Lesson Plan Overview

Course	Refugee, Asylum and International Operations Directorate Officer Training Asylum Division Officer Training Course
Lesson	***Safe Third Country Threshold Screening***
Rev. Date	May 9, 2013
Lesson Description	The purpose of this lesson is to explain how to determine whether an alien seeking entry into the US from Canada at a land border is eligible for an exception to the Safe Third Country Agreement between the US and Canada, which would allow him/her to seek asylum in the United States.
Terminal Performance Objective	The Asylum Officer will be able to correctly determine whether the applicant in a "threshold screening" has established eligibility for an exception to the Safe Third Country Agreement.
Enabling Performance Objectives	1. Identify who is subject to the Safe Third Country Agreement. (OK4)(AIL4)(ACRR10) 2. Identify the exceptions to the Safe Third Country Agreement.(AIL4) 3. Identify the function of the threshold screening.(AIL4) 4. Identify the standard of proof required to establish eligibility for an exception to the Safe Third Country Agreement.(AIL4) 5. Distinguish between the processes for Land Border Port-of-Entry cases versus Removals from Canada In-Transit through the US.(OK6)(OK7) 6. Identify family relationships that may prompt eligibility for an exception. 7. Identify the types of lawful immigration status a qualifying family member must have to prompt eligibility for an exception.(AIL4) 8. Identify when an asylum claim is pending and whether it may provide a basis for an exception.(AIL4)(OK4) 9. Identify exceptions based on citizenship or statelessness with last habitual residence in Canada.(AIL4)(OK4) 10. Identify process and potential bases for a public interest exception.(AIL4)
Instructional Methods	Lecture, practical exercises
Student Materials/ References	INA Section 208(a)(2)(A), 235(b)(1)(B)-(F); 8 C.F.R. § 208.30; *Agreement for the Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*; *Procedural Issues Associated with Implementing the Agreement for the Cooperation in the*

	Examination of Refugee Status Claims from Nationals of Third Countries: *Statement of Principles* Forms: **Form I-860**: Notice and Order of Expedited Removal; **Form I-867-A&B**: Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act; Safe Third Country Agreement Threshold Screening Adjudication Worksheet; **Form M-444C**: Information about Threshold Screening Interview
Method of Evaluation	Written test
Background Reading	Joseph E. Langlois, Director, Asylum Division, US Citizenship and Immigration Service. *APSS SAFE Screen Guidance*, Memorandum to All Asylum Officer Personnel (Washington, DC: June 5, 2006) 9 pp.

CRITICAL TASKS

Knowledge of U.S. case law that impacts RAIO (3)
Knowledge of the Asylum Division mission, values, and goals. (3)
Knowledge of how the Asylum Division contributes to the mission and goals of RAIO, USCIS, and DHS. (3)
Skill in identifying information required to establish eligibility. (4)
Knowledge of the Asylum Division jurisdictional authority. (4)
Knowledge of forms required for exclusion/removal. (4)
Knowledge of Safe Third Country Agreement's impact on asylum. (4)
Skill in organizing case and research materials (4)
Skill in analyzing complex issues to identify appropriate responses or decisions. (5)
Skill in applying legal, policy, and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence. (5)
Knowledge of Custom and Border Protection (CBP) functions and responsibilities, as they relate to RAIO (2)

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Presentation **References**

I. INTRODUCTION

The purpose of this lesson is to explain how to determine whether an alien is eligible for an exception to the bar on applying for asylum when the alien would be subject to removal to Canada by operation of the *Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* ("Safe Third Country Agreement" or "Agreement").

II. BACKGROUND

Section 208(a)(1) of the Immigration and Nationality Act ("Act") permits any alien who is physically present in or who arrives at the United States to apply for asylum; however, section 208(a)(2)(A) of the Act specifically states that paragraph (1) shall not apply where, "pursuant to a bilateral or multilateral agreement, the alien may be removed to a country where the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General [now deemed to be the Secretary of Homeland Security under the Homeland Security Act] finds that it is in the public interest for the alien to receive asylum in the United States."

A more detailed discussion of the background underlying the Agreement may be found in the Supplementary Information discussion that accompanied publication of the Proposed Rule to implement the Agreement, published on March 8, 2004. 69 Fed. Reg. 10620.

