

BACKGROUND OF ASYLUM ELIGIBILITY IN THE U.S.

(from Federal Register)

Asylum is a discretionary immigration benefit that generally can be sought by eligible aliens who are physically present or arriving in the United States, irrespective of their status, as provided in section 208 of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1158. Congress, however, has provided that certain categories of aliens cannot receive asylum and has further delegated to the Attorney General and the Secretary of Homeland Security (“Secretary”) the authority to promulgate regulations establishing additional bars on eligibility to the extent consistent with the asylum statute, as well as the authority to establish “any other conditions or limitations on the consideration of an application for asylum” that are consistent with the INA. *See* INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B). This proposed rule will limit aliens' eligibility for this discretionary benefit if they fall within certain categories related to criminal behavior. The proposed rule will also eliminate a regulation concerning the automatic reconsideration of discretionary denials of asylum applications.

A. Joint Notice of Proposed Rulemaking

The Attorney General and the Acting Secretary of Homeland Security publish this joint notice of proposed rulemaking in the exercise of their respective authorities concerning asylum determinations.

The Homeland Security Act of 2002, Public Law 107-296, as amended (“the Act” or “the HSA”), transferred many functions related to the execution of federal immigration law to the newly created Department of Homeland Security (“DHS”). The Act charges the Secretary “with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,” 8 U.S.C. 1103(a)(1), and grants the Secretary the power to take all actions “necessary for carrying out” the provisions of the immigration and nationality laws, *id.* 1103(a)(3). The Act also transferred to U.S. Citizenship and Immigration Services (“USCIS”) responsibility for affirmative asylum applications, *i.e.*, applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). If an alien is not in removal proceedings or is an unaccompanied alien child, DHS asylum officers determine in the first instance whether an alien's asylum application should be granted. *See* 8 CFR 208.9.

At the same time, the Act retained for the Attorney General authority over certain individual immigration adjudications, including those related to asylum. These proceedings are conducted by the Department of Justice through the Executive Office for Immigration Review (“EOIR”), subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g).

Accordingly, immigration judges within the Department of Justice continue to adjudicate all defensive asylum applications made by aliens during the removal process and review affirmative asylum applications referred by USCIS to the immigration courts. *See* 8 U.S.C. 1101(b)(4); 8 CFR 1208.2. *See generally Dhakal v. Sessions*, 895 F.3d 532, 536-37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals within the Department of Justice, in turn, hears appeals from immigration judges' decisions. 8 CFR 1003.1. In addition, the HSA amended the INA to mandate “[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” 8 U.S.C. 1103(a)(1). This broad division of functions and authorities informs the background of this proposed rule.

B. Domestic Legal Framework for Asylum

Asylum is a form of discretionary relief under section 208 of the INA, 8 U.S.C. 1158, that precludes an alien from being subject to removal, creates a path to lawful permanent resident status and citizenship, and affords a variety of other ancillary benefits, such as allowing certain alien family members to obtain lawful immigration status derivatively. *See R-S-C v. Sessions*, 869 F.3d 1176, 1180 (10th Cir. 2017); *see also, e.g.*, INA 208(c)(1)(A), (C), 8 U.S.C. 1158(c)(1)(A), (C) (asylees cannot be removed and can travel abroad without prior consent); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (allowing derivative asylum for asylee's spouse and unmarried children); INA 209(b), 8 U.S.C.

1159(b) (allowing the Attorney General or Secretary to adjust the status of an asylee to that of a lawful permanent resident); INA 316(a), 8 U.S.C. 1427(a) (describing requirements for naturalization of lawful permanent residents). Aliens who are granted asylum are authorized to work in the United States and to receive certain financial assistance from the Federal Government. See INA 208(c)(1)(B), (d)(2), 8 U.S.C. 1158(c)(1)(B), (d)(2); 8 U.S.C. 1612(a)(2)(A), (b)(2)(A); 8 U.S.C. 1613(b)(1); 8 CFR 274a.12(a)(5); see also 8 CFR 274a.12(c)(8) (providing that asylum applicants may seek employment authorization 150 days after filing a complete application for asylum). In 1980, the Attorney General, in his discretion, established several mandatory bars to asylum eligibility. See 8 CFR 208.8(f) (1980); Aliens and Nationality; Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980). In 1990, the Attorney General substantially amended the asylum regulations, but exercised his discretion to retain the mandatory bars to asylum eligibility related to persecution of others on account of a protected ground, conviction of a particularly serious crime in the United States, firm resettlement in another country, and the existence of reasonable grounds to regard the alien as a danger to the security of the United States. See Aliens and Nationality; Asylum and Withholding of Deportation Procedures, 55 FR 30674-01, 30678, 30683 (July 27, 1990); see also *Yang v. INS*, 79 F.3d 932, 936-39 (9th Cir. 1996) (upholding firm resettlement bar); *Komarenko v. INS*, 35 F.3d 432, 436 (9th Cir. 1994) (upholding particularly serious crime bar), *abrogated on other grounds by Abebe v. Mukasey*, 554 F.3d 1203 (9th Cir. 2009) (en banc). In 1990, Congress added another mandatory bar for those with aggravated felony convictions. Immigration Act of 1990, Public Law 101-649, sec. 515, 104 Stat. 4987.

