



## Policy Memorandum

SUBJECT: Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with *Matter of L-E-A-*

### Purpose

This policy memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers for determining whether an applicant is eligible for asylum or refugee status or withholding of removal in light of the Attorney General’s decision in *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019). The guidance in this memorandum supersedes all previous guidance dealing specifically with asylum, withholding, and refugee eligibility that is inconsistent with this guidance.

### Scope

This PM applies to, and shall be used to, guide determinations by all USCIS employees. USCIS personnel are directed to ensure consistent application of the holding and reasoning in *Matter of L-E-A-* in reasonable fear, credible fear, asylum, and refugee screenings and adjudications.

### Authority

Sections 101(a)(42), 103(a), 207, 208, and 235 of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1101(a)(42), 1103(a), 1157, 1158, 1225); Section 451 of the Homeland Security Act of 2002 (6 U.S.C. § 271); Title 8 Code of Federal Regulations (8 C.F.R.) Parts 207, 208, and 235.

## I. Background

On July 29, 2019, the Attorney General published *Matter of L-E-A-*, which provides the framework to adjudicate protection claims based on membership in a particular social group “defined by family or kinship ties.” The purpose of this memorandum is to provide guidance to asylum and refugee officers on the application of this decision while processing reasonable fear, credible fear, asylum, and refugee claims.

In his decision, the Attorney General overruled the portion of the Board of Immigration Appeals’ (BIA) precedent decision in *Matter of L-E-A-*, 26 I&N Dec. 40, 42-43 (BIA 2017), which discussed whether the applicant’s proposed particular social group is cognizable. The Attorney General found that, in analyzing the particular social group at issue, the BIA did not perform the required fact-based inquiry to determine whether the applicant had satisfied his burden of establishing the existence of a particular social group within the legal requirements of the statute. The Attorney General, however, left the Board’s analysis of the nexus requirement undisturbed. *See id.* at 43–47. That analysis, in which the

Board concluded that the applicant failed to establish a sufficient nexus between his membership in the group and the persecution, remains good law.

Section 103(a) of the INA provides that the “determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” 8 U.S.C. § 1103(a). Further, under 8 C.F.R. §§ 103.10(b) and 1003.1(g), “decisions of the [BIA], and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security.” And decisions of the Attorney General, as well as selected decisions designated by the Board, “shall serve as precedents in all proceedings involving the same issue or issues.” See 8 C.F.R. §§ 103.10(b); 1003.1(g). Accordingly, the decision in *Matter of L-E-A-* was effective immediately and has been binding on all USCIS officers since July 29, 2019.<sup>1</sup>

## II. Summary of Changes

Previous USCIS guidance, no longer valid in light of the Attorney General’s decision in *Matter of L-E-A-*, instructed officers to recognize particular social groups based on familial relationships so long as the pertinent society perceived the degree of relationship among the family members as so significant that the society distinguished groups based on that type of relationship. This held true under past USCIS guidance, even for families that were not well-known in the relevant society. For example, the RAO Nexus – Particular Social Group Lesson Plan, July 27, 2015, stated:

Often, the determinative question is whether the familial relationship also reflects social distinctions. That would depend on the circumstances, including the degree and nature of the relationship asserted to define the group and the cultural context that would inform how that type of relationship is viewed by the society in question. The question here is not generally whether a specific family is well-known in the society. Rather, the question is whether the society perceives the degree of relationship shared by group members as so significant that the society distinguishes groups of people based on that type of relationship.

In most societies, for example, the nuclear family would qualify as a particular social group, while those in more distant relationships, such as second or third cousins, may not. *Matter of H-*, 21 I&N Dec. 337, 342-43 (BIA 1996) (indicating that a Somali clan or subclan represents a familial-type relationship that is socially distinct)... You should carefully

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<sup>1</sup> While a court order in *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018), currently requires officers to apply the law of the circuit most favorable to an alien undergoing credible fear screening, the Attorney General’s decision in *Matter of L-E-A-* is controlling law in every circuit, and must be applied going forward in every circuit, unless and until a circuit court holds to the contrary. The Attorney General in *L-E-A-* held that previous courts of appeals decisions that held that nuclear families categorically constituted particular social groups were interpretations of “particular social group,” an ambiguous statutory term that the Attorney General has discretion to reasonably interpret. The Attorney General has reasonably interpreted that term to require social distinction and particularity, and has predicted that many family-based groups may not meet those requirements. Therefore, the Attorney General concluded that the cognizability of family groups must be considered on a case-by-case basis, not categorically. Accordingly, this part of the Attorney General’s decision in *L-E-A-* overrode court decisions (a) approving family-based particular social groups categorically or (b) suggesting that the particularity and social distinction requirements are satisfied where the type of relationship that unifies group members is particular and socially distinct, even where the specific family group at issue is not particular and socially distinct. See *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs., Inc.*, 545 U.S. 967, 980 (2005); see also *Grace*, 344 F. Supp. 3d at 136-37 (explaining that where a court has interpreted an ambiguous statutory provision that an agency has discretion to interpret, the agency’s reasonable interpretation of the statute may override the prior court interpretation). Questions or suggestions regarding the *Grace* order and its applicability to credible fear screenings should be addressed through appropriate channels to the Office of Chief Counsel.