On December 5th, 2002, the governments of the United States and Canada signed the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries. The Agreement allocates responsibility between the United States and Canada whereby one country or the other (but not both) will assume responsibility for processing the claims of certain asylum seekers who are traveling from Canada into the United States or from the United States into Canada.

Under the Agreement, U.S. and Canada have agreed that the "country of last presence" is obligated to accept the return of an asylum seeker from the "receiving country" under certain circumstances. Specifically, aliens who request protection from the "receiving country," either at a U.S.-Canada land border port-of-entry or while being deported through the "receiving country" by the government of the "country of last presence," may generally be returned to the "country of last presence."

The "country of last presence" will then consider the alien's protection request under its legal system.

The general obligation of the "country of last presence" to accept the return of asylum seekers making protection claims was largely tempered by principles underlying the U.S. position while negotiating the Agreement: (1) to the extent practicable, the Agreement should not act to separate families; (2) the Agreement must guarantee that persons subject to it would have their protection claims adjudicated in one of the two countries; and (3) it would be applied only in circumstances where it is indisputable that the alien arrived directly from the other country. Reflecting these principles, the Agreement allows asylum seekers to join certain relatives already in the "receiving country." It also clearly stipulates that an asylum seeker subject to its terms must have his or her protection claim adjudicated in either Canada or the United States. And, the Agreement limits its application to two situations where aliens have come directly from the other country: those arriving at land border ports-of-entry and those transiting from the "country of last presence" through the "receiving country" during the course of deportation.

In addition to these limits on the Agreement's applicability, the Agreement also contains several exceptions allowing asylum seekers to pursue their protection claims in the "receiving country." These exceptions are discussed in detail below.

Finally, it is important to note that, because the Agreement is applicable only to aliens who may be treated as "applicants for admission" under INA § 235(a), the expedited removal process of § 235(b) has been selected as the principal implementation vehicle for the Agreement. The DHS regulations implementing the Agreement create within the expedited removal process a new mechanism for making determinations about how the Agreement applies to asylum seekers. This new mechanism is called the "threshold screening interview." For cases where the Agreement applies, the "threshold screening interview" will precede (and, in some cases, preempt) the INA § 235(b)(1)(B) credible fear interview process with which asylum officers are familiar.

Immigration judges will conduct a similar analysis in those cases where DHS does not apply the expedited removal process to an alien subject to the Agreement and instead places the alien in removal proceedings under INA § 240. 8 CFR 1240.11(g)

III. FUNCTION OF THRESHOLD SCREENING

The function of the threshold screening process is to determine whether an alien is subject to the Agreement, and, if so, whether the alien will be permitted to remain in the U.S. to pursue his or her protection claims based on the alien's qualification for one of the Agreement's exceptions.

It is important to keep in mind that, while both the U.S. and Canada boast generous and effective protection regimes, in some individual cases, an applicant may have compelling reasons for not seeking protection in one nation, in favor of the other. Asylum officers are trained to make factual and legal determinations in the context of protection claims, so they are well-suited to the task of the threshold screening.

IV. STANDARD OF PROOF IN THRESHOLD SCREENING

8 CFR 208.30(e)(6)(ii)

The threshold screening is a fact-based determination, and is subject to a *preponderance of the evidence* standard of proof. Threshold screening interviews are conducted in Q&A format to create a sworn statement that is read back to the asylum seeker to ensure a complete and accurate record for supervisory and Headquarters Asylum (HQASM) review. There is no other review of the threshold screening determination.

Excerpt from Supplementary Information to the Proposed Rule - "What Type of Evidence Will Satisfy USCIS When Determining Whether an Individual Meets One of the Exceptions in the Agreement?" 69 FR 10623

Asylum officers will use all available evidence, including the individual's testimony, affidavits and other documentation, as well as available records and databases, to determine whether an exception to the Agreement applies in each alien's case. Credible testimony alone may be sufficient to establish that an exception applies, if there is a satisfactory explanation of why corroborative documentation is not reasonably available. In assessing whether evidence is reasonably available, asylum officers should be sensitive to the fact that asylum seekers fleeing persecution may often not have documents establishing eligibility for one of the Agreement's exceptions at the time they seek to enter the United States from Canada; however, they should also consider the length of time the asylum seeker spent in Canada, and whether one could reasonably be expected to have obtained documentation while in Canada. Also, computer systems and government database records, though helpful in verifying certain family relationships and questions concerning immigration status, may not be conclusive. Asylum officers conducting threshold screening interviews should rely upon their training and experience in evaluating credibility of testimony when there is little or no documentation in support of that testimony.