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) in 1996, Congress added three more categorical bars on the ability to apply for asylum, for: (1) Aliens who can be removed to a safe third country pursuant to a bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104-208, div. C, sec. 604. Congress also adopted six mandatory bars to asylum eligibility that largely reflected the pre-existing, discretionary bars set forth in the Attorney General's existing asylum regulations. These bars cover (1) aliens who “ordered, incited, or otherwise participated” in the persecution of others; (2) aliens convicted of a “particularly serious crime” in the United States; (3) aliens who committed a “serious nonpolitical crime outside the United States” before arriving in the United States; (4) aliens who are a “danger to the security of the United States;” (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who were “firmly resettled” in another country prior to arriving in the United States. *Id.* (codified at 8 U.S.C. 1158(b)(2) (1997)). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered “particularly serious crime[s].” *Id.* (codified at 8 U.S.C. 1158(b)(2)(B)(i) (1997)). Although Congress has enacted specific asylum eligibility bars, that statutory list is not exhaustive. Congress, in IIRIRA, further provided the Attorney General with the authority to establish by regulation “any other conditions or limitations on the consideration of an application for asylum,” so long as those limitations are “not inconsistent with this chapter.” INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B); see also INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). Aliens who apply for asylum must satisfy two criteria. They must establish that they (1) are statutorily eligible for asylum; and (2) merit a favorable exercise of discretion. INA 208(b)(1)(A), 240(c)(4)(A), 8 U.S.C. 1158(b)(1)(A), 1229a(c)(4)(A); *Matter of A-B-*, 27 I&N Dec. 316, 345 n.12 (A.G. 2018), *abrogated on other grounds by Grace v. Whitaker*, 344 F. Supp. 3d 96, 140 (D.D.C. 2018); see also, e.g., *Fisenko v. Lynch*, 826 F.3d 287, 291 (6th Cir. 2016); *Kouljinski v. Keisler*, 505 F.3d 534, 541-42 (6th Cir. 2007); *Gulla v. Gonzales*, 498 F.3d 911, 915 (9th Cir. 2007); *Dankam v. Gonzales*, 495 F.3d 113, 120 (4th Cir. 2007); *Krastev v. INS*, 292 F.3d 1268, 1270 (10th Cir. 2002). As the Attorney General recently observed, “[a]sylum is a discretionary form of relief from removal, and an applicant bears the burden of proving not only statutory eligibility for asylum but that he also merits asylum as a matter of discretion.” *Matter of A-B-*, 27 I&N Dec. at 345 n.12; see also *Moncrieffe v. Holder*, 569 U.S. 184, 187 (2013) (describing asylum as a form of “discretionary relief from

removal”); *Delgado v. Mukasey*, 508 F.3d 702, 705 (2d Cir. 2007) (“Asylum is a discretionary form of relief Once an applicant has established eligibility . . . , it remains within the Attorney General’s discretion to deny asylum.”).

With respect to eligibility for asylum, section 208 of the INA provides that an applicant must (1) be “physically present” or “arrive[.]” in the United States, INA 208(a)(1), 8 U.S.C. 1158(a)(1); (2) meet the statutory definition of a “refugee,” INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A); and (3) otherwise be eligible for asylum, INA 208(b)(2), 8 U.S.C. 1158(b)(2); 8 CFR 1240.8(d).

In general, a refugee is someone who is outside of his country of nationality and who is unable or unwilling to return to that country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A). The alien bears the burden of proof to establish that he meets eligibility criteria, including that he qualifies as a refugee. INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i).

