

# Claiming Asylum or Protection in the United States

To seek Asylum, the alien must show, a “well-founded fear of Persecution” because of 1 of the following:

1. Race
2. Religion
3. Nationality
4. Membership in a particular social group with immutable qualities
5. Political Opinion

Refugee- Any person who is outside his/her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution (based on 1-5 above)

An applicant may qualify as a refugee either because he/she has suffered *past* persecution or because he/she has a “well founded fear” of *future* persecution.

# Persecution

- Persecution must be done by the government or a group that the government cannot control or refuses to control.
- Persecution is the infliction of suffering or harm in a way that is regarded as offensive physical abuse or threats to life or freedom. It must be more than mere harassment; or
- The cumulative effects of various types of harm added together can equal to persecution such as:
  1. economic disadvantage/inability to procure gainful employment
  2. interference with person's right to privacy
  3. interference with person's right to higher education
  4. being forced to live in substandard housing or conditions
  5. being forced to live ostracized by society or family
  6. being denied a passport
  7. being forced to live under constant surveillance
  8. being under constant pressure to become an informant

## Well-Founded Fear Test

- The Asylum Applicant need only show a “reasonable expectation” that he/she will be persecuted.
- **Subjective Test**—Applicant must demonstrate that he/she has a fear of returning to their home country.
- **Objective Test**—Applicant must demonstrate the country conditions through specific and objective evidence or credible testimony.
- If the applicant can show that he/she was persecuted in the past, there will be a presumption of future persecution.
- The government then has the burden of rebutting the presumption.

# Other Relief

## Withholding Standard

- The Attorney General may not remove a person to a country where his or her life or freedom would be threatened based on 1 of the 5 “well founded fears of persecution”
- The applicant can remain in the U.S. but it is not a grant of LPR status.

## Convention Against Torture (CAT)

- Prohibits the return of a person to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture if returned.
- A person who gains relief under CAT can be removed to a third country if one is available.
- The individual cannot adjust his/her status to LPR, but can get a work authorization.

# Bars to Asylum Eligibility

## **The Applicant will be denied Asylum if he/she:**

- Ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, nationality, membership in a particular social group, or political opinion
- Was convicted of a particularly serious crime (including aggravated felonies)
- Committed a serious non-political crime outside the U.S.
- Poses a danger to U.S. security
- Firmly resettled in another country prior to arriving in the U.S.
- Has engaged in terrorist activity
- Is engaged in or is likely to engage in any terrorist activity, and a consular officer or the attorney general knows, or has reasonable grounds to believe, that this is the case

# Bars to Asylum Eligibility Continued

## **Applicant will be denied Asylum if he/she:**

8. Has under any circumstances indicated an intention to cause death or serious bodily harm or incited terrorist activity
9. Is a representative of: (i) a foreign terrorist organization; (ii) is a member of a political, social, or other terrorist organization whose public endorsement of acts of terrorist activity undermines U.S. efforts to reduce or eliminate terrorist activities; (iii) has used a position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that undermines U.S. efforts to reduce or eliminate terrorist activities
10. Has previously filed for asylum and was denied

# Bar to Asylum for Failure to File Within 1 Year of Entry

- The applicant must file for Asylum within 1 year of entry. If this is not done, the applicant can show changed circumstances in his/her country or extraordinary circumstances not to be barred:

## **Changed Circumstances**

1. Changes in the condition of the applicant's country
2. Changes in the applicant's circumstances that *materially* affect his or her eligibility (including changes in U.S. law)
3. The loss of the spousal or parental relationship for an applicant who was being included as a dependent of another applicant

## **Extraordinary Circumstances**

1. Serious illness or mental/physical disability
2. Legal disability (power of attorney, minor, ineffective legal counsel)

# Filing the Asylum Application

## **2 Methods of Filing**

1. Affirmative Application Filed with USCIS
2. Defensive Asylum Process (before Immigration Judge)

## **Documents Needed to File Application (No Filing Fee Required)**

1. Form I-589 (Request for Asylum)
2. Detailed Statement of Asylum Claim
3. Form G-28
4. Notice of Appearance (only in removal proceedings)
5. Certificate of Service upon the USCIS (only in removal proceedings)
6. Cover letter from the Attorney
7. Signature of all persons preparing documents
8. 2 recent photos of all applicants
9. Marriage Certificate & Birth Certificates (to prove familial relationships)



# Filing the Asylum Application

## **Documents Needed to File Application**

10. 1 original & 3 copies of Form I-589 and all documentation (for each applicant)
11. All foreign documents must be certified and translated into English
12. Written declaration by the applicant detailing questions contained on Form I-589
13. Any materials that would help verify the applicant's claims (news articles, etc. . .)
14. Passport, ID Card, or any other proof of applicant's identity
15. Expert testimony or declaration about country conditions and/or medical/psychiatric evaluation, etc.

# Status of Family Members, Adjustment of Status, Work Authorization, Travel Permit

## Derivative Status

- An asylum seeker may include spouse unmarried children under 21 who are in the U.S. to his asylum application.

## Child Turns 21 After Application Filed

- Child Status Protection Act (CSPA)—child is given classification at filing

## Adjustment of Status to Permanent Residency

- Applicant may apply for LPR status after being physically present in the U.S. for 1 year after the granting of asylum

## Obtaining Work Authorization

- The applicant will be authorized to work in the U.S. if he/she is granted asylum and as long as he/she remains in asylum status

## Permission to Travel

- Applicant must receive “Advance Parole” in order to leave *and return* to U.S.

## Unlawful Presence

- The pending application tolls the time for accruing “unlawful presence.”