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Asylum Processing

Overview

A person is eligible for a discretionary grant of asylum if he or she meets the INA's definition of a "refugee," is eligible for the favorable exercise of discretion, and is not otherwise barred from obtaining asylum. The definition of "refugee" under the INA is "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to avail himself or herself of the protection of, that country because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

Affirmative asylum qualification criteria

Physically present in the United States, regardless of how they got here and regardless of their current immigration status.

Claim to be a refugee as defined under INA.

Submitting an application to USCIS within one year of arrival in the U.S., unless certain circumstances justify such delay of filing of a timely application.

Application procedures

- File an asylum application Form I-589 by sending it to a USCIS Service Center over the residing jurisdiction.
- To be interviewed by an asylum officer (non-adversarial).
- The interviews take place at one of the eight Asylum Offices throughout the U.S. or, if the applicant lives far from one of those offices, at a District Office.
- If the application is rejected by the asylum officer, the application will be referred to an immigration officer for a de novo review.
- Transferring a pending asylum application to another jurisdiction:
 - If the applicant has not been interviewed by an asylum officer, the applicant can have his/her legal representative send a notification to the Service Center and request to transfer the case to another jurisdiction.
 - If the applicant has been interviewed, the applicant can't request a transfer of his/her case until the asylum officer has reached a decision on the application.
 - If the applicant has been interviewed and the application has been referred to an immigration judge, the applicant can, through his/her legal representative, file a motion to change venue by showing that the changed circumstances warrant such change of venue. However, each local immigration court has its operating procedures and it is necessary to check with local rules first.
- If granted asylum, the applicant is allowed to bring in any eligible dependents that were included in the application to the United States.
- The asylum application can also be used as an application for withholding of removal under § 241(b)(3) of the INA. If asylum is denied, the applicant may still

be eligible for withholding of removal. The applicant must establish that it is more likely than not that his/her freedom or life would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal. Upon obtaining an order withholding removal, such applicant may be removed to a third country, but any dependents will have to file such protection on their own. It will also not give the applicant the right to become lawful permanent resident of the United States.

Filing Fees

There is no filing fee for application Form I-589.

Timeframe

- Normally, an affirmative asylum applicant is interviewed by USCIS within 43 days of application and, if not approved, is referred by USCIS to an Immigration Judge at the Executive Office for Immigration Review (EOIR) for further and de novo consideration.
- The time period is somewhat longer if the applicant does not reside near one of the eight Asylum Offices and an Asylum Officer is required to go to a distant District Office to conduct the interview. Asylum applicants referred to an Immigration Judge for such processing are also not detained.
- This processing is usually completed within 6 months of the initial application, including processing by the Immigration Judge if USCIS could not approve the application and referred it to the judge. If USCIS can approve the application, the decision is usually issued within 60 days from the initial application. During this time, most asylum applicants are not authorized to work.
- If denied asylum, the Department of Homeland Security may use the information the applicant provided in the prior asylum proceeding to establish that the applicants are subject to immediate removal.

Defensive Asylum Proceeding

Applicants use asylum as a defense against removal from the United States. Immigration Judges (IJs) hear such cases in adversarial (court-room-like) proceedings: the IJ is the judge that hears the applicant's claim and also hears any concerns about the validity of the claim raised by the Government, which is represented by an attorney. The IJ then makes a determination of eligibility. If the applicant is not found eligible for asylum, the IJ 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.

Aliens generally are placed into defensive asylum processing in one of two ways:

- they are referred to an IJ by Asylum Officers who did not grant asylum to them, or
- they are placed in removal proceedings because they
 - are undocumented or in violation of their status when apprehended in the U.S. or
 - were caught trying to enter the U.S. without proper documentation (usually at a port-of-entry) and were found to have a credible fear of persecution or torture

Key Differences Between “Affirmative” and “Defensive” Asylum Process

Affirmative	Defensive
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