Aliens must also establish that they are otherwise eligible for asylum, meaning that they are not subject to one of the statutory bars to asylum or any “additional limitations and conditions . . . under which an alien shall be ineligible for asylum” established by regulation. *See* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). The INA currently bars from asylum eligibility any alien who (1) “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of” a protected ground; (2) “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;” (3) “has committed a serious nonpolitical crime outside the United States” prior to arrival in the United States; (4) constitutes “a danger to the security of the United States;” (5) is described in the terrorism-related inadmissibility grounds, with limited exception; or (6) “was firmly resettled in another country prior to arriving in the United States.” INA 208(b)(2)(A)(i)-(vi), 8 U.S.C. 1158(b)(2)(A)(i)-(vi).

Aliens who fall within one of these bars are subject to mandatory denial of asylum. Where there is evidence that “one or more of the grounds for mandatory denial of the application for relief may apply,” the applicant in immigration court proceedings bears the burden of establishing that the bar at issue does not apply. 8 CFR 1240.8(d); *see also, e.g., Rendon v. Mukasey*, 520 F.3d 967, 973 (9th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the aggravated felony bar to asylum); *Su Qing Chen v. U.S. Att’y Gen.*, 513 F.3d 1255, 1257 (11th Cir. 2008) (applying 8 CFR 1240.8 in the context of the persecutor bar); *Xu Sheng Gao v. U.S. Att’y Gen.*, 500 F.3d 93, 98 (2d Cir. 2007) (same).

Because asylum is a discretionary benefit, aliens who are eligible for asylum are not automatically entitled to it. Rather, after demonstrating eligibility, aliens must further meet their burden of showing that the Attorney General or Secretary should exercise his or her discretion to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (the “Secretary of Homeland Security or the Attorney General *may* grant asylum to an alien” who applies in accordance with the required procedures and meets the definition of a refugee (emphasis added)); *Matter of A-B-*, 27 I&N Dec. at 345 n.12; *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

Additionally, aliens whose asylum applications are denied may nonetheless be able to obtain protection from removal under other provisions of the immigration laws. A defensive application for asylum that is submitted by an alien in removal proceedings is also automatically deemed an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 1208.3(b). An immigration judge may also consider an alien’s eligibility for withholding and deferral of removal under regulations implementing U.S. obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), which were issued pursuant to section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277 (8 U.S.C. 1231 note). *See* 8 CFR 1208.13(c)(1); *see also* 8 CFR 1208.16(c) through 1208.18.

These forms of protection prohibit removal to any country where the alien would more likely than not be persecuted on account of a protected ground or tortured. Applying the relevant standard, if an

alien proves that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground, but is denied asylum for some other reason—for instance, because of an eligibility bar or a discretionary denial of asylum—the alien may be entitled to statutory withholding of removal if not otherwise statutorily barred. INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16, 1208.16; *see also Garcia v. Sessions*, 856 F.3d 27, 40 (1st Cir. 2017) (“[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood.”). Likewise, an alien who establishes that it is more likely than not that he or she would be tortured if removed to the proposed country of removal will qualify for CAT protection. *See* 8 CFR 1208.16(c) through 1208.18. But, unlike asylum, statutory withholding and CAT protection do not (1) prohibit the Government from removing the alien to a third country where the alien does not face persecution or torture, regardless of whether the country is a party to a bilateral or multilateral agreement specifically authorizing such removal, *contra* 8 U.S.C. 1158(a)(2)(A) (denying eligibility to apply for asylum “if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a [third] country”); (2) create a path to lawful permanent resident status and citizenship; or (3) afford the same ancillary benefits (such as derivative protection for family members). *See R-S-C*, 869 F.3d at 1180.

C. Bars to Eligibility for Asylum

Eligibility for asylum has long been qualified both by statutory bars and by the discretion of the Attorney General and the Secretary to create additional bars. Those bars have developed over time in a back-and-forth process between Congress and the Attorney General. The original asylum provisions, as set out in the Refugee Act of 1980, Public Law 96-212, simply directed the Attorney General to “establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum,” and provided that “the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee” within the meaning of the title. 8 U.S.C. 1158(a) (1994); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 427-29 (1987) (describing the 1980 provisions). In the 1980 implementing regulations, the Attorney General, in his discretion, established several mandatory bars to asylum eligibility that were modeled on the mandatory bars to eligibility for withholding of deportation under the existing section 243(h) of the INA. *See* 8 CFR 208.8(f) (1980); 45 FR at 37392 (“The application will be denied if the alien does not come within the definition of refugee under the Act, is firmly resettled in a third country, or is within one of the undesirable groups described in section 243(h) of the Act, *e.g.*, having been convicted of a serious crime, constitutes a danger to the United States.”). Those regulations required denial of an asylum application if it was determined that (1) the alien was not a refugee within the meaning of section 101(a)(42) of the INA; (2) the alien was firmly resettled in a foreign country before arriving in the United States; (3) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion; (4) the alien had been convicted by a final judgment of a particularly serious crime and therefore constituted a danger to the community of the United States; (5) there were serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States; or (6) there were reasonable grounds for regarding the alien as a danger to the security of the United States. 45 FR at 37394-95.

