

TOPICS ON IMMIGRATION: SEEKING ASYLUM FROM WITHIN THE US

prepared for the University YMCA Welcome Center

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AN OVERVIEW OF ENTERING AND RESIDING IN THE US AS A NON-CITIZEN (7/1/2018)

There are three ways that a foreign national can enter the US:

1. By receiving a green card which entitles one to permanent residence
2. By receiving a temporary visa which allows one to stay in the US temporarily
3. By entering the US without permission

These three ways of entering the US have given rise to the following three broad categories of foreign nationals residing in the US:

1. Immigrants with permanent resident status, also called green card holders
2. Those with temporary permission to reside in the US. This diverse group includes:
 - A. Visitors with temporary visas
 - B. People who have received temporary protection from adverse circumstances such as persecution, war, natural disaster or crime
 - C. People who entered or stayed in the US without permission and who have been given temporary permission by the Executive branch of the Federal Government to remain in the US under the Deferred Action for Childhood Arrivals (DACA)
3. Those who lack proper authorization to be in the US. This group includes:
 - A. People who entered the US without going through customs, also referred to as undocumented immigrants
 - B. Visitors who overstayed their temporary authorization to be in the US
 - C. People who lost their permanent immigration or temporary resident status by committing a serious crime or by committing fraud in their immigration or visa application, and who remain in the US without authorization.

In many cases, people with temporary resident status can apply for a permanent resident status, and there are well defined criteria that permit permanent residents to obtain citizenship. After a resident obtains naturalized citizenship, they have all the rights and privileges of native-born citizens. However, even having permanent resident status does not prevent a resident from being deported due to immigration fraud or other serious crimes.

US residents who become naturalized citizens have the same rights and privileges as native born citizens with one exception: naturalized citizens can be denaturalized and then deported by a Federal Court for any of the following reasons:

1. Falsification or Concealment of Relevant Facts During Immigration or Naturalization Application;
2. Refusal to Testify Before Congress (This requirement to testify in order to maintain citizenship; status expires after 10 years of becoming naturalized)
3. Becoming a member, within five years of becoming a naturalized citizen, of a group designated as subversive by the US government, such as Al Qaeda or the Nazi Party;

4. Dishonorable Military Discharge following a general court-martial within five years of beginning military service.

Source: <https://immigration.findlaw.com/citizenship/can-your-u-s-citizenship-be-revoked-.html>
<https://www.ilrc.org/essentials-of-asylum-law>

The book this website describes is a comprehensive overview of asylum law.

https://therefugeecenter.org/resources/daca-and-the-travel-ban-update/?gclid=CjwKCAjw9-HZBRAwEiwAGw0QcWO1twEhpoVYwpDK79eSGtihXP2t2kyjRX1RrM4vagqkZDhSC1p1IRoC1OYQAvD_BwE

A. What is the Difference Between a Refugee and an Asylum Seeker? (7/1/2018)

There are several significant differences under US law between refugees and asylum seekers:

1. Refugees have fled their countries and reside temporarily in another location. Asylum seekers may or may not have fled their countries and must also be either in the US or at the US border.
2. The number of people receiving refugee status in the US is limited by law and executive order. There is no legal limit on the number of people who can receive asylum status.
3. Refugees must typically apply for admission to the US through the UN or an affiliated agency. Asylum seekers can apply directly to either the State Department or to USCIS (US Citizenship and Immigration Services).
4. Refugees admitted to the US are generally expected to transition to permanent residents after one year in the US. Asylum seekers are given only temporary resident status and their ability to achieve permanent resident status is much less certain.

This overview deals only with asylum seekers and asylees.

