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Cases Addressing Harms Not Rising to the Level of Persecution

Court	Case/Statute	Points of Law/Fact
SCOTUS	<u>INS v. Stevic</u> , 467 U.S. 407 (1984)	Persecution may be a broad enough concept to encompass more than just threats to life or liberty. For instance, it might be the case that persecution includes certain deprivations of property.
BIA	<u>In re S-L-L-</u> , 24 I&N Dec. 1 (BIA 2006)	Lexis Headnotes: “(1) An alien whose spouse was forced to undergo an abortion or sterilization can establish past persecution on account of political opinion and qualify as a refugee within the definition of section 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42) (2000), but only if the alien was, in fact, opposed to the spouse's abortion or sterilization and was legally married at the time of the abortion or sterilization. <i>Matter of C--- Y--- Z---</i> , 21 I. & N. Dec. 915 (BIA 1997), reaffirmed and clarified.” ”(2) Unmarried applicants claiming persecution related to a partner's coerced abortion or sterilization may qualify for asylum if they demonstrate that they have been persecuted for "other resistance to a coercive population control program" within the meaning of section 101(a)(42) of the Act.”
First Circuit	<u>Sipayung v. Gonzales</u> , 2007 U.S. App. LEXIS 15240 (1st Cir. June 27, 2007)	Being subjected to “weird looks” when carrying one’s Bible does <i>not</i> rise to the level of persecution, <i>nor</i> does learning that stones have been thrown at a fellow churchgoer’s home.
First Circuit	<u>Attia v. Gonzales</u> , 477 F.3d 21 (1 st Cir. 2007)	Two altercations in a nine year period and a climate of generalized discrimination do <i>not</i> rise to the level of persecution.



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First Circuit	<u>Awad v. Gonzales</u> , 463 F.3d 73 (1 st Cir. 2006)	Learning that a friend’s sister has been sexually assaulted, enduring frequent unfair treatment on account of one’s religion, and being occasionally shoved, slapped, or vaguely threatened by unconnected individuals, does <i>not</i> rise to the level of persecution.
Second Circuit	<u>Gjolaj v. Bureau of Citizenship & Immigration Servs.</u> , 468 F.3d 140 (2d Cir. 2006)	IJ erred by asking whether each of three arrests by itself constituted persecution. Instead, IJ should have considered the arrests cumulatively in arriving at a past persecution determination.
Second Circuit	<u>Beskovic v. Gonzales</u> , 467 F.3d 223 (2d Cir. 2006)	Conduct that might not by itself constitute persecution (mild beating, threats, verbal harassment) might contribute to an overall finding of persecution in the context of a detention. When someone is detained on account of a protected ground, the relationship between harassment that occurs in detention and the detention itself tends to be correlative, <i>not</i> incidental.
Third Circuit	<u>Kibinda v. Att’y Gen.</u> , 477 F.3d 113 (3d Cir. 2007)	Maltreatment during a fairly routine military detention that results in a few stitches and a small scar is <i>not</i> extreme or severe enough to rise to the level of persecution.
Third Circuit	<u>Lukwago v. Ashcroft</u> , 329 F.3d 157, 165 (3d Cir. 2003)	Generally, lawful, relatively nondiscriminatory conscription into military service will <i>not</i> amount to persecution at the hands of a sovereign nation.
Third Circuit	<u>Fatin v. INS</u> , 12 F.3d 1233 (3d Cir. 1993)	Not all treatment that offends Americans’ moral or political sensibilities rises to the level of persecution; otherwise, much of the world’s population would qualify for asylum in the U.S., and this cannot be what Congress intended. In fact, in order to rise to the level of persecution, treatment must be not only “harsh,” but “extreme.”



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Fourth Circuit	<u>Niang v. Gonzales</u> , 2007 U.S. App. LEXIS 13723 (4th Cir. 2007)	A well-founded fear of persecution <i>cannot</i> be based on a fear of psychological harm alone. In this case, the petitioner attempted to show that she feared psychological harm if her daughter were to accompany her to her home country and there be subjected to FGM.
Fourth Circuit	<u>Li v. Gonzales</u> , 405 F.3d 171 (4th Cir. 2005)	Petitioners did <i>not</i> show past persecution on account of resistance to coercive population controls because they were given a reasonable amount of time to pay fines to the Chinese authorities, and because no force was used in the insertion of an IUD.
Fifth Circuit	<u>Chen v. Gonzales</u> , 470 F.3d 1131 (5th Cir. 2006)	Being forced to worship in a non-government-approved, underground church in order to keep one's faith does <i>not</i> compel a finding of persecution.
Fifth Circuit	<u>Tesfamichael v. Gonzales</u> , 469 F.3d 109 (5th Cir. 2006)	Verbal taunts in the workplace do <i>not</i> rise to the level of persecution.
Fifth Circuit	<u>Eduard v. Ashcroft</u> , 379 F.3d 182 (5th Cir. 2004)	Mere denigration, harassment, and threats do <i>not</i> rise to the level of persecution.
Sixth Circuit	<u>Lumaj v. Gonzales</u> , 462 F.3d 574 (6th Cir. 2006)	Where a woman was beaten once, but not severely, and without any detention, serious interrogation, or sexual assault, evidence supported the IJ's conclusion that the woman had <i>not</i> suffered persecution.
Sixth Circuit	<u>Mece v. Gonzales</u> , 415 F.3d 562 (6th Cir. 2005)	Where police subjected a petitioner to multiple beatings and death threats, and where they fractured his shoulder and explicitly directed him not to seek medical care, any reasonable fact finder would have to find past persecution.



