



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Director
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

FACT SHEET

Questions and Answers

Contact: Office of Legislative and Public Affairs
(703) 305-0289 Fax: (703) 605-0365
Internet: www.usdoj.gov/eoir

April 28, 2005

Asylum Protection in the United States

This fact sheet is intended to assist the public's general understanding of asylum protection in the United States. It is not a substitute for legal advice, nor does it constitute any legal opinion by the Department of Justice. It is not fully inclusive; does not address the many legal, regulatory, and court interpretations that determine actual applicability of asylum protection in individual cases; and may be subject to change as new laws and regulations are implemented.

The United States offers asylum and refugee protection based on its commitment to human rights and to preventing the persecution of individuals. Asylum is an important protection that is granted by federal law to qualified applicants—regardless of their countries of origin—who are unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution. Those who are found eligible for asylum are permitted to remain in the United States and, after 1 year, may apply to adjust their status to become a lawful permanent resident.

What Is the Legal Standard for Granting Asylum Claims?

Asylum and refugee applications are both adjudicated under the same legal standard—a well-founded fear of persecution based on at least one of five internationally recognized grounds: race, religion, nationality, membership in a particular social group, or political opinion.

Is Anyone Barred From Obtaining Asylum?

Under immigration law certain individuals are barred from obtaining asylum, including those who:

- Have firmly resettled in another country prior to arriving in the United States;
- Have ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Were convicted of a particularly serious crime (includes aggravated felonies);

(more)

Asylum Protection in the United States

Page 2

- Committed a serious nonpolitical crime outside the United States;
- Pose a danger to the security of the United States;
- Are members or representatives of a foreign terrorist organization; or
- Have engaged in or incited terrorist activity.

What Agencies Are Responsible for the Asylum and Refugee Programs?

The responsibility for the asylum program is shared between the U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS), and the Executive Office for Immigration Review (EOIR), a Department of Justice agency that adjudicates cases on behalf of the Attorney General involving charges of immigration violations.

The responsibility for the refugee program is shared between the Department of State and USCIS.

What Is the Major Difference Between Asylum and Refugee Applicants?

The major difference between asylum and refugee applicants is that those seeking refugee status apply from outside the United States. Asylum-seekers must be in the United States or applying for admission at a port of entry.

Also, while there is a ceiling for refugee admissions that is determined annually by the President, there is no ceiling on the number of individuals who may be granted asylum each year, except for those who are granted asylum under the Coercive Population Control (CPC) provision of the immigration law. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 changed the definition of refugee to include those who have suffered persecution because of CPC policies. A maximum of 1,000 aliens per fiscal year may be granted asylum or admitted as a refugee under this provision. (Because the number of individuals eligible for asylum based on CPC annually has been greater than 1,000, many individuals remain in conditional grant status until one of the 1,000 final approval authorization numbers, issued annually by USCIS, becomes available.)

How Do Individuals Apply for Asylum?

Asylum-seekers must apply for asylum within 1 year from the date of last arrival in the United States—unless they can show changed circumstances that materially affect their eligibility or extraordinary circumstances that delayed filing, and that they filed within a reasonable amount of time given those circumstances.

Aliens in the United States can apply for asylum by filing an Application for Asylum, [Form I-589](#) with the USCIS. As the alien initiates this proceeding, this is called an “affirmative” asylum claim.

(more)

Aliens who have been placed in removal proceedings and are in immigration court can apply for asylum with EOIR. This is called a “defensive” asylum claim.

Can Asylum Applicants Work in the United States?

Asylum applicants cannot apply for employment authorization at the same time they apply for asylum. However, they can apply for work authorization if 150 days have passed since they filed their completed application and no decision has been made on their application. The USCIS has 30 days to either grant or deny the requests for employment, and work authorization can begin after 180 days. In all other cases, asylum applicants will be authorized to work in the United States when they are granted asylum and as long as they remain in asylum status.

The application for an Employment Authorization Document is the [Form I-765](#).

How Does USCIS Process Asylum Claims?

In processing affirmative asylum claims, USCIS asylum officers conduct interviews of asylum applicants and determine whether to grant asylum. In making a determination, the asylum officer will evaluate applicants’ testimony, the information they provide on their applications, any supplementary materials they submit, and the credibility of their claims. Moreover, the asylum officer will consider country condition information from reliable sources as well as the relevant law found in the Immigration and Nationality Act, the regulations found in Title 8 of the Code of Federal Regulations, and case law.

If the asylum officer does not grant asylum, the applicant’s case is referred to an EOIR immigration court. This referral to an immigration court is not a denial of the applicant’s asylum application. The applicant’s asylum request will be considered (without additional refiling) when the applicant appears before an EOIR immigration judge. The determinations that the asylum officer made in referring the applicant’s application are not binding on the immigration judge, who will evaluate the applicant’s claim anew (*de novo* review).

USCIS maintains [Asylum Statistics](#) on affirmative asylum processing.

