

**Re: Statement of Law and Facts in Support of Application for Asylum**

**Alien: X-**

**COB: Armenia**

To the Asylum Officer:

Mr. X- has retained our firm to file an affirmative application for asylum on his behalf. In order to focus the legal and factual issues, I have prepared the following Statement of Law and Facts in Support of X-'s Application for Asylum ("Statement"). This statement also includes a summary of the key points raised in the supporting documentation. I hope you find this statement helpful to your adjudication.

### **FACTUAL BACKGROUND**

X- is a 24-year-old Armenian physician and long-time advocate of sexual and reproductive rights. He is a practicing homosexual who fled Armenia, followed shortly by his life partner, Z-, after threats, assaults, rape, harassment and persecution on account of his membership in the particular social group of homosexuals by members of the police in Y, Armenia, whom the Armenian government is unwilling or unable to control. Details of the persecution suffered by Mr. X- are provided below and in the attached exhibits, but a brief summary may be helpful here:

- In June, 2004, Mr. X- was abducted from his car by uniformed police officers in Y, verbally abused and threatened with "outing" to his family. He was forced to pay money to the officers to make them leave.

- On October 29, 2004, while giving a presentation on Lesbian and Gay Rights in a private home in Y, Mr. X- was forcibly handcuffed and abducted by two police officers and taken into detention.
- The two officers repeatedly verbally abused Mr. X- on the drive to the police station. He was threatened with death and physical abuse for being a “gyot” (faggot) and for spreading homosexuality in Armenia.
- Mr. X- was confined, handcuffed to a chair, in a small, unventilated room for several hours with no contact with the outside world.
- Upon their return to the cell, the two officers taunted Mr. X- that they could kill him, and that no-one would know what happened to him.
- The two officers repeatedly slapped and verbally abused Mr. X-, again referring to him constantly as “gyot”, or faggot.
- One officer told Mr. X- that they would make him their ‘private whore’ before they killed him.
- The officers then sexually assaulted Mr. X- by forcing him to perform oral sex on them.
- After coercing Mr. X- into signing a statement that he is a homosexual, the two police informed him they would let him go for \$500.
- On November 9, 2004, the same two officers again seized Mr. X-, this time telling him he would have to give them another \$500 if he wanted to live. Shortly after this incident, Mr. X- fled Armenia.
- After Mr. X- fled Armenia, his life partner was also detained by the same officers and beaten and verbally abused. Mr. X-’s family received threatening

visits from the police and Mr. X-'s statement was shown to his parents. His parents subsequently disowned him and his own father has threatened to kill him.

Mr. X- entered the United States on January 18, 20054 on a valid B-2 Tourist Visa. He subsequently changed his status to F-1 and enrolled at Durham Technical Community College. His life partner also fled Armenia and joined him in the United States, entering on December 17, 2004.

Mr. X- is filing this affirmative asylum application within one year of his entry into the United States.

## LAW

### *I. Legal Standard*

An asylum applicant must demonstrate that he is unable or unwilling to return to his native country because of past persecution or a well-founded fear of future persecution on account of at least one of five enumerated grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(2).

An applicant can establish eligibility for asylum by proving either past persecution *or* a well-founded fear of future persecution. See 8 CFR § 208.13(b). If an applicant demonstrates past persecution, he is presumed to have a well-founded fear of future persecution unless country conditions have improved dramatically. 8 CFR § 208.13(b)(1)(i). "It may be assumed that a person has a well-founded fear of being persecuted if he has already been the victim of persecution for one of the [enumerated] reasons," United Nations High Commissioner for Refugees Handbook on Procedures and

Criteria for Determining Refugee Status (“UNHCR Handbook”) at ¶45, and an applicant may establish a well-founded fear by showing that a reasonable person in similar circumstances would fear persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

## ***II. Burden of Proof***

The asylum applicant bears the burden of proof. This burden, however is relatively low. The applicant is not required to prove a “clear probability” that he will be persecuted on account of a protected ground, or even that it is “more likely than not” that he will be persecuted. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). The applicant must only demonstrate that there is a “**reasonable possibility**” that he will be persecuted on account of one of the five enumerated grounds. *Id.* at 438-39 (rejecting both the ‘clear probability’ and the ‘more likely than not standards’)(emphasis added).

“There is simply no room in the United Nation’s definition for concluding that because an applicant only has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no ‘well-founded fear’ of the event happening.” *Id.* at 440.

“If there is a real chance that he will suffer persecution, that is reason good enough, and his ‘fear’ is ‘well-founded.’” *Id.* at 400, fn. 24, *quoting*, 1 A.Grahl-Madsen, *The Status of Refugees in International Law* 191 (1966).

When evaluating an asylum claim, “the danger of persecution should generally outweigh all but the most egregious of factors.” *Matter of Pula*, 19 I&N 467, 474 (BIA 1987).