V. EXCEPTIONS APPLICABLE AT U.S.-CANADA LAND BORDER PORTS OF ENTRY

Aliens who request asylum, withholding of removal, or protection

under the Convention Against Torture at a U.S. port-of-entry located on the shared U.S.-Canada land border will be ineligible to pursue their claims in the U.S. unless they qualify for one of the Agreement's exceptions. An alien qualifies for an exception to the Agreement under these circumstances if he or she:

8 CFR 208.30(e)(6)(iii)

a.) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

b.) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to an alien whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the United States pursuant to the Visa Waiver Program;

c.) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;

d.) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

e.) Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States to the alien, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

f.) The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

A. Citizen or habitual resident of Canada

Agreement, art. 2

8 CFR 208.30(e)(6)(iii)(A)

Applications made by individuals claiming to be citizens of Canada must be referred to HQASM prior to a determination. A passport may generally be considered presumptive proof of citizenship.

Aliens claiming citizenship in multiple countries may be admitted under this exception if they establish Canadian citizenship by a preponderance of the evidence.

Stateless individuals who last resided in Canada must establish both statelessness and habitual residence in Canada.

The UN has defined "stateless person" as "a person who is not considered as a national by any State under the operation of its law." The INA defines "national" as a person owing permanent allegiance to a State. Both definitions should be considered when determining whether an individual is stateless. Even if the applicant believes he or she owes allegiance to a State, if the State does not consider the applicant to be a national of that State, the applicant should be considered stateless. Asylum Officers may wish to research State nationality laws to help identify statelessness.

Convention Relating to the Status of Stateless Persons, opened for signature Sept. 28, 1954, art. 1(1), 360 U.N.T.S. 117 (entered into force June 6, 1960)

Whether the applicant maintained a habitual residence in Canada is a question of fact that should be assessed based on the applicant's testimony and any documentation that establishes that the applicant, in fact, resided in Canada. Asylum Pre-Screening Officers (APSOs) should elicit specific information establishing place of residence and duration to determine whether the applicant habitually resided in Canada.

INA § 101(a)(21)

B. Family member in lawful status

Agreement, art. 4, ¶ 2(a)

8 CFR 208.30(e)(6)(iii)(B)

1. Qualifying family members with lawful immigration status in the United States, other than visitor (B-1, B-2, or visa waiver program), may serve as anchor relatives upon whom the applicant may base his/her request for exception to return under the Safe Third Agreement.

   Proof of relationship may be based on specific documentary evidence (such as a birth certificate establishing a parent-child relationship), or, on the credible testimony of the applicant alone.

Additional supporting evidence could include a sworn statement executed by the anchor relative, or by the anchor relative's representative (not necessarily a legal representative) if the anchor relative is incapable of executing a sworn statement. Sworn statements by anchor relatives should identify the anchor by full name, date of birth, and alien registration number (if the anchor is not a US citizen). APSOs may wish to contact anchor relatives by telephone to confirm or supplement information provided in the statement.

To facilitate submission of documents by the anchor relative, the applicant should be afforded access to telecommunications equipment to contact the anchor, and to receive communication from the anchor.

The applicant's credible testimony alone may also be sufficient to establish a qualifying relationship, if obtaining documentary evidence is unreasonable. The testimony must establish that it is more likely than not that the relationship exists. To establish a relationship through credible testimony alone, the APSO should elicit information relating to the anchor relative's basic biographic information, such as birth date, age, place of residence, length of time in the U.S., or other information that confirms familiarity with the relative.

Matter of Dass, 20 I&N Dec. 120 (BIA 1989); *Matter of S-M-J,* 21 I&N Dec. 722 (BIA 1997); *Matter of Y-B-,* 21 I&N Dec. 1136 (BIA 1998) *Matter of B-B-*, Int. Dec. 3367 (BIA 1998)

The following family members may serve as anchor relatives:

a. The applicant's spouse, as defined in INA § 101(a)(35). The relationship must be based on a non-polygamous marriage valid under the laws of the place where the marriage was performed, and does not include unions precluded by U.S. law or regulations. Proof of a spousal relationship could include a marriage certificate or a sworn statement from the spouse.

