



FACT SHEET

Contact: Office of Legislative and Public Affairs
(703) 305-0289 Fax: (703) 605-0365
Internet: www.usdoj.gov/eoir

January 15, 2009

Asylum and Withholding of Removal Relief Convention Against Torture Protections

Relief and Protections Based on Fear of Persecution or Torture

This fact sheet provides basic information on forms of relief and protection for aliens in the United States who fear persecution or torture in returning to their homeland. It is intended for general informational purposes only and is not a substitute for legal advice, nor does it constitute any legal opinion by the Department of Justice (DOJ). This fact sheet is not fully inclusive, does not address all applicable laws or case interpretation, and may be subject to change as new laws and regulations are enacted.

Asylum Relief

Asylum relief is granted to qualified applicants, regardless of their countries of origin, who are unable or unwilling to return to their country of nationality because of past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

When asylum applicants are granted asylum relief:

- They are permitted to remain in the United States,
- Asylum relief is also granted to their family members who are in the United States and were included in their asylum application,
- They may also petition to bring their eligible family members to the United States, and
- In time, they may apply for lawful permanent residence and, ultimately, citizenship.

(more)

Asylum and Withholding of Removal Relief Convention Against Torture Protections Page 2

Legal Bars to Asylum

Under immigration law, the Immigration and Nationality Act (INA), certain aliens are barred from obtaining asylum. They include those who:

- Have firmly resettled in another country prior to coming to the United States;
- Have already applied for and been denied asylum, unless there are changed circumstances that materially affect the alien's eligibility for asylum;
- Have ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Were convicted by final judgment of a particularly serious crime (including aggravated felony convictions), and therefore constitute a danger to the community of the United States;
- Are believed to have committed a serious nonpolitical crime outside the United States before arriving in the United States;
- Pose a danger to the security of the United States;
- Are members or representatives of a foreign terrorist organization, unless the Secretary of the Department of Homeland Security (DHS) determines that they are not a danger to the security of the United States; or
- Have engaged in or incited terrorist activity.

Difference Between Asylum and Refugee Applicants

Both asylum and refugee determinations are made under the same legal standard that requires persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. However, those seeking refugee status must apply while outside both their country of nationality and the United States. Asylum-seekers must be in the United States or applying for admission at a U.S. port of entry.

Also, there is a ceiling for refugee admissions that is determined annually by the President. However, there is no limit on the number of asylum grants.

Agencies Responsible for Asylum and Refugee Programs

The responsibility for the asylum program is shared between DHS and the Executive Office for Immigration Review (EOIR), an agency within DOJ.

(more)

Asylum and Withholding of Removal Relief Convention Against Torture Protections Page 3

The responsibility for the refugee program is shared between the Department of State and DHS.

The Department of Health and Human Services, Office of Refugee Resettlement (ORR), provides resettlement assistance for both refugees and asylees. This includes grants to states to administer cash and medical assistance, employment preparation, job placement, and English language training. Information is available online on ORR's website ("[Benefits and Services](#)" and "[Asylee Benefits and Responsibilities](#)").

Applying for Asylum

Asylum-seekers must apply for asylum within 1 year from the date of last arrival in the United States. If an applicant seeks asylum more than 1 year after arrival, an applicant must show either changed circumstances that materially affect the applicant's eligibility or extraordinary circumstances that delayed filing an application. An applicant must also show that the application was filed within a reasonable amount of time given those circumstances.

Aliens in the United States can apply for asylum by filing a [Form I-589](#), "Application for Asylum and for Withholding of Removal."

- Aliens who are not in removal proceedings can apply for asylum with DHS. This is called an "affirmative" asylum claim.
- Aliens who are in removal proceedings can apply for asylum with EOIR. This is called a "defensive" asylum claim.

DHS — The Affirmative Asylum Process

The affirmative asylum process applies to aliens who initially file an asylum application with DHS, U.S. Citizenship and Immigration Services (USCIS). USCIS asylum officers conduct non-adversarial interviews of asylum applicants and determine whether to grant asylum.

In making a determination, an asylum officer will evaluate the applicant's testimony, the information they provide on their application, any supplementary materials they submit, and the credibility of their claims. Moreover, an asylum officer will consider country condition information from reliable sources and adjudicate cases in accordance with immigration law.