Sources:

<https://www.uscis.gov/humanitarian/refugees-asylum>

Chapter Seven of “Introduction to Immigration Law: Training manual”, published by CLINIC, The Catholic Legal Immigration Network Inc., which can be found at

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0ahUKEwjEyoTy p9HZA hWL2YMKHTOaDVUQFghWMAQ&url=https%3A%2F%2Fcliniclegal.org%2Fsites%2Fdefault%2Ffiles%2Fintro_manual.july_2013.pdf&usg=AOvVaw2s5smoGSyxpEsdF7Ijm5k

The Website of the American Immigration Council:

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>

B. What is the Difference Between Affirmative Asylum Applications and Defensive Asylum Applications? (7/1/2018)

There are two types of application for asylum:

1. Affirmative

Any person who applies for asylum and who is not already in deportation proceedings (also called removal proceedings) is said to apply affirmatively. An affirmative application for asylum can be made at the border, or from within the US.

2. Defensive

Non-citizens who are in deportation proceedings can initiate what is called a defensive asylum application. This type of asylum application is a defense against being deported.

Both affirmative and defensive applications have very similar eligibility requirements and use the same application form, I-589. Related to both affirmative and defensive asylum status is asylum status based on the United Nations Convention Against Torture (CAT), but the grounds for CAT protection are much narrower, having to do with a justified fear of torture in one's home country.

C. Who Can Apply for Asylum and What Are the Eligibility Requirements? (7/1/2018)

The eligibility requirements for an asylum seeker are similar to the eligibility requirement for a refugee. Persecution, or the legitimate fear of persecution, due to any of the following factors make a foreign national eligible for asylum in the US:

1. Race
2. Religion
3. Nationality
4. Membership in a particular social group
5. Political opinion

It is important to emphasize that an asylum seeker does not need to prove he or she has been persecuted, but they do need to demonstrate that their fear of being persecuted is well-founded.

The primary difference between a refugee and an asylum seeker is that a refugee must be living abroad and classified by UNHCR as a refugee, whereas an asylum seeker is defined as a person who is in the US or at a port of entry when they seek asylum, and they apply for asylum status directly to the US government. Anyone, child or adult, who is within the US, who meets the above eligibility requirements, and who is not a US citizen or a permanent resident, can apply for asylum. This includes undocumented immigrants. Dependent children and spouses of non-citizens who are with the person seeking asylum can also be included in an asylum application.

In general, a non-citizen in the US is only eligible for asylum if they apply within one year of entering the US. Exceptions to this one-year rule will be made if the applicant can show that conditions within his or her country of origin have changed recently, thereby presenting an existing threat of persecution, or if the applicant can demonstrate that they faced insurmountable difficulties in applying for asylum within the required one year period.

People who are fleeing economic or natural disasters are not legally considered refugees or asylum seekers even though they may have fled their countries do to such hardships. Such persons can apply for what the US government calls Temporary Protected Status (TPS). This paper deals only with

people who are considered asylum seekers because they are in the US (or at a port of entry) and have a well founded fear of persecution.

If a foreign national does not meet the persecution requirements of asylum, but can show that they face the probability of being tortured if they are sent back to their home country, they may apply for relief under CAP, the United Nations Convention Against Torture. Applicants who have committed serious crimes or are otherwise considered a danger to the US, may nevertheless apply for protection under CAP. This paper does not discuss CAP protection. For additional information on CAP, see https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-relief-under-cat/#.WxW7_yBOnyQ

Non-citizens—potentially of either sex, but typically female—living in the US who are trying to escape an abusive relationship, or who are victims of certain crimes, may be eligible for government protection and possibly legal permanent status under certain conditions, even if they are currently undocumented and do not meet the above eligibility requirements for asylum. Such protections and permanent status opportunities are governed not by asylum provisions, but by the Violence Against Women Act (VAWA) passed in 1994 and re-authorized most recently in 2013. This outline does not deal with VAWA eligibility. Information on VAWA and how to apply for its protections can be found at <https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime> and <https://www.uscis.gov/humanitarian/battered-spouse-children-parents>.