In cases where the applicant cannot provide documentary evidence that he would be singled out for persecution, the regulations provide for finding a well-founded fear of persecution where the applicant can demonstrate:

1. That there exists a pattern and practice of persecution on account of race, religion, nationality, membership in a particular social group or political opinion of groups of people similarly situated to the applicant in the applicant's country; and
2. the applicant establishes his own inclusion in the group.

8 CFR § 208.13(b)(2)(C)(iii)(A) and (B).

### ***III. Meaning of Persecution***

The Immigration and Nationality Act does not define “persecution.” The Board of Immigration Appeals has defined persecution as the infliction of harm or suffering by a government or persons a government is unwilling or unable to control, to overcome a characteristic of the victim. See e.g. *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996).

“A threat to life or freedom on account of race, religion, nationality, political opinion, or membership in a particular social group is always persecution.” UNHCR Handbook at ¶ 51; see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 n.22 (1987) (UNHCR Handbook provides “significant guidance” in construing United States obligations under the 1967 United Nations Protocol relating to the Status of Refugees). Persecution includes threats to life, confinement, and torture. *Chang v. INS*, 119 F.3d 1055, 1066 (3rd Cir. 1997).

Moreover, an applicant “may have been subjected to various measures not in themselves amounting to persecution, (e.g. discrimination in various forms), in some

cases combined with other adverse factors, (*e.g.* general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on ‘cumulative grounds.’” UNCHR Handbook ¶53.

To establish a well-founded fear of future persecution, therefore, Mr. X- must establish two prongs: 1) a subjective fear, that is, he genuinely fears persecution on return to Armenia, and 2) an objective fear. *I.N.S. v. Cardozo Fonseca*, 480 U.S. 421, 450 (1987). To be objectively reasonable, “a reasonable person in [X-’s] circumstances would fear persecution...” *Balazoski v. INS*, 932 F.2d 638, 640 (7th Cir. 1991). Mr. X- must “present specific, detailed facts showing a good reason to fear that [he] will be singled out for persecution.” *Milosevic v. I.N.S.*, 18 F.3d 366, 370 (7th Cir. 1994). There must be some reasonable possibility of persecution, but it does not have to be more likely than not. *Id.* The objective component is satisfied if Mr. X- presents credible, direct, and specific evidence that persecution is a reasonable possibility. His testimony alone can be deemed credible where corroborating evidence would be impracticable to obtain. See *Kataria v I.N.S.*, 232 F.3d 1107 (9th Cir. 2000). A favorable factor toward a finding of an objectively well-founded fear includes promptness in vacating the country of persecution.

#### ***IV. Particular Social Group***

The UNHCR Handbook notes that “a ‘particular social group’ normally comprises persons of similar background, habits or social status. UNHCR Handbook,

¶77. and that “[m]embership of such a particular social group may be at the root of persecution because there is no confidence in the group’s loyalty to the Government, or because of the political outlook, antecedents or economic activities of its members, or the very existence of the social group.

“[A] ‘particular social group’ is one united by a voluntary association, including a former association, *or* by an innate characteristic that is so fundamental to the identities or con-sciences of its members that members either cannot or should not be required to change it.” *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000). In *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819 (BIA 1990), the BIA upheld an Immigration Judge’s determination that a Cuban gay asylum applicant had established membership in a particular social group defined by the status of being homosexual. *See id.* at 822-23. In 1994, the Attorney General designated *Toboso* “as precedent in all proceedings involving the same issue or issues.” Att’y Gen. Order No. 1895-94 (June 19, 1994).

Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil by women in some societies. Even where homosexual practices are not criminalized, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm: *Guidelines on International Protection: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* § 17.

In a case with very similar facts to Mr. X-'s the United States Court of Appeals for the Ninth Circuit granted asylum to a man who was assaulted and harassed for being homosexual. The facts bear summarizing here. Late one evening, a police officer stopped Jose Patricio Boer-Sedano and a friend and detained the two men for twenty-four hours. The officer told the two men they were being held for being gay. Over the next three months, the same police officer stopped Boer-Sedano several times. On each occasion, the officer ordered Boer-Sedano into his official police car, drove to a dark location, and forced Boer-Sedano to perform oral sex on him. To get Boer-Sedano to comply, the officer told Boer-Sedano that he knew "where [he] lived and where [he] worked" and would tell others that Boer-Sedano was a homosexual if he resisted. The officer also warned Boer-Sedano that "if he killed [him] and threw [his] body somewhere no one would ask about [him], . . . because . . . [he] was a gay person" and the officer would not be committing murder, but simply "cleaning up society." *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1086; 2005 U.S. App. LEXIS 16900, \*3 (9th Cir. 2004)

The court went on the find, in overturning the denial of Boer-Sedano's application for asylum, that

Police officers are the prototypical state actor for asylum purposes. *See, e.g., Hernandez-Montiel*, 225 F.3d at 1097 (noting that petitioner's assaults by the police demonstrated that he "is at risk of [being] persecuted [by] the very agency which purports to protect him by law"). These persecutory acts by a single governmental or quasi-governmental official are sufficient to establish state action. *See id. at 1097-98; Lazo-Majano v. INS*, 813 F.2d 1432, 1434 (9th Cir. 1987).

