. In removal proceedings arising within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, the offense of domestic battery in violation of sections 242 and 243(e)(1) of the California Penal Code does not presently qualify categorically as a “crime of violence” under 18 U.S.</p>	<p><i>Galeana-Mendoza v. Gonzales</i>,--- F.3d----, 2006 WL 2846379C. A.9,2006 - cites with approval.</p> <p>a. <i>Galeana-Mendoza v. Gonzales</i>, 465 F.3d 1054 (9th Cir. 2006) - follows.</p>

	C. §§ 16 (2000), such that it may be considered a “crime of domestic violence” under section 237(a)(2)(E)(i) of the Act.	
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A-M-E- & J-G-U- , 24 I&N Dec. 69 (BIA 2007):	“Affluent Guatemalans” is not a particular social group due to (1) lack of sufficient social visibility to be perceived as a group by society, and (2) lack of sufficient particularity in its definition.	<i>Ucelo-Gomez v. Mukasey*</i> , 509 F. 3d 70 (2d Cir. 2007): affirmed <i>Arteaga v. Mukasey</i> , 511F. 3d 940 (9th Cir. 2007): followed
Tobar-Lobo , 24 I&N Dec. 142 (BIA 2007)	Willful failure to register by a sex offender per California Penal Code section 290(g)(1) is a CIMT.	<i>Placencia-Ayala v. Mukasey</i> , —F. 3d —, 2008 WL 323406 (9th Cir. 2008): rejects reasoning , holding that the mere failure to register as a sex offender cannot constitute morally turpitudinous behavior.
Y-L- , 24 I&N Dec. 151 (BIA 2007)	Sets out criteria for making a frivolous finding under INA section 208(d)(4)(A).	<i>Kalilu v. Mukasey</i> , —F. 3d —, 2008 WL 383267 (9th Cir. 2008): cites favorably ; remands for consideration under criteria of Y-L-.
Briones , 24 I&N Dec. 355 (BIA 2007)	A. To be barred under INA section 212(a)(9)(C)(i) (I), an alien must depart the U.S. after accruing more than 1 year of unlawful presence, and then reenter (or attempt to) w/o being admitted. B. One who is inadmissible under such section is not eligible for section 245(i) adjustment of status.	<i>Ramirez-Canales v. Mukasey</i> , —F. 3d —, 2008 WL 507987 (6th Cir. 2008): follows , granting deference to the Board’s interpretation.
Carachuri-Rosendo , 24 I&N Dec. 382 (2007):	A. Controlling Circuit case law will determine whether a state drug conviction corresponds to the Federal felony of “recidivist possession,” and is thus an aggravated felony. B. Absent controlling authority, recidivist status must be admitted by the alien or determined by the judge or jury for a state simple possession conviction to constitute an aggravated felony.	B.1. <i>U.S. v. Pacheco-Diaz</i> , —F. 3d —, 2008 WL 220692 (7th Cir. 2008): rejects reasoning , ruling that it does not matter whether the defendant was charged in state court as a recidivist, or whether the state even has a recidivist statute.