Sources:

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves>

<https://www.nolo.com/legal-encyclopedia/do-you-need-to-have-actually-been-harmed-to-get-asylum.html>

<https://pdfs.semanticscholar.org/24a3/6ee7387a7a3cc83a4f6b3df36e34152ba3b5.pdf>

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-and-answers-asylum-eligibility-and-applications>

<https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime>

<https://www.uscis.gov/humanitarian/battered-spouse-children-parents>

<https://www.immihelp.com/>

https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html?emc=edit_na_20180611&nl=breaking-news&nid=59967137ing-news&ref=headline

D. Who is Ineligible for Asylum? (7/1/2018)

Even if an applicant meets the criteria, listed in **Section C** above, they may still be found ineligible for asylum if they:

1. Ordered, incited, assisted, or participated in the persecution of any person on account of race religion, nationality, membership in a particular social group, or political opinion;
2. Were convicted of a serious crime (including aggravated felonies);
3. Committed a serious nonpolitical crime outside the United States;
4. Pose a danger to the security of the United States;

5. Were firmly resettled in another country prior to arriving in the United States.

Source:

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-and-answers-asylum-eligibility-and-applications>

E. Is It Possible to Lose Asylum Status After it is Granted? (7/11/2018)

Yes. Asylum status is only temporary, even if it has no definite termination date. Foreign nationals who have received asylum status can have their asylum status terminated if the conditions which led to their persecution or fear of persecution in their home countries change for the better such that they no longer have to fear persecution.

An asylee can also lose his or her asylum status for the following reasons:

1. Committed fraud or misrepresentation when applying for asylum;
2. 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;
3. Constitutes a danger to the community of the United States, if convicted of a particularly serious crime;
4. Committed a serious nonpolitical crime outside the United States prior to arriving in the United States;
5. Is classified as a danger to the security of the United States, which could result from engaging in terrorist activity;
6. Has gained nationality in another country and enjoys the protection of that country.

Sources

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/faq/can-asylum-status-be-terminated>
<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartM-Chapter6.html>
https://www.ilw.com/seminars/201008_citation1b.pdf

F. What Are the Benefits of Applying for and Obtaining Asylum? (7/1/2018)

BENEFITS OF APPLYING FOR ASYLUM STATUS

The benefits of applying for asylum vary greatly depending on the current status of the non-citizen who is applying for asylum. Holders of current tourist visas or other temporary travel visas, if they meet the eligibility requirements for asylum, may, through an affirmative asylum application, extend their stay in the US and even apply for the right to work and other benefits. Non-citizens who have been detained and face deportation, and who submit a defensive application for asylum to contest their deportation order, may be held in detention. The policies and practices regarding asylum seekers have become influenced by politics and subject to frequent changes. It is best to get legal advice regarding one's rights as an asylum applicant.

BENEFITS OF OBTAINING ASYLUM STATUS

The major benefit, of course, is escaping from persecution in one's home country. In addition there are other benefits:

1. The right to live and work in the US, which include the ability to apply for a Social Security card. Even asylum seekers whose asylum applications are still pending can apply for permission to work in the US 150 days after submitting Form I-589 (Application for Asylum and for Withholding of Removal).
2. The ability to petition to bring family members to the United States.
3. The right to apply for a driver's license or an alternative state identification card.
4. The ability to travel overseas, with prior permission of the US government, while still maintaining one's asylum status.
5. Eligibility for US government resettlement benefits, including medical assistance, and the likelihood of receiving significant amounts of aid from the many NGO's that help asylees resettle and manage their new lives in the US.
6. The right to apply for lawful permanent resident status (i.e. a green card) after one year in the US.
7. The right to apply for citizenship after 4 years of being a permanent resident.

Source:

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/benefits-and-responsibilities-asylees>
<https://www.uscis.gov/i-765>

G. Applying for Asylum (7/1/2018)

OVERVIEW OF APPLYING

The following procedures apply to adults. Unaccompanied children seeking asylum have different procedures that must be followed. See <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves> for details.