*Id.* at 1088.

## APPLICATION OF LAW TO FACTS

An applicant for asylum can prove that he or she is at a particular risk of persecution if the applicant “establishes that there is a pattern or practice in his country of persecution of groups of persons similarly situated to the applicant on account of membership in a particular social group; and establishes his own inclusion in and identification with such group of persons such that his fear of persecution upon return is reasonable.” 8 C.F.R. § 208.13(b)(2)(i)(A)(B). In such a case “the more egregious the showing of group persecution—the greater the risk to all members of the group—the less evidence of individualized persecution must be adduced.” *Kotasz v. I.N.S.*, 31 F.3d 847, 853 (9<sup>th</sup> Cir. 1994). In the instant case, Mr. X- is able to document both systematic persecution of homosexuals in Armenia **and** individualized persecution.

The International Helsinki Federation for Human Rights has repeatedly reported on discrimination against and harassment of homosexuals in Armenia. In its 2005 report, the Federation noted police officers continued to harass homosexuals in 2004 and that the Association of Armenian Homosexuals of France received “endless email messages from homosexuals who complain about police violence against them”. *Human Rights in the OSCE Region*, International Helsinki Federation for Human Rights, 2005. (Exhibit 20). These findings are echoed by the UNHCR in its *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention*, UNHCR, May 7, 2002: “Homosexuality is not accepted within the traditions of Armenian society, and homosexuals in the country conceal their sexual orientation. Because of social pressure and traditions, homosexuals are reportedly victims of discrimination, harassment, subject to maltreatment, and do not enjoy the effective protection of the government.” (Exhibit 21). On a visit to Armenia in October 2004, just one month after

Mr. X-'s abduction and sexual assault by the police, Mr. Thomas Hammarberg, Commissioner for Human Rights at the Council of Europe noted that:

Homophobia is reportedly widespread in society and politics, and the media are silent on cases of violence against LGBT persons. As A 2005 UNESCO report noted, “public opinions on homosexuality are rather tough: traditional Armenian society rejects displays of non-heterosexual relations.” It thus comes as no surprise that LGBT people are invisible in society and that the LGBT community is fragmented and vulnerable.

*Commissioner for Human Rights Report on His Visit to Armenia*, Council of Europe, Strasbourg, April 30, 2008 (Exhibit 18).

These reports and others were summarized by the Immigration and Refugee Board of Canada in its 2006 Response to Information Request on the situation of homosexuals and lesbians in Armenia. (see Exhibit 28).

Further evidence of the ingrained homophobia of Armenian society was provided by the events of 2006 in the Armenian parliament, when accusations of homosexuality and demands for the resignation of any gay member of parliament (described a “sexual perverts”) dominated the headlines. (Exhibit 30). In 2004 a nightclub in Y published a poster advertising a “Rap Party”—and stating that “gays and animals are not allowed.” (Exhibit 33).

Numerous reports of homosexuals being murdered, assaulted and extorted have emerged from Armenia. In 2001 the British Broadcasting Corporation reported that seven homosexuals had been killed and that government officials in Y were extorting money from individual gays in return for “being left alone.” (Exhibit 22). In 2004, Joshua Hagland, a United States citizen, was stabbed to death in Y and police regarded homosexuality as the main motive. (Exhibit 20, *supra*, p. 15). In a 2003 article in Armenia Now, one interviewee stated that “Homosexuals are target [sic] of police in

Armenia.” *Secret Life: No longer criminals, homosexuals remain cultural outcasts in Armenia*, Armenia Now, January 10, 2003. (Exhibit 23). In an article entitled *The Homosexuals – Money Source for the Police*, the Helsinki Association for Human Rights reports that the decriminalization of homosexuality in Armenia has done little to end police abuse and extortion:

The police regularly take the homosexuals to the police station and threaten to put into prison or blackmail them, saying them that they will inform them about their relations, so to take money from them. “I gave money five times, - says a gay, who did not wish to tell his name, - once - \$300, another time - \$400, next time - \$700. Now they don’t frighten with prison so much. They say, we’ll tell your close relatives, your surrounding will know and they take money, not to tell them.”

