

ASYLUM



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ASYLUM

Asylum is the legal protection afforded by the United States to individuals that are fleeing persecution in their homeland. The asylum applicant must demonstrate that he or she is unable or unwilling to avail himself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in particular social group, or political opinion.

This brochure explains some of the procedures and common questions associated with asylum. It is not, however a substitute for legal advice. Be sure to consult with an attorney experienced in immigration matters to be certain that you qualify for asylum.

What is persecution?

Persecution is a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive. Persecution is usually physical but can also be emotional, psychological, or economic. Importantly, persecution is more than harassment, discrimination, or isolated threats. The following examples describe abuse that adjudicators may find rise to the level of persecution:

- Serious physical harm;
- Coercive medical/psychological treatment;
- Invidious prosecution or disproportionate punishment for a criminal offense;
- Severe discrimination and economic persecution; and
- Severe criminal extortion or robbery.

Harsh conditions or general civil strife suffered by the general population are usually not considered persecution. The persecution must be inflicted by the government or by organizations that the government is unwilling or unable to control. Successful applicants must demonstrate that the persecution was motivated by one of the five protected grounds: race, religion, nationality, membership in a particular social group (PSG) or political opinion.

Can I apply for asylum if I have not suffered persecution in the past but I am afraid of persecution in the future?

Yes, you can. If a person has suffered persecution in the past on the account of one of the protected grounds, there is a presumption that the person has a well-founded fear of future persecution. However, a person need not have actually suffered persecution in the past to qualify for asylum. A person may also qualify for asylum if he or she has a well-founded fear of future persecution. The applicant must show that a reasonable person in his or her circumstances would fear persecution

What is the process to apply for asylum?

An asylum application must be filed in the U.S. with the U.S. Citizenship and Immigration Services (USCIS) **within one year** after arrival to the U.S., unless changed or extraordinary circumstances exist. If either of these exceptions apply, you must file an application “within a reasonable period.” Once, an application is filed, USCIS will schedule you for an interview with regard to your claim. At the interview, the USCIS officer will make a determination as to your asylum application. The USCIS officer may decide to grant asylum or refer your application to an immigration court for an immigration judge to make the decision. If your case is referred to an immigration court, the proceedings will be adversarial, which means that a government attorney will be present and will cross-examine you and your witnesses. Your case will likely remain pending for several years before the immigration court prior to receiving a decision.

Starting in January 2018, USCIS began to give priority to the most recently filed affirmative asylum applications when scheduling asylum interviews. However, not all new applicants will receive an immediate interview appointment and the case may take months or years to be scheduled for an interview.

Can I work while my asylum is pending

Yes, but only after you receive your Employment Authorization Document (EAD), which allows you to legally work in the U.S. You may apply for your EAD 150 days after you file your asylum application. You will need to renew your EAD periodically, so keep the expiration date in mind.

What is my legal status while my asylum application is pending?

A pending asylum application **does not** grant you lawful status in the U.S. However, you will be in a period of authorized stay from the day you file a bona

vide asylum application (a properly filed application that has a reasonably arguable basis in fact or law and is not frivolous). This means that you will not be accruing any unlawful presence while your application is pending, unless you engage in unauthorized employment.

What are the benefits of asylum?

If you are granted asylum, you will enjoy many benefits, including the ability to:

- Live and work in the U.S.;
- File for your spouse and minor children to come to the U.S.;
- Apply for permanent residence after one year from the grant of asylum; and
- Apply for citizenship.

Can I travel internationally if I am an asylee?

Asylum applicants, asylees, and lawful permanent residents who obtained such status based on their asylum status are subject to special rules with regard to traveling outside the U.S..

Asylum Applicants: An asylum applicant who leaves the U.S. without first obtaining advance parole shall be presumed to have abandoned his or her asylum application. Advance parole allows certain aliens to return to the U.S. without a visa after traveling abroad. However, there is no guarantee that an advance parole application will be approved or that you will be admitted into the U.S.

Asylees: Asylees may travel abroad with prior approval. Such prior approval comes in the form of a refugee travel document. A refugee travel document is valid for one year and is issued to an asylee to allow his or her return to the U.S. after temporary travel abroad. Like an advance parole, a refugee travel document does not guarantee admission into the U.S.

Lawful Permanent Residents: Lawful permanent residents who obtained such status based on their asylum status may also travel abroad with refugee travel documents.