The USCIS specifies the following affirmative asylum application procedures for anyone at the US border or already in the US:

1. Apply to the USCIS for asylum by filing Form I-589, Application for Asylum and for Withholding of Removal (see <https://www.uscis.gov/i-589>);
2. Make, and go to, a biometric services appointment for finger printing;
3. Receive an appointment for an interview;
4. Go to the asylum interview appointment;
5. Receive a decision from USCIS.

Most of the preceding steps require significant preparation and can involve many requirements and complications. It is therefore important that anyone considering filing Form I-589 for asylum contact an immigration lawyer or accredited representative before submitting the form.

Whether asylum is granted or denied, follow-up support should be pursued. Given the complexities of immigration laws, rules and requirements, getting follow-up support is very important. If asylum is granted, there are still many requirements that must be fulfilled. If an affirmative asylum application

is denied by the USCIS, there are procedures for automatically appealing the decision, which an immigration lawyer or accredited representative should be well-versed in.

FORMS AND DOCUMENTS REQUIRED

The two basic forms which applicants or their representatives will need to fill out are:

- Form I-589, Application for Asylum and for Withholding of Removal
- Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

The instructions also state what supporting documents are required. In addition to those required, the Form I-589 instructions state:

“You are strongly urged to attach additional written statements and documents that support your claim. Your written statements should include events, dates, and details of your experiences that relate to your claim for asylum.”

Depending on the applicant’s circumstances, the following forms may also need to be submitted:

- Form AR-11, Alien's Change of Address Card
- Form I-94, Arrival-Departure Record. A form that is often given when entering the United States.
- Form I-730, Refugee and Asylee Relative Petition
- Form I-765, Application for Employment Authorization

Asylum applicants who are already in immigration court proceedings may be required to submit the following forms:

- Form I-122, Notice to Applicant for Admission Detained for Hearing Before an Immigration Judge
- Form I-221, Order to Show Cause and Notice of Hearing
- Form I-862, Notice to Appear
- Form I-863, Notice of Referral to Immigration Judge
- EOIR Form 33/IC, Alien's Change of Address Form/Immigration Court

USCIS forms can be viewed and downloaded at <https://www.uscis.gov/forms>.

HOW LONG DOES IT TAKE TO PROCESS AN APPLICATIONS?

Resolving cases for asylum seekers in the US can take as little as several months, or it could take much longer, depending on circumstances. There are no “typical” cases. Legal council or an accredited representative should be contacted to get an assessment tailored to the applicant’s specific circumstances.

WHAT IS THE COST OF APPLYING FOR ASYLUM?

There is no fee to apply for asylum, but there will be expenses, which will vary enormously, depending on the asylum seeker's circumstances. The major categories of expenses are:

1. Legal Fees (if not provided free of charge by an authorized NGO)
2. Fees Needed to Acquire Various Documents (court documents, marriage & birth certificates, etc.)

3. Associated Travel Fees (for finger printing, interviews, etc)
4. Living expenses while waiting for the application to be processed.

Sources:

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>

<https://www.us-immigration.com/uscis-guide-being-granted-asylum-u-s/>

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>

H. Are There Risks or Drawbacks to Applying for Asylum? (5/17/2018)

Asylum seekers with applications pending, even if they are not in detention, can only leave the country with the permission of the USCIS.

Asylum seekers can be detained by the US government indefinitely while their case is pending. This is more likely to happen with immigrants who do not have a current legal status to be in the country. If an undocumented foreign national applies for asylum and their application and appeal are turned down, they will likely be deported.

Recently, the US government has made a policy of separating Asylum seeking adults from their children in order to discourage asylum seeking. Although this practice is being legally challenged and has been temporarily discontinued, the risk of family separation is still real. In some instances the government has lost track of the mother/child connection and has been unable to trace the current location of a child that has been taken from its mother.