- If an applicant in lawful status is in the United States and an asylum officer finds the applicant ineligible for asylum, the asylum officer denies the asylum claim.
- If an applicant is in the United States without lawful status and an asylum officer finds the applicant ineligible for asylum, USCIS places that applicant in removal proceedings and refers the case to an EOIR immigration court for a hearing. An immigration judge evaluates the asylum claim anew (*de novo* review).

(more)

Asylum and Withholding of Removal Relief Convention Against Torture Protections Page 4

Information about the [affirmative asylum process](#) and [affirmative asylum statistics](#) are available online on the [DHS/USCIS](#) website.

EOIR — The Defensive Asylum Process

The defensive asylum process applies to aliens who are in removal proceedings and request asylum from an immigration judge. The process is called “defensive” because it can provide relief from being removed from the United States.

An immigration judge hears an applicant’s claim and also hears any concerns about the validity of the claim that are raised by the DHS, Immigration and Customs Enforcement attorney, who represents the U.S. government in immigration court. The immigration judge adjudicates each case individually, on the evidence provided and in accordance with immigration law, to determine whether the applicant is eligible for asylum and merits a grant of asylum.

If an applicant is ineligible for asylum, an immigration judge determines whether the applicant is eligible for any other form of relief or protection from removal.

If an applicant is ineligible for any relief or protection from removal, an immigration judge will deny the application and order the applicant removed from the United States.

If the alien or DHS disagrees with the immigration judge’s decision, either party or both parties may appeal the decision to EOIR’s appellate component, the Board of Immigration Appeals (BIA). If the alien disagrees with the BIA’s ruling, the alien may file a petition for review (an appeal) with the federal circuit courts of appeal.

Statistics on immigration judge asylum decisions are available on [EOIR’s website](#) under [Statistical Yearbook](#) and [Asylum Statistics](#).

Claiming Asylum at a U.S. Port of Entry Expedited Removal Process — Credible Fear or Reasonable Fear Reviews

Immigration law mandates that aliens who arrive at a U.S. port of entry without travel documents or present fraudulent documents must be detained and placed in expedited removal proceedings. The expedited removal process allows DHS immigration inspectors to remove certain aliens from the United States without placing them in removal proceedings.

(more)

**Asylum and Withholding of Removal Relief
Convention Against Torture Protections
Page 5**

During the expedited removal process:

- Aliens who express a fear of persecution or torture receive a “credible fear” interview with a USCIS asylum officer.
- Aliens previously removed from the United States who express a fear of persecution or torture receive a “reasonable fear” interview with a USCIS asylum officer.

When the USCIS asylum officer finds that an alien does not have a credible fear or reasonable fear of persecution or torture, the alien may request that an EOIR immigration judge review that finding.

- **Credible Fear Reviews**

The immigration judge’s credible fear review:

- Must be done within 24 hours whenever possible, but no later than 7 days after the initial determination by an asylum officer, and
- Is limited strictly to whether an alien has a credible fear of persecution or torture.

USCIS asylum officers refer aliens who are found to have a credible fear to EOIR for removal proceedings. During their removal proceedings, they may apply for asylum [under 208](#) of the INA, withholding of removal relief under [241\(b\)\(3\)](#) of the INA, or Convention Against Torture (CAT) protections.

- **Reasonable Fear Reviews**

The immigration judge’s reasonable fear review:

- Must be done within 10 days after the USCIS asylum officer refers the case to the immigration court, unless there are exceptional circumstances, and
- Is limited strictly to whether an alien has a reasonable fear of persecution or torture.

USCIS refers aliens who are found to have a reasonable fear to EOIR for “withholding only” proceedings. During their “withholding only” proceedings, they may apply for withholding of removal relief under [241\(b\)\(3\)](#) of the INA or CAT protections.

(more)

Asylum and Withholding of Removal Relief Convention Against Torture Protections Page 6

Employment Authorization for Asylum Applicants

Asylum applicants are eligible for employment authorization 180 days after they file their asylum application. The 180-day timeframe does not include time spent due to any delays caused by the applicant.

Applicants may apply for employment authorization 150 days after they file their asylum application by submitting a [Form I-765](#), “Application for Employment Authorization” to USCIS. USCIS has 30 days to either grant or deny employment authorization.

Asylum applicants who are granted asylum will be authorized to work in the United States as long as they remain in asylee status.

Withholding of Removal Relief Under the INA

To qualify for withholding of removal relief under the INA, [INA 241\(b\)\(3\)](#), aliens must establish that it is more likely than not that their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal.

