



a HEARTLAND ALLIANCE partner



Cases Addressing Motive of Persecutor

| COURT | Citation | Points of Law/Fact |
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| SCOTUS | <u>INS v. Elias-Zacarias</u> , 502 U.S. 478, 483 (U.S. 1992) | The “on account of” language used in the asylum statutes and regulations requires at least some evidence of the persecutor’s motive . This evidence need not be direct; it may also be circumstantial . If the BIA determines that this burden has not been met, a judicial reversal can be achieved only where the evidence in the record compels a contrary finding. |
| BIA | <u>In re J-B-N- & S-M-</u> , 24 I&N Dec. 208 (BIA 2007) | Under section 101(a)(3) of the REAL ID Act of 2005, in mixed motive asylum cases, an applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the claimed persecution. In this case, BIA found feared persecution arising from a land dispute between family members was not centrally connected to a protected ground. |
| First Circuit | <u>Babani v. Gonzales</u> , 2007 U.S. App. LEXIS 14811 (1st Cir. 2007) | Where the asylum-seeker presented no evidence—other than her own stated belief—that abuses at the hands of police were politically motivated, the IJ was entitled to find that the persecution did <i>not</i> occur on account of one of the five protected grounds. |
| First Circuit | <u>Berrio-Barrera v. Gonzales</u> , 460 F.3d 163 (1st Cir. 2006) | Where the asylum-seeker testified that his abductors told him he was being extorted for money, and where he admitted on cross-examination that he was abducted for financial reasons, he failed to make his showing with respect to his persecutors’ motives. |
| First Circuit | <u>Samayoa Cabrera v. Ashcroft</u> , 367 F.3d 10 (1st Cir. 2004) | Membership in a civil defense patrol does <i>not</i> compel the inference of a political opinion. |



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| Second Circuit | <u>Yueqing Zhang v. Gonzales</u> , 426 F.3d 540 (2d Cir. 2005) | Retaliation for opposition to government corruption <i>may, in some instances</i> , constitute persecution on account of a political opinion. |
| Third Circuit | <u>Lie v. Ashcroft</u> , 396 F.3d 530 (3d Cir. 2005) | The shouting of one ethnic slur during a robbery is <i>not</i> sufficient to show that the robbery was ethnically, rather than financially motivated. |
| Fourth Circuit | <u>Abdel-Rahman v. Gonzales</u> , 2007 U.S. App. LEXIS 16606 (4th Cir. July 12, 2007) | It may be true that an illegitimate prosecution by a country's authorities may constitute or be part of persecution. However, an asylum-seeker must produce evidence that the prosecution is illegitimate and is occurring on account of one of the protected grounds. In the absence of such evidence, other countries are entitled to draft, pass, and enforce their own laws with respect to criminal acts and military conscription. |
| Fourth Circuit | <u>Lopez-Soto v. Ashcroft</u> , 383 F.3d 228 (4th Cir. 2004) | The fact that petitioner's brother had been killed by a criminal street gang did <i>not</i> establish that petitioner was targeted "on account of" his family membership. Rather, the Court concluded, he was targeted as a male teenager from Guatemala. |
| Fifth Circuit | <u>Girma v. INS</u> , 283 F.3d 664 (5th Cir. 2002) | An Ethiopian woman was denied asylum where she failed to demonstrate that her attackers were motivated by political reasons, rather than by her status as a successful businesswoman. True, she provided some evidence suggesting that the motives were political, but there was also evidence that itself questioned the evidence she had presented. It was for the BIA to determine whether or not the asylum-seeker met her burden. |



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| Fifth Circuit | <u>Ontunez-Tursios v. Ashcroft</u> , 303 F.3d 341 (5th Cir. 2002) | Where the alleged persecution arises in the context of a land dispute between private parties who merely happen to have political ties, the evidence does <i>not</i> compel a finding of persecution “on account of” political opinion. |
| Sixth Circuit | <u>Yidong Bu v. Gonzales</u> , 2007 U.S. App. LEXIS 14008 (6th Cir. 2007) | Where a Chinese asylum-seeker was persecuted in response to his protest strike against corrupt factory officials, the IJ erred in finding that the persecution was not on account of political opinion. This was so because (1) the Chinese government deems criticism of government corruption to be political expression, (2) Chinese persons critical of government corruption are frequently subjected to persecution, and (3) the asylum-seeker’s treatment during incarceration was consistent with China’s treatment of political prisoners. |
| Sixth Circuit | <u>Marku v. Ashcroft</u> , 380 F.3d 982 (6 th Cir. 2004) | The IJ rightly found that an asylum-seeker who was persecuted for refusing to falsify records failed to show that she was persecuted on account of one of the protected grounds. This was true even though her boss was a government official, because she presented no evidence that her boss was aware of her political opinions or attributed any to her. Instead, the evidence suggested that she was morally opposed to being involved in criminal activity of any sort. |
| Seventh Circuit | [NONE.] | [NONE.] |
| Eighth Circuit | <u>Gomez v. Gonzales</u> , 425 F.3d 543 (8th Cir. 2005) | The record supported the IJ’s and BIA’s determination that soldiers persecuted the petitioners <i>not</i> on account of an imputed political opinion, but rather because they were searching for a conscript who had deserted the military. Although the record might <i>support</i> a finding of imputed political opinion, the record does not <i>compel</i> such a finding where it is clearly established that (1) the persecutors made no political remarks but (2) did discuss their search for the deserter. |



