

Protection for Persecuted Refugees: US Asylum

Foreigners seeking asylum and protection from persecution in their home country may be eligible to gain permanent residency status in the US based on Refugee and Asylum laws. The laws governing asylum cases are quite strict and, all applications will be reviewed through a stringent process by the Department of Homeland Security and the Department of Justice. This review process is in place to ensure that the asylum system is not abused by persons seeking to come into the US under false pretenses. Unfortunately, it also makes the process much more complicated and difficult for legitimate applicants.

Who is Eligible for US Asylum?

The legal standard for granting asylum in the United States begins with the petitioner proving that he or she has a credible fear of persecution in his or her home country and the government is either the perpetrator of the persecution or cannot protect the individual from the persecution. The persecution must be based on one or more of the following:

- Nationality
- Political Opinion
- Religion
- Race
- Membership in a Particular Social Group

Even though there are laws in place that govern asylum cases, each one will be reviewed carefully by an immigration law officer. This means having a professional immigration law attorney representing the applicant can help ensure the best possible outcome.

Difference Between Asylum and Refugee Applicants

Both asylum and refugee status applicants are seeking the same thing, that is, asylum protection, but there is a difference. Asylum seekers are already in the United States, and must petition to the US government for asylum protection and permanent residency status. Refugees on the other hand, are residing outside of the US, and must petition the United Nations for asylum protection.

How to Apply for Asylum

Depending on whether or not the immigrant has been placed in a removal proceeding, there are two different application processes. For foreigners currently residing in the US and having no pending removal issues, the application for asylum process is as follows.

Affirmative Application (No Pending Removal Proceeding)

USCIS Application for Asylum

To begin the application process, the foreigner must file an "Application for Asylum and Withholding of Removal". This application must be filed within one year of the most recent arrival in the United States.

Fingerprinting and Background Check

Upon receipt of the application, the USCIS will designate a two week time frame during which the applicant must go to an authorized application support center to be fingerprinted. The fingerprints will be sent to the FBI, and a background check will be performed. The results of the FBI background check will be sent to the USCIS once completed.

An Asylum Interview is Scheduled

The applicant will receive a notice of interview. This details the time, date and location of an interview with an Asylum Officer. Typically, this notice will be mailed to the applicant within 21 days of the initial application being received by the USCIS.

The Asylum Interview

The interview will usually take place within 45 days of the initial application receipt. During this interview, the applicant will be asked questions regarding their situation and eligibility for asylum. A typical interview will take approximately one hour.

The applicants immigration attorney should take some time to prepare him or her for the interview, going over all potential questions and answers to ensure the applicant provides all the required information. Additionally, the immigration lawyer should be present during the interview.

The applicant must bring any family members that wish to gain residency along with the applicant. Any witnesses that can testify in support of the applicant should also be at the interview.

Asylum Determination by Asylum Officer

After the interview is completed, the asylum officer will review all the details of the case, and make a determination. The officer will have to determine whether the eligibility requirements have been met, that the applicant meets the definition of an asylee, and whether the applicant is barred from being granted asylum.

This determination is then reviewed by a supervising asylum officer to ensure that the determination is consistent with current immigration legislation regarding asylum.

Usually the applicant will receive the final determination within 14-60 days of the interview.

Defensive Asylum Application Process (Defending a Removal/Deportation Proceeding)

The defensive application process is used as a defense to a pending removal (deportation) proceeding. As opposed to the affirmative application process, this takes place in an immigration court and is presided over by an Immigration Judge. This court procedure is much more adversarial. The government will have its case for deportation presented by an Immigration and Customs Enforcement Trial Attorney. It is critical for people in this situation to have their interests represented by a skilled immigration attorney.

How a Defensive Case Arises

Generally, a defensive asylum application arises from one of two situations. 1. A rejected affirmative application, where the applicant has been denied asylum and has been ordered to be removed from the US. 2. A person has been placed in removal proceeding after having been caught entering or residing in the US illegally. In both situations, asylum can be used to defend the deportation case.

Applying for Asylum During Entry to the US

Generally speaking, anyone attempting to enter the US without a visa or other legal paperwork allowing them entry is "removeable." This is known as expedited removal. One exception to the expedited removal process is an alien who indicate an intention to apply for asylum.

How the Asylum Process Works During Entry

Upon entry to the US, if an alien expresses an intention to apply for asylum, a fear of persecution in their home country, or fear of returning to their home country, they will be referred to an asylum officer. Once referred, the following steps will take place:

"Credible Fear Interview"

Once referred to an asylum officer, a credible fear interview will take place. The purpose of this interview is to determine whether the credible fear expressed by the alien is sufficient to apply for asylum protection. If the asylum officer determines that there is a credible fear, the defensive application process (explained above) begins.

Negative Credible Fear Determination

If the asylum officer determines, during the credible fear interview, that the alien is not eligible for asylum, then he or she will order the alien removed. However, upon a negative determination by the asylum officer, the alien may request that their case be heard by an immigration judge. If this request is made, the alien will be given an opportunity to state their case to the judge. Keep in mind, the asylum officer will likely not tell an alien about this, and if the request is not made, the alien will be removed from the country.

Can Asylum Status be Terminated?

Asylum status can be terminated for several reasons. It should be noted that asylum status is not the same as lawful permanent residence. If it is found that the credible fear upon which the asylum protection was granted no longer exists, then the asylum status may be terminated. Additionally, if any errors or fraudulent information are found in the original asylum application, the asylum status may be ended and the alien removed.

Protecting Your Asylum Status

The best advice for any asylee that wishes to remain in the US permanently is that he or she obtain lawful permanent residence as soon as possible. Under current immigration legislation, anyone granted asylum in the US may apply for permanent resident status after having lived in the US for one year after the granting of asylum protection.

Asylum and Immigration Laws are Complex

Navigating the laws, rules, forms and intricacies of the US immigration system can be difficult at best. Whenever possible, consult with an immigration attorney regarding all immigration matters. There is a wide array of legal information to be found online, but for any given case, there is no substitute to the experience and legal advice that a skilled immigration attorney can offer.