*The Homosexuals – Money Source for the Police*, Helsinki Association for Human Rights, November 22, 2005, p. 2. (Exhibit 24). This same organization’s annual reports document numerous additional incidents of persecution of homosexuals by the police. (See *inter alia*, Exhibit 32, pp. 31-32).

One month before the attacks on Mr. X-, The Rainbow Report published a story on Armenian animosity towards gays (Exhibit 34). Alongside accounts of now-familiar prejudice and homophobia, the article cites surveys that show that 73% of Armenians would disown a gay child, and that 86.5% of young Armenians would refuse to live or work near homosexuals. Part of the blame for homophobia is laid by the author with the Armenian Apostolic Church, which takes the view that homosexuals are in a state of sin and refuses to permit them to partake of communion during mass. This view is supported by the published opinions of the Armenian Apostolic Church. In an online “Q&A” posted by the Araratian Apostolic Diocese, a church representative answers a question on the viewpoint of his church on homosexuality. The response includes such phrases as

“Homosexuality is a spiritual vice and sin,” “homosexuality is considered as a disgusting phenomenon,” and refer to homosexuals as facing “a punishment of eternal fire.” (Exhibit 35). These same words are an eerie echo of the insults hurled at Mr. X- during his ordeal in detention.

On September 29, 2004, during a peaceful gathering in a private home, at which Mr. X- was giving a presentation on issues of concern to young gays and lesbians in Armenia, two members of the local police, in uniform, forced entry into the house and violently removed Mr. X- from the premises. Mr. X-'s own statement (here edited for brevity) describes in graphic terms what happened to him:

Two policemen invaded the house without any permission and started yelling that they are looking for X- and Z-. Both men were in uniform and started yelling that I and Z- must be burnt in hell, since we are spreading homosexuality in Armenia.

One of the police officers pushed me down on the sofa, put the handcuffs on my hands and the bald one forced me to go with him to their police car.

The police put me in the back seat of the car. He said, “Faggot, son of a bitch, shut your mouth. You and the others like you are animals and should die.”

They took me out of the town to a police department which was about an hour away. There was a sign saying ‘Police’ on the building. It became the worst day in my entire life. They locked me in a small room.

They left me there and told me “Stay here faggot till we come back.” I was scared to death. I was expecting to be beaten or even killed. All the stories I had heard came back to me.

It was about 6 p.m., when they came back. They started threatening me that they would kill me and no one else will ever know where I am. One of the officers called me faggot and a whore. I heard him saying, “You are confident enough to spread homosexuality in Armenia, you will be a man enough to survive torture”. They said I would be their private whore.

The bald one came really close to me, and took matchsticks from his pockets. He stuck the matches at my ears threatening that he would punch the matches into my ears and I will go deaf if I didn't perform oral sex on him. He unzipped his pants. He forced me to perform oral sex on him, then so did his partner.

Throughout my ordeal, they called me a faggot.

After that I was pushed on the floor and beaten. The bald policeman hit me in the legs and ankles with his baton. The fat policemen warned his partner not to leave any marks on me.

At the end they gave me a piece of paper to write a statement that I am homosexual and sign it. I knew that anytime they could use that paper to blackmail me, but I had no choice.

Since this incident, and the subsequent encounter with the same officers, Mr. X- has suffered from depression and nightmares, finally being diagnosed with post-traumatic stress disorder after his arrival in the United States. (Exhibit 7).

In addition to the physical and verbal abuse to which Mr. X- was subjected, and which mirrors many reports of similar incidents, the police continue to threaten and harass his family after he fled to the United States. His coerced confession of homosexuality was shown to his parents, causing great emotional distress to his mother. Mr. X-'s father has since disowned him and forbidden other family members to contact him—indeed he has threatened to kill Mr. X- should he return home. (Exhibit 6). The fear of future persecution is thus redoubled.

Mr. X-'s personal experience mirrors precisely published accounts of the persecution, detention and torture of other homosexuals in Armenia. As a result of Armenia's current treatment of homosexuals, Mr. X- is afraid to return to Armenia. His fear of future persecution is both subjectively and objectively reasonable in light of the past persecution he has suffered and the threats of future persecution received. In his own words:

I cannot go back to Armenia because of what happened to me and because what I think would happen to me if I go back. I cannot return to Armenia, because my life is in danger. It is obvious that government agency, such as police department is not willing to protect me. Moreover,

they were the ones who instigated my illegal arrest, humiliation and beating. I have no one to turn for help.

### **CONCLUSION**

For the foregoing reasons and those reasons included in Form I-589 and supporting exhibits, Mr. X- respectfully requests that the USCIS grant his application for asylum in the United States of America.

If you have any questions, please feel free to contact me at any time. Please notify my office of any and all interview dates scheduled for Mr. X-. Thank you for your attention to this matter.

I am

Very truly yours,

Helen L. Parsonage  
Attorney