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| Eighth Circuit | <u>Mohamed v. Ashcroft</u> , 396 F.3d 999 (8th Cir. 2005) | The asylum-seeker failed to distinguish the persecution she suffered from the everyday suffering induced by widespread looting and banditry in Somalia in the 1990s. Her testimony alone did <i>not</i> compel a finding that her persecutors were motivated by her clan affiliation. |
| Eighth Circuit | <u>De Brenner v. Ashcroft</u> , 388 F.3d 629, 637 (8th Cir. 2004) | The evidence compelled a finding of persecution on account of an imputed political opinion where (1) Shining Path guerrillas had publicly targeted bank employees as supporters of “imperialist” goals, (2) the asylum-seeker’s Shining Path assailants named her as a member of a political party they opposed, (3) the assailants accused the asylum-seeker’s family of supporting the government, and (4) the assailants mistakenly accused the asylum-seeker of being an employee of the political party they opposed. |
| Ninth Circuit | <u>Garcia-Martinez v. Ashcroft</u> , 371 F.3d 1066, 1075 (9th Cir. 2004) | The IJ erred by considering the asylum-seeker’s rape by soldiers in a vacuum. The asylum-seeker clearly demonstrated that her entire village was being targeted by the Guatemalan military because of alleged rebel ties, and she made a strong evidentiary showing that the soldiers probably imputed a political opinion to her based on her family members’ involuntary participation in guerrilla activities and/or her membership in the village community. |
| Ninth Circuit | <u>Molina-Morales v. INS</u> , 237 F.3d 1048 (9th Cir. 2001) | The mere fact that one is a politician does <i>not</i> mean that all the harms one suffers are on account of a political opinion. In this case, evidence supported the inference that persecution stemmed from a personal vendetta related to a rape allegation. |
| Ninth Circuit | <u>Popova v. INS</u> , 273 F.3d 1251, 1258 (9th Cir. 2001) | Where petitioner was, inter alia, sent to atheism training, asked to prepare atheistic materials, told to change her religious surname, and warned to think more about her family’s safety and less about politics, the evidence compelled a finding that persecution occurred on account of religion and political opinion. |



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| Ninth Circuit | <u>Rivera-Moreno v. INS</u> , 213 F.3d 481 (9th Cir. 2000) | Petitioner did not produce evidence showing that guerrillas were aware of her political neutrality, but she did produce evidence showing that the guerrillas knew of her status as a nurse, and that she refused to provide them with nursing services. Thus, the record supported a finding that she was persecuted on account of her refusal, and <i>not</i> on account of a “hazardously neutral” political opinion. |
| Tenth Circuit (Unpublished) | <u>Basova v. INS</u> , 1999 U.S. App. LEXIS 15715 (10th Cir. 1999) (unpublished opinion) | Where the asylum-seeker’s rapist-persecutors did not make any remarks about any of the protected grounds, and where the asylum-seeker testified that the persecutors were criminals who were displaying their power over her society, the asylum-seeker was <i>not</i> persecuted “on account of” one of the protected grounds. |
| Eleventh Circuit | <u>Perlera-Escobar v. EOIR</u> , 894 F.2d 1292, 1298 (11th Cir. 1990) | Where an asylum-seeker has not expressed his political beliefs other than by deserting a guerrilla force he had earlier joined, and where the record shows that the asylum-seeker is nothing more than a deserter, he has <i>not</i> met his burden of showing that the feared persecution is on account of a protected ground. |
| Eleventh Circuit | <u>Rodriguez-Morales v. U.S. Att’y Gen.</u> , (11th Cir. 2007) | Petitioner was a Colombian dentist who refused to provide services to FARC guerilla members. Court found that persecution was for refusal to aid the guerillas, <i>not</i> on account of Petitioner’s political opposition to the FARC. |