analyze this issue in light of the nature and degree of relationship within the family group and pay close attention to country of origin information about social attitudes toward family relationships.

Nexus Particular Social Group Lesson Plan at 22.

This language and all other guidance and training materials that conflicts with the holding in *Matter of L-E-A-* are no longer valid and do not reflect the current state of the law. Under the Attorney General’s opinion in *Matter of L-E-A-*, officers should no longer recognize family-based particular social groups based only on the general significance of family relationships in the society in question, or the sole fact that a particular family has been the target of private criminal activity. Instead, officers “must be careful to focus on the particular social group *as it is defined* by the applicant and ask whether *that group* is distinct in the society in question.” *Matter of L-E-A-*, 27 I&N Dec. at 594. For social groups defined by a specific family, such as an applicant’s father’s immediate family, “the adjudicator must ask whether *that specific family* is ‘set apart, or distinct, from other persons within the society in some significant way.’ It is not sufficient to observe that the applicant’s society (or societies in general) place great significance on the concept of the family.” *Id.* (citing *M-E-V-G-*, 26 I&N Dec. at 238). The Attorney General explicitly instructs that “[t]he fact that ‘nuclear families’ or some other widely recognized family unit generally carry societal importance says nothing about whether a *specific* nuclear family would be ‘recognizable by society at large.’” *Id.* (citing *Matter of A-B-*, 27 I&N Dec. 316, 336 (A.G. 2018); see also *Castellano-Chacon v. INS*, 341 F.3d 533, 548 (6th Cir. 2003) (noting that a country or society’s reaction to a group is a factor in establishing whether it is a cognizable particular social group)). For social groups defined as “a collection of familial relatives of persons who have certain shared characteristics”—such as family members of persons who have been killed by gang members—officers must ask whether “families sharing these characteristics are seen in society as cohesive and identifiable groups.” *Id.* at 595. Further, the shared characteristic relied upon to establish “particular social group’ status cannot be defined “in terms of the persecution” that the group “has suffered or that it fears.” *Id.* at 595. In other words, if a family group fears retaliation from a gang, the characteristic establishing particular social group status cannot simply be people who fear retaliation from criminal gangs. The alleged family social group would have to be defined by a characteristic other than the particular harm that the group fears. This is because, by its terms, the INA defines refugees as needing to satisfy two separate and distinct elements—that of (i) having a protected status like membership in a “particular social group” and (ii) having experienced, or having a well-founded fear of, persecution on account of that status.

### **III. Analyzing Whether a Family Based Group is a Cognizable Particular Social Group**

The Attorney General, in *Matter of L-E-A-*, reaffirmed long-standing BIA precedent that all proposed particular social groups, including family-based groups, must satisfy the criteria set forth in *Matter of M-E-V-G-* and *Matter of W-G-R-*. See *Matter of M-E-V-G-*, 26 I&N Dec. at 237; *Matter of W-G-R-*, 26 I&N Dec. at 215–18. In these cases, the BIA held that for any claim based on membership in a particular social group, an applicant has the burden to prove that he or she is a member of a group that is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. -. See *Matter of M-E-V-G-*, 26 I&N Dec. at 237; *Matter of W-G-R-*, 26 I&N Dec. at 215–18. The Attorney General thus did not bar all family-based groups from qualifying for asylum, but predicted that “[b]ased upon these immigration decisions, in the

ordinary case, a nuclear family will not, without more, constitute a ‘particular social group’ because most nuclear families are not inherently socially distinct.” *Matter of L-E-A-*, 27 I&N Dec. at 589. In the same manner as former Attorney General Sessions’s opinion in *Matter of A-B-*, 27 I&N Dec. at 318, the Attorney General’s decision in *Matter of L-E-A-* also made clear that the rigorous application of that legal standard is required for all particular social group cases. Therefore, the Attorney General’s decision in *Matter of L-E-A-* confirms, consistent with BIA precedent, that to qualify as a particular social group, a family-based group must satisfy **all three** of the criteria listed below.

