

REAL ID ACT SHORT FORM BOILERPLATE LANGUAGE

I. NEXUS

- Applicant must show that this nexus was “at least one central reason” for the persecution. INA § 208(b)(1)(B)(i).
- Standard “does not require that the persecutor be motivated solely by the victim’s possession of a protected characteristic” and still allows for a persecutor to have “mixed motives.” Conference Report on the Real ID Act, H.R. Rep. No. 109-13, at 163 (2005) (Conf. Rep.)

II. CREDIBILITY

A. Applicability

- The Real ID Act of 2005 became effective on May 11, 2005 and apply to all cases initially filed after that date. Matter of S-B, 24 I&N 42 (BIA 2006).

B. Credibility Standard

- Amendments codify the credibility factors identified in the existing case law, in particular as set out in Matter of S-M-J-, 21 I&N Dec. 722, (BIA 1977), in order to create a more consistent body of law. H.R. Rep. No. 109-13, at 166-67 (2005) (Conf. Rep.)
- May base a credibility determination on the demeanor, candor, or responsiveness of the applicant, the inherent plausibility of the applicant's account, the consistency between the applicant's written and oral statements (whenever made and whether or not made under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record, and any inaccuracies or falsehoods in such statements, or any other relevant factor. INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C).
- Adverse credibility determination can be based on any of these factors, but it must be reasonable and take into consideration the individual circumstances of the specific witness. H.R. Rep. No. 109-713, at 167.
- As under Matter of S-M-J-, the testimony of an applicant may be sufficient to sustain the applicant’s burden of proving eligibility for asylum or withholding of removal without corroboration, if the Court is satisfied that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.
- May make a credibility determination without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii).

C. Corroboration

- There is no presumption of credibility and if the Court determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.” H.R. Rep. No. 109-13 at 166.

- It would not be unreasonable to expect the applicant to produce “documentary support for material facts which are central to his or her claim and easily subject to verification, such as evidence of his or her place of birth, media accounts of large demonstrations, evidence of a publicly held office, or documentation of medical treatment” H.R. Rep. No. 109-13 at 167.
- Even the excused lack of corroborating evidence “does not relieve the applicant from sustaining the burden of proof, that is to say, the alinee must satisfy his burden through other evidence.” H.R. Rep. No. 109-13 at 166.

D. Overall Reasoning

- “While the trier of fact is not required to state expressly that the trier has considered each factor in assessing credibility, Congress expects that the trier of fact will describe those factors that form the basis of the trier’s opinion. This is true even when the trier of fact bases a credibility determination in part or in whole on the demeanor of the applicant.” H.R. Rep. No. 109-13 at 167.