An order granting withholding of removal prohibits an alien’s removal to the country where an alien’s life or freedom would be threatened — but allows removal to a third country where an alien’s life or freedom would not be threatened.

Withholding of removal under the INA:

- Does not provide relief for eligible family members in the United States,
- Does not provide the ability to petition to bring eligible family members to the United States,
- Does not lead to lawful permanent residence and, ultimately, citizenship, and
- Does provide relief recipients (not their family members) the ability to apply (with USCIS) for work authorization.

Claims for withholding of removal under the INA are adjudicated by EOIR immigration judges during regular removal proceedings. Immigration judge decisions may be appealed to the BIA. If the alien disagrees with the BIA’s ruling, the alien may file a petition for review (an appeal) with the federal circuit courts of appeal.

(more)

Asylum and Withholding of Removal Relief Convention Against Torture Protections Page 7

Additional information on withholding of removal under the INA is available in the [instructions](#) to the [Form I-589](#), “Application for Asylum and for Withholding of Removal.”

Convention Against Torture Protections

CAT protections relate to the obligations of the United States under Article 3 of the United Nations Convention Against Torture. This is an international treaty provision designed to protect aliens from being returned to countries where they would more likely than not face torture. Torture is defined, in part, as severe pain or suffering (physical or mental) that is intentionally inflicted by or at the instigation of or with the consent or acquiescence of a public official, or other person acting in an official capacity.

Under this treaty provision, the United States agrees not to “expel, return, or extradite” aliens to another country where they would be tortured.

Regarding eligibility, CAT protections:

- Require applicants to establish that it is more likely than not that they would be tortured if removed to a specific country,
- Do not apply to all types of harm that qualify as persecution. Not all types of harm that qualify as persecution necessarily qualify as torture,
- Do not require applicants to establish that the torture is based on one of the five protected grounds (race, religion, nationality, membership in a particular social group, or political opinion), as is required for asylum or withholding of removal under the INA, and
- May be granted to criminals, terrorists, and persecutors, as they cannot be returned to a country where they would face torture.

CAT protections:

- Allow the detention of CAT recipients, where appropriate,
- Allow the removal of CAT recipients to a third country where they would not be tortured,
- Allow eligible CAT recipients, but not their family members, to apply (with USCIS) for work authorization,
- Do not provide for CAT recipients to become lawful permanent residents, and
- Do not provide for CAT recipients to bring family members to the United States.

(more)

**Asylum and Withholding of Removal Relief
Convention Against Torture Protections
Page 8**

CAT Protections — Withholding of Removal (Under CAT) and Deferral of Removal

CAT provides two types of protections, “withholding of removal (under CAT)” and “deferral of removal.” Both protections ensure that aliens are not returned to a country where they would face torture.

- **Withholding of Removal (Under CAT)**

Withholding of removal (under CAT) prohibits returning aliens to a specific country where they would face torture. It is a more secure form of protection than deferral of removal. It can be terminated only if DHS establishes that an alien is not likely to be tortured in that country.

- **Deferral of Removal**

Deferral of removal also prohibits returning aliens to a specific country where they would face torture. However, deferral of removal is granted to aliens who likely would face torture but who are ineligible for withholding of removal (under CAT), for example, certain criminals and persecutors.

Deferral of removal is a more temporary form of protection. It can be terminated more quickly and easily if an alien no longer is likely to be tortured in the country of removal, or if the U.S. government receives assurances that the alien will not be tortured if returned.

CAT claims are adjudicated by EOIR immigration judges during regular removal proceedings. Immigration judge decisions may be appealed to the BIA. If the alien disagrees with the BIA’s ruling, the alien may file a petition for review (an appeal) with the federal courts of appeal. Information about EOIR removal proceedings is available on [EOIR’s website](#).

— EOIR —

The Executive Office for Immigration Review (EOIR) is an agency within the Department of Justice. Under delegated authority from the Attorney General, immigration judges and the Board of Immigration Appeals interpret and adjudicate immigration cases according to United States immigration laws. EOIR’s immigration judges conduct administrative court proceedings in immigration courts located throughout the nation. They determine whether foreign-born individuals — who are charged by the Department of Homeland Security (DHS) with violating immigration law — should be ordered removed from the United States or should be granted relief from removal and be permitted to remain in this country. The Board of Immigration Appeals primarily reviews appeals of decisions by immigration judges. EOIR’s Office of the Chief Administrative Hearing Officer adjudicates immigration-related employment cases. EOIR is committed to ensuring fairness in all of the cases it adjudicates.