

Third Circuit Court**Case:** *Lukwago v. Ashcroft*, 329 F.3d 157 (2003)**Date:** May 14, 2003**Panel:** Sloviter, Rendell, Greenberg**Opinion:** Sloviter**Tags:** Immigration, asylum, PSG, persecution, nexus, Uganda, conscription, child soldiers, imputed political opinion;**Question(s) Presented:** Merit of asylum case based on conscription in Lord's Resistance Army (Uganda).**Holdings:** Partial denial, partial remand. No nexus to protected ground for past persecution—but PSG for future persecution: “former child soldiers from the LRA in Uganda.” To consider on remand: effect of publicity on recognition factor in Uganda; relocation possibility; political opinion; withholding on well-founded fear of persecution by LRA. No CAT, because it's unlikely that the Ugandan gov't will torture him.**Rationale:** “Former” status is immutable, it's a distinct group, and particular. Well-founded fear of future persecution!**Facts:** Citizen of Uganda. Conscripted by Lord's Resistance Army (after they murdered his parents) when he was 15. Manual labor at their camp, firearms training, forced to fight on front lines against government soldiers. Heartbreaking testimony. Uncle helped him flee Uganda on false passport to Germany, then Holland. His application for asylum was denied there. Met someone who provided him with a passport and ticket to U.S. in 2000.**Procedural History:**

- **2001: IJ:** denied application for asylum—adverse credibility determination based on mannerisms before the court, implausibility of his testimony about participating in LRA battles. Granted withholding under CAT. DOS has found that former child soldiers are punished, detained in pits, and used to clear minefields.
- **2002: BIA:** reversed adverse credibility finding because it lacked support. But denied withholding under CAT because did not meet burden of past persecution / well-founded fear of future persecution based on a protected ground.

Discussion:

- Past persecution was real and horrible, but it was not on account of a protected ground.
- Conscription into national military service is not normally persecution. “Conscription into service by guerrillas engaged in attacks on the established government is an entirely different matter.” 169
- 3rd Circuit follows *Matter of Acosta* re. parameters of PSG. (immutability)
- **First PSG:** children in Uganda who are abducted & enslaved (circularity, diffuse)
 - “The INS counters that a social group cannot be created by the alleged underlying persecution.”

- “We agree that under the statute a PSG must exist independently of the persecution suffered by the applicant for asylum. . . Therefore, the ‘particular social group’ must have existed before the persecution began.” 172
- **Humanitarian Asylum?** Still requires the protected grounds for persecution—but can be granted even if country conditions have changed and there is no likelihood of *future* persecution.
- **Well-Founded Fear:** still requires the protected ground, and higher burden to show that this is likely to happen going forward.
 - **PSG #2: escaped LRA child soldiers**
 - Court thinks that Uganda won’t persecute former child soldiers who have escaped (they have an amnesty program now, after all). But the chances that LRA will persecute an escapee are high.
 - “We note . . . that the issue presented for purposes of this discussion is distinguishable from the prior [PSG] discussion in that this group is not dependent on a member’s current age, but rather the shared experience of abduction, persecution, and escape at a time when he was a child.” 178
 - “Lukwago’s proffered group is not dissimilar from that suggested in *Acosta* where the BIA stated that the shared characteristic ‘might be a shared past experience such as former military leadership.’ 178
 - “Lukwago shares the past experience of abduction, torture, and escape with other former child soldiers. His status as a former child soldier is a characteristic he cannot change and one that is now, unfortunately, fundamental to his identity.” 178
- Additional detail of the widespread publicity Lukwago’s story had received by this time—may affect his vulnerability if returned to Uganda.