

In published article, Immigration Attorney Godfrey Muwonge examines the Deportation Defense "Withholding of Removal"

One of the most-important forms of relief from removal/deportation that a non-citizen can get from an immigration judge is known as withholding of removal.

MILWAUKEE, WISCONSIN, UNITED STATES, November 16, 2018 /EINPresswire.com/ -- In his continuation of the Instruction Series on various forms of "Relief from Removal," Immigration Attorney [Godfrey Muwonge](#) examines the Deportation Defense known as Withholding of Removal available in US Immigration Court Removal Proceedings. The complete article will be published on his blog at <https://GodfreyMuwonge.blogspot.com/>

One of the most-important forms of relief from removal/deportation that a non-citizen (a respondent in removal proceedings) can get from an

immigration judge is known as withholding of removal. It is a product of Article 33 of the 1951 United Nations Refugee Convention. Under it, contracting states such as the United States agree not to refouler or return an individual to a country where his or her life would be threatened.

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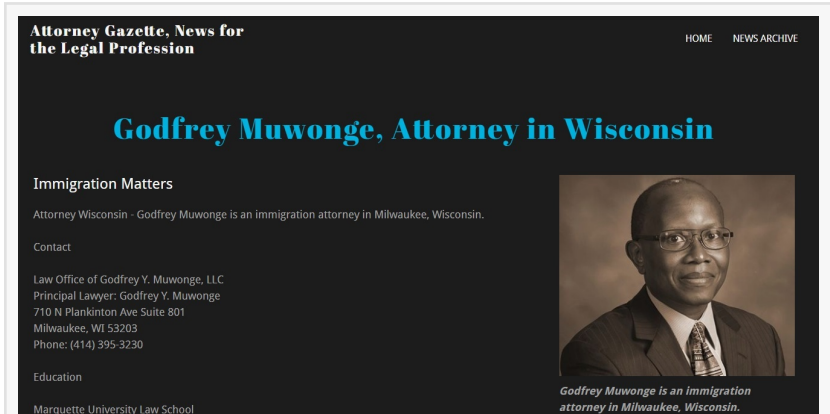
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The respondent in removal proceedings may apply for this form of relief by demonstrating that it is more likely than not that he or she faces persecution on account of race, nationality, religion, membership in a particular social group, or religion. The standard “more likely than not” has been characterized as 51% by some courts, but one imagines that anything over 50% is more likely than not to happen.

Withholding is a stiffer standard than its counterpart, asylum. For asylum, courts have held that demonstrating a 10% chance that persecution will occur and is sufficient to qualify an applicant for the relief. This “10%” formulation comes out of a 1987 ruling by the United States Supreme

Court known as INS v. Cardoza-Fonseca. In that case, the court did not say “10%” chance, it said that even a one in ten chance of an event occurring does not preclude the event’s occurring. The court was distinguishing the standards for asylum and the one for withholding which the



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Immigration Service was insisting had to be imposed upon applicants for asylum instead of the lower standard. The court held that the lower standard for asylum to be imposed was “a well-founded fear of persecution” which translated to “a reasonable likelihood” that persecution will occur, which is not the “more likely than not” or 50%—plus standard.

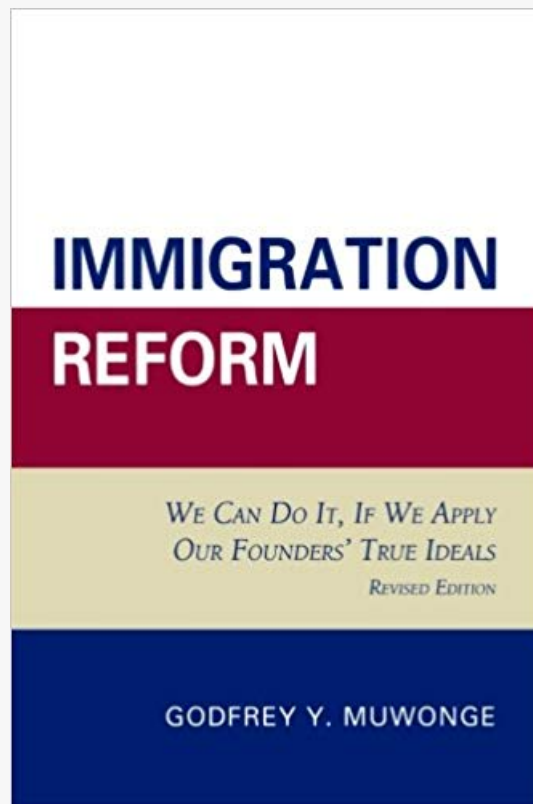
At any rate, withholding is clearly more difficult to get but, unlike asylum which is discretionary—that is the Immigration Judge grants it as a matter of grace—it is mandatory, once the respondent shows that persecution on one of the protected grounds is more likely than not. In addition, while asylum requires that its applicant prove that he or she filed his or her application within a year of arrival (with a couple of exceptions), withholding has no time limit as to filing an application for it.

Withholding only prevents the Government from returning the respondent to his or her home country or to the country where his or her life would be threatened. This means, although this commenter has not experienced it, that if the Government can find a third country willing to take the respondent it can remove the respondent to that third country. In addition, while asylum affords the asylee who is successful in obtaining it to become a lawful permanent resident (LPR) or get a green card and eventually become a naturalized citizen, and bring family to the United States or, if family is here already, to extend the benefit to immediate family members (spouse and children under 21), withholding affords the grantee no such benefits. The respondent granted the benefit gets to apply for and receive a work permit but that is about it.

If, however, the respondent with withholding as relief qualifies for a green card through other means—family, work and so on—that respondent can approach the Office of Chief Counsel of the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and request that that office join in a motion to reopen removal proceedings and to vacate the removal order and terminate proceedings to permit the respondent to either adjust status to permanent resident here in the United States, or to proceed overseas to an American consulate



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Godfrey Muwonge, Book on Immigration Reform, available at Barnes and Noble

for green card processing. [Mr. Muwonge](#) concludes that we shall see the difference of those two categories of processing in a future instructional comment in this series.

Withholding of removal is NOT available to a respondent:

1. Who has persecuted others; or
2. Who has been convicted of a particularly serious crime.

A particularly serious crime includes aggravated felonies, especially those that carry a sentence of five years or longer, and it is irrelevant whether the sentence was imposed, stayed or suspended. The definition of “aggravated felony” that Congress provided as of September 30, 1996 has 21 subdivisions. To understand what they are, one should consult an experienced immigration attorney regarding the meaning of and “particularly serious crime,” within the context of withholding.

This is a comment on immigration law and it is not legal advice. One seeking legal advice should consult an immigration lawyer that is versed in the particular matter about which legal advice is sought.

About [Godfrey Y. Muwonge](#)

Godfrey Muwonge is an immigration attorney in Milwaukee, Wisconsin. Author of “Immigration Reform: We Can Do It, If We Apply Our Founders' True Ideals, Revised Edition” (Univ. Press of America, 2010), which was selected as one of top-10 Books that Drive the Debate (2009) by U.S. Chamber of Commerce's National Chamber Foundation. See <https://www.amazon.com/Immigration-Reform-Apply-Founders-Ideals-ebook/dp/B00D79W838>

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