

OVERVIEW OF ASYLUM PROCESS

The Asylum Division, which is located within the U.S. of Citizenship and Immigration Services (USCIS) at the Department of Homeland Security (DHS), has responsibility for implementing the U.S. Asylum Program. The Asylum Division Headquarters is located in Washington, DC. Asylum claims are adjudicated by specially trained Asylum Officers from eight Asylum Offices located throughout the United States.

Asylum is a form of protection that allows eligible refugees to remain in the United States, and eventually to adjust their status to lawful permanent resident. These individuals may apply for asylum within one year of their last arrival in the United States, whether they are here legally or illegally. They may apply regardless of their countries of origin.

DEFINITION OF A REFUGEE

An individual who is unable or unwilling to return to his or her country of nationality, or country of last habitual residence if stateless, because of

- past persecution or a well-founded fear of future persecution
- on account of race, religion, nationality, membership in a particular social group, or political opinion

To apply for asylum, an individual files Form I-589, *Application for Asylum and for Withholding of Removal*, with a USCIS Service Center. The Immigration and Nationality Act (INA) requires that final administrative adjudication of the asylum application be completed within 180 days after the date an application is filed. Applicants who have not received a decision on their asylum claims within 150 days of the filing date are eligible to apply for work authorization. If the application is still pending 180 days after the filing date, work authorization is granted.

Filing date	Within 21 days of the filing date	Within 43 days of the filing date	Within 60 days of the filing date	Within 180 days of the filing date
Applicant files Form I-589 at the USCIS Service Center. The filing date is the date the complete application was received at the USCIS Service Center.	Applicant receives: <ul style="list-style-type: none"> • Receipt notice that USCIS received I-589 • Fingerprint appointment notice • Interview notice 	Applicant is interviewed at one of the eight Asylum Offices, unless applicant lives at a significant distance from an Asylum Office.	Majority of applicants return to Asylum Office two weeks after the interview to pick up the decision on their application, including referrals to the Immigration Court for final determination.	Applicants whose cases have been referred to the Immigration Court receive a decision on their application.

WHO CAN APPLY FOR ASYLUM?

Individuals who are:

- already in the United States, or
- seeking entry into the United States at a port of entry

The following individuals, with some important exceptions, are ineligible to apply for asylum:

- Failed to apply within 1 year after date of last arrival in the United States
- Were previously denied asylum by an Immigration Judge or the Board of Immigration Appeals
- Can be removed, pursuant to an agreement, to a safe third country where they would have access to a full and fair asylum process.

Every individual who applies for asylum is subject to a background/security check. Depending on the results of the mandatory check, the applicant may not be eligible for a final grant of asylum. The application may be referred to the Immigration Court, and the applicant may be placed in removal proceedings before an Immigration Judge.

The United States does not have any quotas on the number of individuals who may be granted asylum each year (with the exception of individuals whose claims are based solely on persecution for resistance to coercive population control measures). From Fiscal Year 1991 – 2001, the Asylum Program granted asylum to approximately 115,655 individuals from over 150 countries.

WHO MAY BE GRANTED ASYLUM?

An individual in the United States who meets the definition of a refugee may be granted asylum. The following are bars to a grant of asylum:

1. Persecution of others on account of a protected characteristic
2. Conviction of a particularly serious crime
3. Commission of a serious nonpolitical crime outside the U.S. prior to arrival
4. Reasonable grounds for regarding applicant as a danger to U.S. security
5. Terrorist activities
6. Firm resettlement in another country prior to arrival

An individual granted asylum is eligible to work in the United States. In addition, the asylee may apply for the following benefits:

- Lawful permanent resident status (asylee can apply one year after being granted asylum)
- Family reunification (asylee can file to bring his or her spouse and unmarried children to the United States or to allow those here to remain)
- Assistance and services run by state and private, non-profit agencies through the Office of Refugee Resettlement (ORR)
- Social security card
- Employment assistance from One-Stop Career Centers.

The two main ways of obtaining asylum in the United States are through the *affirmative* process and through the *defensive* process.

U.S. Affirmative Asylum Processing with USCIS

The Asylum Division’s role is to adjudicate asylum claims submitted to the USCIS by individuals who are in the United States and not in removal proceedings. Because these individuals apply for asylum by presenting themselves to the USCIS regardless of their immigration status, they are called “affirmative” asylum applicants. They file an asylum application with a USCIS Service Center, and then have a non-adversarial interview with an Asylum Officer.

If an Asylum Officer finds the applicant eligible for asylum, asylum status is granted and the asylee may remain in the United States indefinitely, unless asylum status is terminated. Applicants not in lawful immigration status who are found ineligible by the Asylum Division are placed in removal proceedings and their applications are referred to an Immigration Judge who will consider their asylum claims in a *de novo* hearing. The Immigration Courts and the Board of Immigration Appeals (BIA) are administrative courts located within the Executive Office for Immigration Review (EOIR) at the U.S. Department of Justice. Applicants in lawful immigrant status who are denied asylum by the Asylum Division can reapply for asylum either with the Asylum Division or, if they are later placed in removal proceedings, with an Immigration Judge.

U.S. Defensive Asylum Processing with EOIR

During removal proceedings, an individual can raise an asylum claim before an Immigration Judge as a defense against removal. Such claims are called “defensive” asylum applications. Immigration Judges hear such cases in adversarial proceedings: the Immigration Judge hears the applicant’s claim and also hears any concerns about the validity of the claim raised by the Department of Homeland Security, which is represented by an 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.

Key Differences Between “Affirmative” and “Defensive” Asylum Process	
Affirmative	Defensive
Jurisdiction of Department of Homeland Security • U.S. of Citizenship and Immigration Services (Asylum Division)	Jurisdiction of Department of Justice • Executive Office for Immigration Review (Immigration Courts and Board of Immigration Appeals)
Asylum-seeker has not been placed in removal proceedings	Asylum-seeker has been placed in removal proceedings in Immigration Court
Asylum-seeker affirmatively submits his or her asylum application to a USCIS Service Center	Asylum-seeker: • Is referred by an Asylum Officer, • Is placed in removal proceedings for immigration violations, or • Tried to enter the U.S. at a port-of-entry without proper documents and was found to have a credible fear of persecution or torture
Asylum-seeker appears before a USCIS Asylum Officer	Asylum-seeker appears before an Immigration Judge with the Executive Office for Immigration Review
Non-adversarial interview	Adversarial court hearing