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Seventh Circuit	<u>Dandan v. Ashcroft</u> , 339 F.3d 567 (7th Cir. 2003)	Although the number of incidents adding up to persecution is not necessarily dispositive, it is important to the inquiry. A single detention or altercation can only rise to the level of persecution if it is sufficiently severe .
Seventh Circuit	<u>Balazoski v. INS</u> , 932 F.2d 638 (7th Cir. 1991)	“Persecution” may be broad enough to encompass more than just threats to life or liberty (a la <u>Stevic</u>), but it is narrow enough that it does <i>not</i> include all forms of harassment.
Eighth Circuit	<u>Nabulwala v. Gonzales</u> , 479 F.3d 972 (8th Cir. 2007)	The IJ concluded that a lesbian petitioner had <i>not</i> been persecuted. The IJ reached this conclusion by considering multiple incidents in isolation from one another, including harassment at school, harassment at a gay rights meeting, and a family-arranged heterosexual rape that the IJ deemed to be a form of private dispute. The IJ erred in failing to make any findings of fact with regard to the connection between the incidents and the government’s inability to provide protection.
Eighth Circuit	<u>Quomsieh v. Gonzales</u> , 479 F.3d 602 (8th Cir. 2007)	A four-hour detention and beating by Israeli troops in 1988, followed by thirteen years without further violence or threats by Israeli troops, does <i>not</i> compel a finding of persecution.
Eighth Circuit	<u>Woldemichael v. Ashcroft</u> , 448 F.3d 1000, 1003 (8th Cir. 2006)	“Absent physical harm, subjecting members of an unpopular faith to hostility, harassment, discrimination, and even economic deprivation is <i>not</i> persecution unless those persons are prevented from practicing their religion or deprived of their freedom .”
Ninth Circuit	<u>Fisher v. INS</u> , 79 F.3d 955 (9th Cir. 1996)	Enforcement of a religious dress code, while harsh by our standards, is <i>not</i> so extreme that it necessarily amounts to persecution.
Ninth Circuit	<u>Ghaly v. INS</u> , 58 F.3d 1425 (9th Cir. 1995)	Racially and religiously discriminatory practices, while reprehensible, do <i>not</i> add up to persecution, absent something more.



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Tenth Circuit	<u>Vatulev v. Ashcroft</u> , 354 F.3d 1207, 1210 (10th Cir. 2003)	Where an asylum-seeker can and does obtain private employment and a private education in her home country, institutional discrimination that prevents her from obtaining government employment and a public university degree does <i>not</i> rise to the level of persecution
Tenth Circuit	<u>Nazaraghaie v. INS</u> , 102 F.3d 460, 463 (10th Cir. 1996)	Exit restrictions do <i>not</i> rise to the level of persecution. The enforcement of exit restrictions is therefore prosecution, not persecution. On the other hand, a ten-month detention for political reasons, replete with beatings, probably <i>does</i> constitute past persecution. (This issue did not need to be decided definitively, because the Service had successfully introduced evidence rebutting any reasonable fear of future persecution in Iran.)
Eleventh Circuit	<u>Lopez v. Att’y Gen.</u> , 2007 U.S. App. LEXIS 16027 (11th Cir. 2007)	An IJ erred by considering only a pattern of threats in the persecution inquiry, while dismissing an actual beating as an everyday crime, where the asylum-seeker’s unchallenged testimony revealed that her assailants had made political comments and announced themselves to be members of a guerrilla group.
Eleventh Circuit	<u>Ruiz v. Gonzales</u> , 479 F.3d 762 (11th Cir. 2007)	While a “light beating” may <i>not</i> amount to persecution, the cumulative effects of beatings, threatening phone calls, and a kidnapping compel a finding of past persecution.