In 1990, the Attorney General substantially amended the asylum regulations, but exercised his discretion to retain the mandatory bars to asylum eligibility for persecution of others on account of a protected ground, conviction of a particularly serious crime in the United States, firm resettlement in another country, and reasonable grounds to regard the alien as a danger to the security of the United States. *See* 55 FR at 30683; *see also Yang*, 79 F.3d at 936-39 (upholding firm resettlement bar); *Komarenko*, 35 F.3d at 436 (upholding particularly serious crime bar). In the Immigration Act of 1990, Congress added an additional mandatory bar to eligibility to apply for or be granted asylum for

“an[y] alien who has been convicted of an aggravated felony.” Public Law 101-649, sec. 515, 104 Stat. 4987.

In 1996, with the passage of IIRIRA and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, Congress amended the asylum provisions in section 208 of the INA, 8 U.S.C. 1158. Among other amendments, Congress created three categories of aliens who are barred from applying for asylum: (1) Aliens who can be removed to a safe third country pursuant to bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104-208, div. C, sec. 604.

Congress also adopted six mandatory bars to asylum eligibility that largely reflected the pre-existing, discretionary bars set forth in the Attorney General's existing asylum regulations. These bars cover (1) aliens who “ordered, incited, or otherwise participated” in the persecution of others; (2) aliens convicted of a “particularly serious crime” in the United States; (3) aliens who committed a “serious nonpolitical crime outside the United States” before arriving in the United States; (4) aliens who are a “danger to the security of the United States;” (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who were “firmly resettled” in another country prior to arriving in the United States. *Id.* (codified at 8 U.S.C. 1158(b)(2) (1997)).

Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered “particularly serious crime[s].” *Id.* (codified at 8 U.S.C. 1158(b)(2)(B)(i) (1997)).

Although Congress has enacted specific asylum eligibility bars, that statutory list is not exhaustive. Congress, in IIRIRA, expressly authorized the Attorney General to expand upon two bars to asylum eligibility—the bars for “particularly serious crimes” and “serious nonpolitical offenses.” *See id.* Although Congress prescribed that all aggravated felonies constitute particularly serious crimes, Congress further provided that the Attorney General may “designate by regulation offenses that will be considered” a “particularly serious crime,” by reason of which the offender “constitutes a danger to the community of the United States.” INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii). Courts and the Board of Immigration Appeals (“Board”) have long held that this grant of authority also authorizes the Board to identify additional particularly serious crimes (beyond aggravated felonies) through case-by-case adjudication. *See, e.g., Delgado v. Holder*, 648 F.3d 1095, 1106 (9th Cir. 2011) (en banc); *Ali v. Achim*, 468 F.3d 462, 468-69 (7th Cir. 2006). Congress likewise authorized the Attorney General to designate by regulation offenses that constitute “a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.” INA 208(b)(2)(A)(iii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii). ⁽¹⁾

In addition to authorizing the discretionary expansion of crimes that would constitute particularly serious crimes or serious nonpolitical offenses, Congress further provided the Attorney General with the authority to establish by regulation “any other conditions or limitations on the consideration of an application for asylum,” so long as those limitations are “not inconsistent with this chapter.” INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B); *see also* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C) (allowing for the establishment by regulation of “additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum”). As the Tenth Circuit has recognized, “[t]his delegation of authority means that Congress was prepared to accept administrative dilution of the asylum guarantee in § 1158(a)(1),” given that “the statute clearly empowers” the Attorney General and the Secretary to “adopt[] further limitations” on asylum eligibility. *R-S-C*, 869 F.3d at 1187 & n.9. In providing for “additional limitations and conditions,” the statute gives the Attorney General and the Secretary broad authority in determining what the “limitations and conditions” should be—*e.g.*, based on non-criminal or procedural grounds like the existing exceptions for firm resettlement, INA 208(b)(2)(A)(vi), 8 U.S.C. 1158(b)(2)(A)(vi), or based on filing time limits, INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B), or based on certain criminal activity, INA 208(b)(2)(A)(ii), 8 U.S.C. 1158(b)(2)(A)(ii). The additional limitations on eligibility must simply be established “by regulation,” and must be “consistent with” the rest of 8 U.S.C. 1158.