69 Fed. Reg. 69480

Matter of H-, 9 I&N Dec. 640, 641 (BIA 1962)

Defense of Marriage Act, Public Law 104-199, section 3, 110 Stat. 2419 (1996).

b. Son, meaning the male offspring of the applicant, including those born either in or out of wedlock, step-sons, and those adopted prior to the age of 18. Proof of a parent-son relationship could include a birth certificate or adoption decree showing the applicant's name as one of the son's parents, or a sworn statement by the son (if he is 18 or over) or by the son's representative (if the son is under 18).

The terms, "son" and "daughter," as they are used in the Agreement, are equivalent to the "child" definition of INA § 101(b), with the exception that 101(b)(1)'s requirement that the "son" or "daughter" be "an unmarried person under

twenty-one years of age" does not apply to analysis under the Agreement's exceptions. Id.

c. Daughter, meaning the female offspring of the applicant, including those born either in or out of wedlock, step-daughters, and those adopted prior to the age of 18. Proof of a parent-daughter relationship could include a birth certificate or adoption decree showing the applicant's name as one of the daughter's parents, or a sworn statement by the daughter (if she is 18 or over) or by the daughter's representative (if she is under 18).

d. Parent, meaning the father or mother of the applicant, either through birth or adoption prior to the age of 18, or a step-father or step-mother, meaning a person married to the father or mother of the applicant prior to the applicant's eighteenth birthday. Proof of parental relationship could include a birth certificate or adoption decree showing the applicant as the child of the named parent, or a sworn statement by the parent.

INA Section 101(b)(2)

e. Legal guardian, meaning a person currently vested with legal custody of the applicant or vested with legal authority to act on behalf of the applicant, provided that the applicant is unmarried and under age 18. Proof of guardianship could include a court-issued guardianship order or sworn statement by the guardian.

8 CFR 208.30(e)(6)(iv)

f. Sibling, meaning the brother or sister of the applicant, as a result of having the same mother or father through birth or adoption prior to the age of 18. This term also includes a step-sibling, meaning a person with a parent married to a parent of the applicant. Proof of sibling relationship could include birth certificates or adoption decrees for both the sibling and the applicant showing shared parentage, or a sworn statement by the sibling (if 18 or over), parent, or representative, or any combination of the above.

g. Grandparent, meaning the parent of the applicant's parent, as the term "parent" is defined above. Proof of grandparent relationship to the applicant could include birth certificates or adoption decrees of the applicant's parent and the applicant, or by sworn

statement from the grandparent or the applicant's parent, or their representative, or any combination of the above.

h. Grandchild, meaning the son or daughter of the applicant's son or daughter as the terms "son" and "daughter" are defined above. Proof of grandchild relationship could include birth certificates or adoption decrees for the grandchild and the grandchild's parent (applicant's son or daughter), sworn statements from the grandchild (if 18 or over) or his/her parents or representative, or any combination of the above.

i. Aunt or uncle, meaning the sibling of the applicant's parent, or the spouse of an applicant's parent's sibling, as the terms "sibling," "parent," and "spouse" are defined above. Proof of relationship to an aunt or uncle could include birth certificates or adoption decrees showing common parentage of the aunt and the applicant's parent, or marriage certificate showing union with the applicant's parent's sibling, or sworn testimony from the aunt or uncle (if 18 or over), or his or her sibling, parent, or representative, or any combination of the above.

j. Niece, meaning the daughter of the applicant's sibling, as the terms "daughter" and "sibling" are defined above. Proof of aunt/uncle relationship to a niece could include birth certificates or adoption decrees of the applicant, the niece's parent (applicant's sibling), and the niece, sworn statements from the niece (if 18 or over), her parents, or her representative, or any combination of the above.

k. Nephew, meaning the son of the applicant's sibling, as the terms "son" and "sibling" are defined above. Proof of aunt/uncle relationship to a nephew could include birth certificates or adoption decrees of the applicant, the nephew's parent (applicant's sibling), and the nephew, sworn statements from the nephew (if 18 or over), his parents, or his representative, or any combination of the above.

