

# Termination of Asylum

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# Grounds for Revocation/Termination of Asylum and Withholding

Pursuant to INA 208(c)(2) and the regulations, a person granted asylum may have his asylum or withholding of removal revoked under certain circumstances by the AO, 8 C.F.R. 208.24(a) & (b), 1208.24(a) & (b), or the IJ. 8 C.F.R. 1208.28(f), 1208.24(f).

# When may Asylee/Withholding status be lost?

Asylee status may be lost in the following circumstances:

1. Where there is fraud in the application
2. The application is filed after April 1, 1997 and the person meets one of the categories of ineligibility specified in INA s208(c)(2) or
3. the application was filed before Apr. 1, 1997 and the applicant no longer has a well-founded fear because there are changed conditions in the country of origin or the alien has committed any act that would have been grounds for a mandatory denial of asylum under 8 C.F.R. 208.13(c)(2)

# Grounds for Termination of Asylum Status

(Application filed on or after April 1, 1997)

The Asylum Office initiates a proceeding to terminate asylum status granted by USCIS when prima facie evidence indicates that at least one (1) of the following circumstances is present:

- 1) There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted.
- 2) As to an application filed on or after April 1, 1997, one or more of the conditions described in Section 208(c)(2) of the INA exist, summarized below:
  - a) the alien no longer meets the definition of a refugee due to a fundamental change in circumstances;
  - b) the alien is a persecutor, danger to the security of the U.S., described in terrorist grounds of inadmissibility, or firmly resettled in another country;
  - c) or the alien was convicted of a particularly serious crime or there are serious reasons to believe the alien committed *a serious nonpolitical crime outside the U.S.*;
  - d) the alien may be removed pursuant to a safe third country agreement;
  - e) the alien voluntarily re-availed him - or herself of the protection of the country of feared persecution by returning to such country with the reasonable possibility of obtaining or having obtained permanent resident status with the same rights and obligations of other permanent residents of the country;
  - f) the alien has acquired a new nationality and enjoys the protection of that country.

## Application filed before April 1, 1997

- (3) As to an application filed before April 1, 1997, the alien no longer has a well-founded fear of persecution due to a change of country conditions in the alien's country of nationality or last habitual residence, or the alien has committed any act that would have been grounds for a mandatory denial of asylum under 8 C.F.R. 208.13(c)(2), summarized below:
- a) the alien was convicted of a particularly serious crime;
  - b) the alien was firmly resettled in another country;
  - c) the alien is a danger to national security;
  - d) the alien has been convicted of an aggravated felony;
  - e) the alien ordered, incited, assisted, or otherwise participated in persecution of others on account of one or more of the five protected grounds;
  - f) the alien is involved in terrorist activities as described in INA Section 212(a)(3)(B)(i)(I) [engaged in], (II) [reasonably likely to engage in after entry], and (III) [incited with an intent to cause death or serious bodily harm], unless there are no reasonable ground to believe the asylee is a danger to national security.
  - g) Termination of asylum status for the principal asylee results in termination of any derivative status, whether derivative status was gained at the same time of the original asylum grant or through the approval of an I-730, *Refugee/Asylee Relative Petition*. The termination does not preclude the former derivative from applying for asylum or withholding of removal on his or her own. When grounds for termination apply to a derivative alone, the derivative asylum status is terminated without effect on the principal asylee's status, and documents discussed in this section are issued to the derivative asylee alone.

# Standards of Proof relating to Revocation/Termination of Asylum Status

A Notice of Intent to Terminate (NOIT), listing the ground(s) for an intended termination and also containing a summary of the evidence supporting the ground(s) must be issued to an asylee before asylum can be terminated.

An Asylum Officer must establish a prima facie case supporting termination in order to issue a NOIT.

To terminate asylee status, USCIS must establish one or more of the termination grounds in 8 C.F.R. 208.24 by a “preponderance of the evidence”.

The burden of proof, is information that, on its face, indicates that asylum termination may be appropriate. You do not need the higher level of evidence required to terminate asylee status.

# Standards of Proof (cont.)

Subsequent to the issuance of an NOIT, further information that may come to the attention of the Asylum Office may lead to a finding that there is insufficient evidence to meet the preponderance of the evidence standards required for termination of asylee status.

# Standards of Proof (cont.)

Where information does not meet the level required (the level of a prima facie case in support of termination), then Asylum Office may then initiate a voluntary interview with the asylee. The Asylum Office may coordinate with ICE Investigations, Office of Fraud Detection and National Security (FDNS) where the asylee fails to cooperate.

*Where overseas information is involved, HQASM may also be called upon to gather/provide further information. (VERIFY)*

# Procedure for Terminating Asylum Granted by USCIS

Asylum Approval must be issued before termination proceedings may be initiated.

Where asylum has been granted by EOIR, the Asylum Office does not have jurisdiction to terminate asylum.

# EOIR Procedures for Terminating Asylum

- Asylum or Withholding status must first be terminated before the person can be removed from US – 8 CFR 208.22

# Scenarios for EOIR Termination

- If IJ granted asylum or w/h – process is initiated with Motion to Reopen
- If IJ granted and case is pending at BIA, process is initiated with Motion to Remand
- If DHS granted asylum, IJ may terminate grant after individual has been served with Notice of Intent to Terminate and Notice to Appear

# Motion to Reopen

- Must meet time (90 days) and numeric (1) limitations
- Exceptions:
  - Fraud in the original proceeding
  - Crime that would support a motion to terminate asylum

# EOIR: Burden of Proof

- If fraud – must show that asylum applicant knew the statement or document was fraudulent at the time it was submitted to the IJ. *See Ntangsi v. Gonzales*, 475 F.3d 1007, 1012-13 (8th Cir. 2007)