Officers should note an important distinction between the context of *L-E-A-* and other Attorney General and Board precedents concerning particular social groups, and USCIS proceedings. In adversarial section 240 proceedings, the applicant has the burden to clearly indicate the exact delineation of any particular social group on which he or she bases her claim. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190-91 (BIA 2018). Proceedings before USCIS officers, unlike section 240 proceedings, are not adversarial. *See* 8 C.F.R. 208.9(b); 8 C.F.R. 208.30(d); 8 C.F.R. 208.31(c). The applicant in USCIS proceedings has the burden to show facts that would demonstrate eligibility for asylum or withholding, 8 C.F.R. 208.13(a); 8 C.F.R. 208.16(b), or in credible and reasonable fear proceedings, facts that show a significant or reasonable possibility the applicant could establish such eligibility, 8 C.F.R. 208.30(e)(2) & (3); 8 C.F.R. 208.31(c). However, the applicant in USCIS interviews does not have the burden to delineate a cognizable particular social group, and the officer must conduct the interview with the purpose of eliciting all relevant and useful information bearing on the applicant’s eligibility. *See* 8 C.F.R. 208.9(b); 8 C.F.R. 208.30(d).

**A. Legal Framework for Analysis of Whether A Family- or Kin- Based Group is a Cognizable “Particular Social Group”**

i. Immutability

The members of a purported social group must have “a common immutable characteristic.” *See Matter of M-E-V-G-*, 26 I&N Dec. at 237-38 (“Our interpretation of the phrase ‘membership in a particular social group’ incorporates the common immutable characteristic standard set forth in *Matter of Acosta*, 19 I&N Dec. [211,] 233 [(BIA 1985)], because members of a particular social group would suffer significant harm if asked to give up their group affiliation, either because it would be virtually impossible to do so or because the basis of affiliation is fundamental to the members’ identities or consciences.”). While the BIA has recognized that “kinship ties” may be one of the kinds of common, immutable characteristics that might form the basis for a “particular social group” under the INA, *Acosta*, 19 I&N Dec. at 233, officers must apply a society-specific and case-specific analysis to determine whether each set of facts, as presented by the applicant, meets the immutability element required by the BIA.

ii. Particularity

To qualify as a social group for purposes of evaluating refugee status, a family-based group must share one or more characteristics that enable the group to be defined with particularity. *Matter of A-B-*, 27 I&N Dec. at 320, 335-36. A group is particular if the “group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of

persons.” *Id.* at 330 (citing *Matter of E-A-G-*, 24 I&N Dec. 591, 594 (BIA 2008)). A particular social group must not be “amorphous, overbroad, diffuse, or subjective,” and “not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239. *See also Matter of L-E-A-*, 27 I&N Dec. at 593 (citing *Matter of S-E-G-*, 24 I&N Dec. at 597, 585 (BIA 2008) (noting that the “proposed group of ‘family members,’ which could include fathers, mothers, siblings, uncles, aunts, nieces, nephews, grandparents, cousins, and others, is . . . too amorphous a category” to satisfy the particularity requirement)). As with each element of a particular social group determination, officers must analyze the group at issue in the context of the society where the claim arises.

### iii. Social Distinction

Officers must determine whether the facts show a particular social group that is socially distinct in the relevant society. *See Matter of M-E-V-G-*, 26 I&N Dec. at 238. In other words, the applicant’s purported group must be “set apart, or distinct, from other persons within the society in some significant way.” *Id.* (“...[I]f the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.”). In *Matter of L-E-A-*, the Attorney General emphasized this long-standing BIA precedent, stating, “‘To have the “social distinction” necessary to establish a particular social group, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.’” *Matter of L-E-A-*, 27 I&N Dec. at 593-94 (quoting *Matter of W-G-R-*, 26 I&N Dec. at 217). It is not enough that the purported group be set apart in the eye of the persecutor, because it is the perception of the relevant society—rather than the perception of the alien’s actual or potential persecutors alone—that matters when determining social distinction. *Id.* at 594 (citing *W-G-R-*, 26 I&N Dec. at 217).<sup>2</sup>

## **B. Application of this Analysis to Common Family-Based Claims**

The Attorney General in *Matter of L-E-A-* addressed two principal ways by which refugee or asylum applicants generally attempt to define family-based groups as “particular social groups:” (1) specific family units, or (2) a collection of familial relatives of persons who have certain shared characteristics. *Matter of L-E-A-*, 27 I&N Dec. at 594.