2. In-law relationships are not considered qualifying family members.

3. For purposes of this exception, there is no age restriction on the anchor family member in lawful immigration status.

4. Lawful immigration status for the purpose of exception to the Safe Third Agreement does not include family members in non-immigrant status under INA 101(a)(15)(B) or pursuant to the Visa Waiver Program. Proof of lawful immigrant status could include verification through DHS or EOIR databases, copies of documents that form the basis for such status (e.g. a U.S. birth certificate for citizenship based on birth in the U.S.; Court Order granting withholding of removal, etc.). Examples of eligible anchor status would include the following:

   a. U.S. Citizens
   b. U.S. Lawful Permanent Residents (LPRs), including conditional LPRs
   c. Asylees
   d. Refugees
   e. Aliens granted Temporary Protected Status
   f. Aliens granted withholding of removal
   g. Aliens with valid student and employment-related non-immigrant visas

The VWP is outlined in INA § 217 and implemented at 8 CFR part 217.

C. Family Member 18 years of age or over who has a pending asylum application

Agreement, art. 4, ¶ 2(b)

8 CFR 208.30(e)(6)(iii)(C)

1. This exception includes qualifying family members as defined in B.1.a-l, above.

2. Unlike the previous category, this exception places an age restriction on the anchor family member.

   The anchor family member must be 18 or over, according to information contained in the asylum application, on the date of the threshold screening determination. This age restriction applies to all family members in this category, including spouses.

3. A "family member" should be regarded as having an asylum application pending where he or she is a principal applicant or is included as a derivative beneficiary on an I-589 filed by another alien, or is in the U.S. and is the beneficiary of a pending Refugee/Asylee Relative Petition (Form I-730).

   a. Pending applications include the following:

      (i) Applications awaiting interview;
      (ii) Applications that have been; interviewed, but are awaiting decision;
      (iii) Applications in which a Notice of Intent to Deny has been issued, but which have not been denied;
      (iv) Applications that have been referred to an IJ and are pending before EOIR;
      (v) Applications that have been denied, but have an appeal pending with the BIA;
      (vi) Applications that have been denied but have a Petition for Review pending with a U.S. Court of Appeals.

   HQASM can be contacted to help determine if a family member's asylum application is pending review by a U.S. Court of Appeals.

   b. The following application will not be considered "pending:"

      (i) Applications that have been administratively closed;
      (ii) Applications that have been dismissed;
      (iii) Applications that have been terminated;
      (iv) Applications that have been withdrawn.

   c. The application must be pending on the date of threshold screening determination.

   d. Proof of filing of I-589 must be confirmed by RAPS and/or EOIR databases, or by proof of receipt (either through communication received from DHS or DOJ, or proof of docketing before a federal court).

   e. No assessment of the quality of the pending asylum application is required.
      (i) Neither the asylum filing bars of INA § 208(a)(2) or the eligibility bars of § 208(b)(2)(A) are relevant to the threshold screening determination.
      (ii) Likelihood of approval is not relevant to the

threshold screening determination.

D. Unaccompanied Minors

Agreement, art. 4, ¶ 2(c)

8 CFR 208.30(e)(6)(iii)(D)

For purposes of the Agreement, "unaccompanied minors" are

1. Unmarried and under age 18 (age may be established through valid identity documents, dental and/or wrist bone examination, which is a process usually coordinated by the Public Health Service, or other evidence that established that it is more like than not that the alien is under age 18); and

8 CFR 1208.4(a)(6); 1240.11(g)(1)

69 Fed. Reg. 10623; 10630; 69483

2. Have no parent or legal guardian in either the United States or Canada.

Under CBP practices, unaccompanied juvenile aliens are generally not subject to Expedited Removal. As such, most aliens who might qualify for the agreement's "unaccompanied minor" exception will not undergo threshold screening interviews by asylum officers. Immigration judges, in removal proceedings under INA § 240, will determine whether unaccompanied minors are excepted from the Agreement by applying the Agreement's definition of "unaccompanied minor," which differs from that customarily used by CBP officers.