Thus, the Attorney General in the past has invoked section 208(b)(2)(C) of the INA to limit eligibility for asylum based on a “fundamental change in circumstances” and on the ability of an applicant to safely relocate internally within a country. *See* Asylum Procedures, 65 FR 76121, 76127 (Dec. 6, 2000) (codified at 8 CFR 208.13(b)(1)(i)(A) and (B)). The courts have also viewed this provision as a broad authority, and have suggested that ineligibility based on fraud would be authorized under it. *See Nijjar v. Holder*, 689 F.3d 1077, 1082 (9th Cir. 2012) (noting that fraud can be “one of the ‘additional limitations . . . under which an alien shall be ineligible for asylum’ that the Attorney General is authorized to establish by regulation”).

The current statutory framework accordingly leaves the Attorney General (and, after the HSA, the Secretary) significant discretion to adopt additional bars to asylum eligibility. Congress has expressly identified one class of particularly serious crimes—aggravated felonies—so that aliens who commit such offenses are categorically ineligible for asylum and there is no discretion to grant such aliens asylum under any circumstances. Congress has left the task of further defining particularly serious crimes or serious nonpolitical offenses to the discretion of the Attorney General and the Secretary. ⁽²⁾ And Congress has provided the Attorney General and Secretary with additional discretion to establish by regulation additional limitations or conditions on eligibility for asylum. Those limitations may involve other types of crimes or non-criminal conduct, so long as the limitations are consistent with other aspects of the asylum statute.

D. United States Laws Implementing International Treaty Obligations

The proposed rule is consistent with U.S. obligations under the 1967 Protocol relating to the Status of Refugees (“Refugee Protocol”) (incorporating Articles 2 through 34 of the 1951 Convention relating to the Status of Refugees (“Refugee Convention”)) and the CAT. Neither the 1967 Refugee Protocol nor the CAT is self-executing. *See Khan v. Holder*, 584 F.3d 773, 783 (9th Cir. 2009) (“[T]he [1967 Refugee] Protocol is not self-executing.”); *Auguste v. Ridge*, 395 F.3d 123, 132 (3d Cir. 2005) (the CAT “was not self-executing”). Therefore, these treaties are not directly enforceable in U.S. law, but some of the obligations they contain have been implemented by domestic legislation. For example, the United States has implemented the non-refoulement provisions of these treaties—*i.e.*, provisions prohibiting the return of an individual to a country where he or she would face persecution or torture—through the withholding of removal provisions at section 241(b)(3) of the INA and the CAT regulations, not through the asylum provisions at section 208 of the INA. *See Cardoza-Fonseca*, 480 U.S. at 440-41. The proposed rule is consistent with those obligations because it affects only eligibility for asylum. It does not affect grants of the statutory withholding of removal or protection under the CAT regulations. *See R-S-C*, 869 F.3d at 1188 n. 11; *Cazun v. Att’y Gen.*, 856 F.3d 249, 257 (3d Cir. 2017); *Ramirez-Mejia v. Lynch*, 813 F.3d 240, 241 (5th Cir. 2016).

Limitations on eligibility for asylum are also consistent with Article 34 of the 1951 Refugee Convention, concerning assimilation of refugees, as implemented by 8 U.S.C. 1158. Section 1158 reflects that Article 34 is precatory and not mandatory, and accordingly does not provide that all refugees shall receive asylum. *See Cardoza-Fonseca*, 480 U.S. at 441; *R-S-C*, 869 F.3d at 1188; *Mejia v. Sessions*, 866 F.3d 573, 588 (4th Cir. 2017); *Garcia*, 856 F.3d at 42; *Cazun*, 856 F.3d at 257 & n.16; *Ramirez-Mejia*, 813 F.3d at 241. Moreover, the state parties to the Refugee Convention sought to “deny admission to their territories of criminals who would present a danger to security and public order.” United Nations High Comm’r for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees ¶ 148 (1979) (edited Jan. 1992). Accordingly, the Refugee Convention incorporated exclusion clauses, including a bar to refugee status for those who committed serious nonpolitical crimes outside the country of refuge prior to their entry into the country of refuge that sought “to protect the community of a receiving country from the danger of admitting a refugee who has committed a serious common crime.” *Id.* ¶ 151. As noted above, Congress has long recognized this principle in U.S. law by imposing various statutory bars to eligibility for asylum and by authorizing the creation of new bars to eligibility through regulation. ⁽³⁾