

THE MANY FACES OF THE ASYLUM PROCESS: APPLYING FOR ASYLUM IN THE UNITED STATES.

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Asylum is a protection granted to foreign nationals already in the United States or at the border who meet the international definition of a “refugee.” A refugee is defined as a person who has been persecuted or has a well-founded fear of being persecuted “on account of race, religion, nationality, membership in a particular social group, or political opinion.”

This definition derives from the United Nations 1951 Convention and 1967 Protocols (“Convention and Protocols”)—international agreements to which the United States is a signatory. Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. Also, the Convention and Protocols and U.S. law protect the asylum-seeker from “non-refoulement.”

In other words, under international law, a country cannot return or expel people to places where their lives or freedoms could be in jeopardy. Asylum status is granted by asylum officers or immigration judges. In FY 2012, 29,484 individuals were granted asylum. There are two asylum processes in the United States: the affirmative process and the defensive process.

An affirmative asylum application occurs when an asylum-seeker files an application for asylum with U.S. Citizenship and Immigration Services (USCIS). At the asylum interview the claimant is given an opportunity to tell his/her story and to try to convince the officer of his/her credible fear. If the asylum officer does not grant the asylum application, then the applicant is put into removal proceedings and can renew the request for asylum there.

A defensive asylum application occurs when one who has already encountered the government, and is in removal proceedings, applies for asylum to an immigration judge. This is an affirmative benefit that can be sought along with other possible forms of relief that may be available. In other words, asylum is applied for “as a defense against removal from the U.S.”

What does an asylum-seeker have to show to be granted asylum? An asylum seeker has the burden to show either persecution or a “well-founded fear” of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.” Asylum seekers often provide substantial evidence. However, asylum can be granted solely on the asylum seeker’s testimony.

What happens when an asylum seeker’s case goes to court? Asylum seekers and other foreign nationals in immigration proceedings do not have the right to have an attorney provided for them. However, it is generally recommended by the Court and by Legal Counselors that a qualified immigration lawyer be retained if a foreign national is placed into an immigration proceeding. Like many other things in life, the technicalities of the removal process present a multitude of nuances. For example, one client who approached our Firm to assist him at a Removal Hearing before an Immigration Law Judge (EOIR) in New York. Upon doing the research, we found that

the individual was a U.S. Citizen because he derived that status from a parent. The case was quickly settled with the government.

What is credible fear? Credible fear is a screening process, not a status. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created a streamlined removal process called “expedited removal,” which authorizes the Department of Homeland Security (DHS) to perform rapid deportations of noncitizens found within 100 miles of a border without proper papers. In order to ensure that the United States does not violate international and domestic laws by returning individuals to countries where their life or liberty may be at risk, the credible fear screening process was created.

Persons who express fear of returning to their home country or who ask to apply for asylum are afforded a “credible fear interview,” conducted by a USCIS officer. Credible fear is a lower standard than the “well-founded fear” ultimately necessary for asylum. If USCIS finds that the person has a credible fear, USCIS is saying that the individual might qualify for asylum status. Individuals who are not found to have credible fear are generally removed.

Upon entering the United States, an asylum-seeker must generally apply for asylum status within one year. Many asylum seekers are detained while their cases are determined. Detention is mandatory pending credible fear and reasonable fear interviews. For more information about Asylum, the Credible Fear Interview or the Immigration Court (EOIR) process, please feel free to contact the Immigration and nationality Lawyers at the Nachman Phulwani Zimovcak Law Group, P.C. at info@visaserve.com or by calling the Firm at 201-670-0006.