E. Individuals with a validly-issued U.S. visa, or Visa Waiver

Agreement, art. 4, ¶ 2(d); art.

nationals required to have a visa in Canada

5

8 CFR 208.30(e)(6)(iii)(E)

An applicant for admission at a U.S.-Canada land border port of entry may be denied admission by CBP and referred to an asylum officer for a threshold screening interview, even though he or she has a passport that contains a U.S.-issued visa. Aliens referred in this fashion may include those presenting currently genuine (not counterfeit) non-immigrant U.S. visa indicating an intention to apply for asylum, and determined by CBP to be an intending immigrant during the inspection process. Aliens found to possess genuine visas will meet an exception to the Agreement, even if they are an intending immigrant, and the officer will continue with consideration of the credible fear claim.

An example of validly issued, genuine visas, for purposes of this exception is a non-immigrant visa that was properly issued by a designated State Department official to an individual using a properly-issued passport, but the individual was found ineligible for admission into the U.S. because CBP determined the alien to be an intending immigrant.

Examples of visas that will not be considered validly issued for purposes of this exception to the Agreement are, obviously, counterfeit visas not issued by the U.S. Government. Additionally, visas in passports that were obtained through identity fraud and visas in photo-subbed passports will not be considered validly issued. However, where an alien has made a material misrepresentation to a consular officer for purposes of concealing his or her intent in order to apply for asylum in the U.S., a visa issued by the State Department in reliance on such a misrepresentation may still be regarded as validly-issued.

Aliens from countries participating in the U.S. Visa Waiver Program who are not exempt from Canadian visa requirements also qualify for an exception to the Agreement. However, at this time, all nationals of each U.S. VWP participating country are also visa exempt for Canadian purposes. Thus, this exception will not presently apply to any asylum seekers. VWP applicants who indicate an intention to apply for asylum will be referred to an asylum officer, who will conduct a threshold screening interview to determine the applicability of other Agreement exceptions.

A list of U.S. VWP participating countries and visa exempt Canadian nationalities may be found, respectively, at http://www.cic.gc.ca/english/visit/visas.asp (scroll down to "Visitor Visa Exemptions")

F. USCIS Director or designee determines it is in the Public Interest to allow the individual to seek asylum in the U.S.

Agreement, art. 6

8 CFR 208.30(e)(6)(iii)(F)

For purposes of the public interest exception to the Agreement, an APSO will conduct the threshold screening interview and may recommend such a determination, but the final decision on affirmative public interest findings is made by the USCIS director or his/her designee.

Each public interest exception should be evaluated on an individualized, case-by-case basis, applying a "totality of the circumstances" analysis.

69 FR 69483-84

VI. EXCEPTIONS APPLICABLE TO INDIVIDUALS BEING REMOVED BY THE GOVERNMENT OF CANADA IN-TRANSIT THROUGH THE UNITED STATES

Parole status granted to an alien for the purpose of allowing him or her to transit through the U.S. during the course of removal by the Canadian government will be revoked upon the alien's indication of intention to seek asylum. The applicant will then be immediately referred for a threshold screening interview. For threshold screening of in-transit referrals, the only exceptions to the Agreement are the following:

- Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada; or

  Described in greater detail at Section V.(A) above.

- The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States

  Described in greater detail at Section V.(F) above.

VII. SUMMARY

A. Function of the threshold screening

The function of the threshold screening process is to determine whether an alien is subject to the Agreement, and, if so, whether s/he will be permitted to remain in the U.S. to pursue his or her protection claims based on the alien's qualification for one of the Agreement's exceptions.

B. Standard of proof in threshold screening

The threshold screening is a fact-based determination, and is subject to a *preponderance of the evidence* standard of proof.

C. Exceptions applicable at U.S.-Canada land border ports of entry

Aliens who request asylum, withholding of removal, or protection under the Convention Against Torture at a U.S. port-of-entry located on the shared U.S.-Canada land border will be ineligible to pursue their claims in the U.S. unless they qualify for one of the Agreement's exceptions.

An alien qualifies for an exception to the Agreement under these circumstances if he or she:

a. Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

b. Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to an alien whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the United States pursuant to the Visa Waiver Program;

c. Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;

d. Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

e. Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States to the alien, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

f. The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

D. Exceptions applicable to individuals being removed by the Government of Canada in-transit through the United States

For threshold screening of in-transit referrals, the only exceptions to the Agreement are the following:

a.) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada; or

b.) The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.