### i. Specific Family Units

The Attorney General reiterated that applicants must show that the specific family unit being considered as a possible particular social group must have some greater significance or meaning in society. “In analyzing these claims, adjudicators must be careful to focus on the particular social group . . . and ask whether that group is distinct in the society in question.” *Id.* It is not enough that a persecutor sets the family apart from the relevant society; the relevant society must perceive the family unit as set apart. *Id.* Consequently, the Attorney General predicted that the average family is unlikely to be recognized as a particular social group within the meaning of the asylum laws and binding precedent. *Id.*

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<sup>2</sup> Although not the focus of the social distinction analysis, the persecutor’s perception remains critical to determining whether the actual or feared persecution is on account of the alien’s membership in the proposed particular social group—i.e., the nexus analysis. *See Matter of L-E-A-*, 27 I&N Dec. at 43–47.

Officers must focus on the particular social group as it is presented by the facts the applicant provides, and determine whether that group is distinct in the society in question. For example, if the applicant claims persecution based on membership in his father's immediate family, then the adjudicator must ask whether that specific family is "set apart, or distinct, from other persons within the society in some significant way." *Matter of L-E-A-*, 27 I&N Dec. at 594. The officer should not assess the proposed particular social group as "immediate families in general."

ii. Collections of Familial Relatives of Persons Who Have Certain Shared Characteristics

The Attorney General explained that this category of family classification (collections of familial relatives of persons who have certain shared characteristics, such as a social group defined as "immediate family members of Honduran women unable to leave a domestic relationship") will only meet the social distinction requirement where there is evidence that families sharing these characteristics are seen in the society as cohesive and identifiable groups. *Matter of L-E-A-*, 27 I&N Dec. at 595. Officers should also be cautioned that when analyzing these kinds of groups, a particular social group cannot be defined by the harm group members have suffered or fear as the persecution that is the basis of the claim. *Id.* (citing *Matter of M-E-V-G-*, 26 I&N Dec. at 236 n.11 and other cases).

**C. No Categorical Bar or Universal Particular Social Groups**

The Attorney General's decision in *Matter of L-E-A-* "does not bar all family-based social groups from qualifying for asylum." *Matter of L-E-A-* 27 I&N Dec. at 595. To the contrary, an applicant may be a member of a specific kinship group or clan that, based on the evidence in the applicant's case and of the pertinent society, is immutable, particular, and socially distinct. *Id.* Additionally, officers must not assume that because one particular social group is cognizable in one specific case and society, that it is cognizable in another case or society. Officers must analyze each case on its merits. Because particular social groups must be both particular and socially distinct in the societies in question, as well as immutable, each case requires a fact-specific analysis based on the evidence presented by the applicant. *Id.* at 591. Instead of imposing any categorical bar, this PM is issued to remind officers of the requirements for particular social groups and to highlight that family-based groups do not automatically qualify as particular social groups under the law.

**IV. Summary**

Under current precedent, including *Matter of L-E-A-*, *Matter of A-B-*, *Matter of M-E-V-G-*, and *Matter of W-G-R-*, an applicant who claims that he or she has experienced, or has a well-founded fear of, persecution on account of membership in a particular social group based on family or kinship has the burden to establish that he or she is a member of a group that is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. It is not sufficient to observe that the applicant's society (or societies in general) place great significance on the concept of the family. *Matter of L-E-A-*, 27 I&N Dec. at 594 (citing *M-E-V-G-*, 26 I&N Dec. at 238). The specific family-based group to which the applicant belongs must hold some greater meaning or significance in their society that sets that specific family group apart or

makes it distinct from other persons within the society in some significant way. *Id.* at 593-95; *Matter of M-E-V-G-*, 26 I&N Dec. at 238.

Officers should be alert that, under the standards clarified in *Matter of L-E-A-*, the Attorney General predicted that the average or ordinary family typically will not meet the standard, because it will not have the kind of identifying characteristics that render a specific family socially distinct within the society in question. Where a preponderance of the evidence does not show that the specific family unit is socially distinct, eligibility for asylum or refugee status on that basis will not be established. See 8 U.S.C. 1158(b)(1)(B)(i). Likewise, in the absence of evidence that the individual family is socially distinct, applicants will be unable to show, on that basis, a significant possibility of establishing eligibility for asylum or withholding of removal under INA § 241(b)(3) for purposes of credible-fear screenings, INA § 235(b)(1)(B)(v), or a reasonable fear of persecution in reasonable fear screenings, 8 C.F.R. § 208.31(c).

Even if an applicant establishes membership in a legally cognizable particular social group, officers must find that the applicant also presents sufficient evidence to satisfy all the other elements of the refugee definition in order to be determined eligible for asylum or refugee status. Officers must examine each element separately, even though certain types of evidence may be relevant to several elements.

## **V. Contact**

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Chief Counsel.

## **VI. Use**

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law, or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.