Kate Lenahan, an immigration attorney with Brophy and Lenahan, has this to say about asylum application risks:

“If you are currently in the country in valid status, the timing of your asylum application is also important for another reason. If you might wish to extend your current temporary visa or apply for a different temporary visa at some point, you may not be able to do so if you file for asylum and lose. Although asylum is a wonderful way to obtain permanent resident status in the United States, it is also risky because you will most likely not be allowed back in the United States if your claim is denied and you are deported (unless you have another path to permanent residence, such as through a spouse who is a United States citizen). The reason for this is because of “immigrant intent.” If you come to the United States on a temporary visa, meaning a visa that is not a green card for permanent residence, the government will look to see if you wish to remain in the United States indefinitely. If they suspect that you do, your visa application will most likely be denied.”

Although everyone considering seeking asylum should obtain legal advice before applying, this is particularly important for undocumented foreign nationals and those who have committed a serious crime or engaged in other activities that might be disqualifying.

Sources:

http://www.brophylenahan.com/Brophy_and_Lenahan/Questions_to_Ask_Yourself_Before_Applying_for_Asylum.html

<https://www.uusc.org/asylum-seeking-families-at-risk-under-trump/>

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-and-answers-asylum-eligibility-and-applications>
<https://www.uscis.gov/faq-page/asylum-eligibility-and-applications-faq>
https://www.washingtonpost.com/opinions/dhs-keeps-separating-kids-from-their-parents--but-officials-wont-say-why-or-how-often/2018/03/20/0c7b3452-2bb4-11e8-8ad6-fbc50284fce8_story.html?utm_term=.1c093b26dd1e&wpisrc=nl_opinions&wpmm=1
https://epic.org/privacy/us-visit/hrf_memo.pdf
<https://www.pri.org/stories/2017-07-31/fearful-court-asylum-seekers-are-banished-absentia>

I. Current USCIS/DHS Policy Regarding Asylum Seekers (5/17/2018)

Because most requests for asylum undergo a lengthy (and secret) security review by the US Department of Homeland Security and other US agencies, the process of obtaining asylum can shrouded in bureaucratic opacity. This can make the process seem both arbitrary and lacking in transparency from the point of view of asylum seekers and outside observers.

However, defensive applications are typically handled by the Department of Justice, (DOJ) rather than the Department of Homeland Security (DHS). DOJ-based judicial proceeding are subject to more oversight and are more open to public scrutiny than are the administrative procedures of DHS.

During the Trump administration, beginning in January 2017, the Department of Homeland Security and its police enforcement agency, Immigration and Customs Enforcement (ICE), have been treating many asylum seeker and undocumented immigrants harshly in an attempt to discourage people from other countries from seeking asylum in the US. While this has not affected the legal rights of asylum seekers, it has, in practice, led to fewer people receiving asylum status than in the past.

Sources:

https://www.washingtonpost.com/opinions/dhs-keeps-separating-kids-from-their-parents--but-officials-wont-say-why-or-how-often/2018/03/20/0c7b3452-2bb4-11e8-8ad6-fbc50284fce8_story.html?utm_term=.1c093b26dd1e&wpisrc=nl_opinions&wpmm=1
https://epic.org/privacy/us-visit/hrf_memo.pdf
<https://www.pri.org/stories/2017-07-31>

J. Support for Asylum Seekers (5/17/2018)

WEB-BASED RESOURCES

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum>
<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/resources-asylum-applicants>
<https://www.us-immigration.com/uscis-guide-being-granted-asylum-u-s/>
<https://www2.ed.gov/about/overview/focus/immigration-resources.html>
<https://www.immigrantjustice.org/resources/resources-attorneys-representing-asylum-seekers>
<https://www.immigrantjustice.org/resources/resources-gender-based-asylum-claims>
<https://www.asylumprojectdc.org/resources-1/>
<http://guides.ll.georgetown.edu/CALSAAsylumLawResearchGuide/general-resources>
<https://therefugeecenter.org/resources/apply-for-asylum/>

<https://www.asylumconnect.org/>

<https://www.immigrationequality.org/about-us/our-clients/#asylum-seekers>

<https://www.ilrc.org/>

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>

<https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=10&Issue=2&ArticleID=26146>

<http://www.asylumlaw.org/>

<http://www.aila.org/>