How Does EOIR Process Asylum Claims?

A “defensive” asylum claim is when an individual requests asylum as a form of relief from removal from the United States, before an EOIR immigration judge in proceedings.

The immigration judge hears the applicant’s claim and also hears any concerns about the validity of the claim raised by the government, which is represented by a DHS attorney. The immigration judge then makes a determination of eligibility. If the applicant is not found eligible for asylum, the immigration judge determines whether the applicant is eligible for any other forms of relief from removal and, if not, will order the individual removed from the United States.

(more)

Asylum Protection in the United States

Page 4

Within 30 days of a denial decision from an immigration judge, the applicant may appeal to the BIA. If the BIA affirms the immigration judge's denial decision, the applicant may file an appeal with the federal court system.

Statistics on asylum applications before EOIR are available on the agency's website under [Statistical Year Book](#) and [Asylum Statistics](#).

What Happens When Aliens Claim Asylum at a Port of Entry?

Immigration law mandates that aliens who arrive at a U.S. port of entry without travel documents or who present fraudulent documents must be detained and placed in expedited removal proceedings.

The expedited removal process allows an immigration inspector to remove from the United States certain classes of aliens who are inadmissible. However, no aliens can be expeditiously removed from the United States until they are read a sworn statement and acknowledge that they understand it, and are questioned whether they have a concern or fear of being returned to their home country.

Aliens who express a fear of persecution during the expedited removal process receive a "credible fear" interview with an asylum officer from the USCIS in DHS.

Aliens who are found not to have a credible fear of persecution by an asylum officer may request that an immigration judge review the asylum officer's negative determination prior to their removal from the country. This review must be concluded within 24 hours whenever possible, but in no case later than 7 days after the initial determination by the asylum officer. The review is limited solely to whether the aliens have a credible fear of persecution.

Those persons found to have a credible fear are referred to EOIR for removal proceedings in which they may apply for asylum before an immigration judge.

Can Asylum Status Be Terminated?

Asylum status may be terminated if the person granted asylum (the asylee):

- No longer has a well-founded fear of persecution because of a fundamental change in circumstances,
- Has obtained protection from another country, or
- Has committed certain crimes or engaged in other activity that makes the asylee ineligible to retain asylum status in the United States.

What Is Convention Against Torture Protection?

Convention Against Torture (CAT) protection relates to the obligations of the United States under Article 3 of the United Nations Convention Against Torture—an international treaty provision designed to protect persons from being returned to countries where they face torture. Under Article 3,

(more)

Asylum Protection in the United States

Page 5

the United States agrees not to “expel, return or extradite” a person to another country where he or she would be tortured.

CAT provides two separate types of protection: “withholding of removal” and “deferral of removal.” Both provisions ensure that a person is not returned to face torture, but the government may remove the person to a third country where he or she would not be tortured.

Withholding of removal prohibits an alien's return to a specific country. Withholding of removal can be terminated only if the case is re-opened and the DHS establishes that the alien is not likely to be tortured in that country.

Deferral of removal is a more temporary form of protection. Deferral of removal is granted to aliens who likely would face torture but who are ineligible for withholding of removal—for example, certain criminals and persecutors. Deferral of removal is more easily and quickly terminated if the individual no longer is likely to be tortured in the country of removal. It also allows an individual who is subject to detention to be detained.

CAT protection is not the same as asylum. The major differences are:

- Individuals granted asylum can file for permanent resident status after 1 year and an asylee’s immediate family members may be granted the same status. CAT protection does not grant either permanent resident status or the ability to bring family members to the United States.
- Persons claiming asylum must establish a “well-founded” fear of persecution, based on one of five grounds: race, religion, nationality, membership in a social group, or political opinion. CAT does not require that the torture be feared on account of those five grounds, but applicants are required to establish that it is “*more likely than not*” that they would be tortured if removed to a specific country.
- Not all types of harm that qualify as persecution necessarily constitute torture.
- For those who meet the respective standards, a grant of asylum is discretionary while CAT protection is mandatory.
- Persons with serious criminal or terrorist backgrounds, as well as persecutors, cannot be granted asylum. Under CAT, such persons will not be returned to torture, although they may be subject to detention where appropriate.

CAT claims generally are determined by EOIR immigration judges during regular immigration removal proceedings. Immigration judge decisions regarding CAT may be appealed to the BIA.

EOIR is responsible for adjudicating immigration cases. Specifically, under delegated authority from the Attorney General, EOIR interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings. EOIR consists of three components: the Office of the Chief Immigration Judge, which is responsible for managing the numerous immigration courts located throughout the United States where immigration judges adjudicate individual cases; the Board of Immigration Appeals, which primarily conducts appellate

(more)

Asylum Protection in the United States

Page 6

reviews of immigration judge decisions; and the Office of the Chief Administrative Hearing Officer, which adjudicates immigration-related employment cases. EOIR is committed to providing fair, expeditious, and uniform application of the nation's immigration laws in all cases.

– EOIR –