5.3 Person Granted Asylum (who has not yet obtained LPR status)

A. Asylee Client's Immigration Priorities
B. Impact on Asylee of an Aggravated Felony Conviction
C. Impact on Asylee of a Criminal Disposition Triggering Inadmissibility
D. Forms of Relief Depending on Offense

5.3 Person Granted Asylum (who has not yet obtained LPR status)

A person granted asylum has been admitted indefinitely to the U.S. due to a threat of persecution in his or her country of nationality. *See supra* § 2.2C, Refugee or Asylee Status. Asylees can be removed because of a criminal conviction and thus returned to a country where they may be harassed, imprisoned, tortured, or even killed. There is much at stake in a criminal case for a client who has been granted asylum.

Both refugees (discussed *supra* in § 5.2, Refugee (who has not yet obtained LPR status)) and asylees have been admitted to the U.S. due to a threat of persecution. Both groups can work in the U.S. and adjust to LPR status. Refugee status, however, is granted to an individual *before* entering the U.S., based on U.S. refugee policy and priorities. Upon application, he or she is granted a visa, and then is admitted to the U.S. as a refugee. In contrast, asylum is granted to an individual *after* entry into the U.S. Thus, the individual entered the U.S. in some other status or unlawfully, but then applied for and was granted asylum.

For technical immigration law reasons pertaining to their status, a refugee can be removed for an offense triggering deportability (*see supra* § 5.2A, Refugee Client's Immigration Priorities), while an asylee's status can be terminated only if convicted of a "particularly serious crime." However, both groups are also concerned about adjusting to LPR status and therefore with avoiding offenses that trigger inadmissibility.

A. Asylee Client's Immigration Priorities

An asylee's greatest concern is conviction of a "particularly serious crime," including any aggravated felony. Such a conviction may result in the termination of his or her asylum status, after which he or she can be removed for grounds of inadmissibility. *See* INA § 208(c)(2)(B)&(3), 8 U.S.C. § 1158(c)(2)(B)&(3); 8 C.F.R. § 1208.22(2013). An asylee will not be removed based on the crime-related grounds of deportability. *See Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

Another significant concern for asylees is an offense triggering inadmissibility. An asylee has been given conditional, not permanent, permission to reside in the U.S. An asylee can lose his or her status if conditions in the country of nationality change. To remain permanently in the U.S., an asylee must adjust status to an LPR. If the asylee has been convicted of a crime making him or her inadmissible, he or she is ineligible to become an LPR.

Third, if your asylee client cannot avoid an aggravated felony, he or she may still be able to remain in the U.S. permanently by seeking relief from removal. Dispositions to avoid include drug trafficking, violent offenses, and particularly serious crimes (as defined for the purposes of withholding), explained further below.

B. Impact on Asylee of an Aggravated Felony Conviction

An asylee's primary immigration concern is a conviction of a "particularly serious crime," for which his or her status can be terminated. *See* INA § 208(c)(2)&(3), 8 U.S.C. § 1158(c)(2)&(3). There is no statutory definition of a particularly serious crime. However, in the context of determining whether an asylee can be deported, an aggravated felony conviction is *per se* a conviction for a "particularly serious crime." *See* INA § 208(b)(2)(B)(i), 8 U.S.C. § 1158(b)(2)(B)(i). For a table of the categories of offenses classified as aggravated felonies, see *supra* § 3.4A, Aggravated Felonies Generally.

Other offenses may be considered particularly serious crimes in the discretion of the immigration judge. *See Matter of M-H-*, 26 I&N Dec. 46 (BIA 2012); *Matter of N-A-M*, 24 I&N Dec. 336 (BIA 2007). The relevant factors include the nature and underlying circumstances of the conviction and the type of sentence imposed.

C. Impact on Asylee of a Criminal Disposition Triggering Inadmissibility

Another significant concern for an asylee client is an offense that renders him or her inadmissible. Because asylum does not confer a permanent right to reside in the U.S., an asylee may want to adjust to LPR status. To adjust his or her status, a person granted asylum must avoid the crime-related grounds of inadmissibility. *See supra* § 3.5G, Chart of Principal Criminal Grounds of Inadmissibility. Other offenses can result in a denial of adjustment of status in the discretion of the immigration judge or officer, but they are not automatic bars.

D. Forms of Relief Depending on Offense

If your client cannot avoid an aggravated felony, he or she may still be able to remain in the U.S. by seeking relief from removal. Below are two principal forms of relief for an asylee client. It may be helpful to consult with an immigration lawyer to determine whether your client is otherwise eligible for these forms of relief.

209(c) Waiver (if not convicted of drug trafficking or violent offense). If your asylee client cannot avoid an aggravated felony, he or she may still be able to remain in the U.S. permanently by seeking a § 209(c) waiver, a special form of relief for refugees and asylees for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. *See* INA § 209(c), 8 U.S.C. § 1159(c). Such relief is barred by any conviction that provides the government "reason to believe" that the refugee has been involved in drug trafficking. *See id; see also supra* § 3.5A, Controlled Substance Offense (discussing meaning of drug trafficking in this context).

In addition, a conviction of a "violent or dangerous" crime will presumptively bar such discretionary relief. *See supra* "209(c) Waiver (if not convicted of drug trafficking or violent offense)" in § 5.2D, Forms of Relief Depending on Offense.

Withholding of Removal. If your asylee client cannot avoid an aggravated felony, he or she may be able to seek "withholding of removal" based, again, on the client's previously determined fear of persecution in the country of removal. *See* § INA 241(b)(3); 8 U.S.C. § 1231(b)(3). It is a less beneficial form of persecution-based relief and requires a higher threshold showing of persecution than asylum.

Withholding of removal is barred by a conviction of a "particularly serious crime." In this context, a particularly serious crime includes one or more aggravated felony convictions with an aggregate sentence of imprisonment (active or suspended) of five years or more. *See* INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B). The five-year sentence may be for one conviction or different convictions, whether or not resolved at the same time A particularly serious crime presumptively includes an aggravated felony conviction involving trafficking in a controlled substance. *See Matter of Y-L-, A-G-, R-S-R-*, 23 I&N Dec. 270 (A.G. 2002) (recognizing that presumption of particularly serious crime is rebuttable). Other offenses may be considered particularly serious crimes in the discretion of the immigration judge. *See Matter of M-H-*, 26 I&N Dec. 46 (BIA 2012); *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007). The relevant factors include the nature and underlying circumstances of the conviction and the type of sentence imposed.