



# Asylum

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## Background

The concept of asylum is not new; the Old TESTAMENT mentions "cities of refuge" and in all likelihood the idea goes back farther than that. Asylum, as we understand it today, differs somewhat from refuge; the asylum-seeker (or asylee) seeks his or her status after arriving in what is hoped will be the welcoming country. The refugee is given that status before traveling to the final destination. The basic premise, however, is the same: People who face persecution, torture, or even death in their home country are sometimes compelled to seek shelter and protection in another land.

Asylum is a complex issue because people have many different reasons for leaving their homeland and not all asylum seekers [WARRANT](#) protection from another government. A person who leaves a country in which people are routinely tortured or killed for their political or religious beliefs may seem at first blush a prime candidate for asylum. If, however, that person was one of the torturers and merely wishes to avoid [IMPRISONMENT](#) when a new government takes over, asylum may not be justified. For this and other reasons, the process of obtaining asylum is a complicated one involving a series of interviews and paperwork that to many can seem daunting.

The history of asylum in the United States goes back to the days when America was still a group of British colonies. Roman Catholics, Jews, and certain Protestant sects (such as the Quakers from England and the Huguenots from France) sailed to America to seek the freedom to practice their religion without fear of recrimination. Historically, the United States has stood stands as a symbol of freedom and has attracted persecuted men and women from other shores. At times, the influx has been so great that legal restrictions have had to be imposed. Historical events, such as World Wars I and II, revolutions in other countries, and the attacks in New York and Washington D. C. on September 11, 2001, also play a role in how, when, and to whom asylum is granted.

## Qualifying for Asylum

A person who has been granted asylum by the U. S. IMMIGRATION and Naturalization Service (INS) is free to remain in the United States. and will not be returned to his or her home country. That same person entering the United States. as an illegal alien, with no fear of persecution from another country, can be removed from the United States. This explains why some people attempt to seek asylum when in fact they have no need for this protection.

## Encyclopedia of Everyday Law: Asylum

The U.S. Government is quick to point out that admission to the United States is a privilege, not a right, and INS has developed a series of regulations and guidelines for handling asylum or potential asylum cases.

### ***Who Can Stay***

Anyone who seeks asylum in the United States must be able to prove that he or she will be subject to persecution if returned home. That persecution may be based on race, religion, or political beliefs. In countries where local tribes or clans vie for power, a member of one such group may fear persecution if another group gains political control. Women are persecuted in a number of countries, particularly if they oppose their country's position on such issues as [ABORTION](#) and [BIRTH CONTROL](#). Homosexuals are a frequent target of persecution, especially in strongly religious countries. Students are another common target of persecution, especially if they engage in political or social activism (either at home or abroad).

Those who wish to emigrate to the United States solely for economic purposes (in other words, better job opportunities) must go through normal immigration procedures, not the asylum process. Trying to find a better job, while perhaps laudable, is not a reason to fear one's government.

### ***Who Cannot Stay***

A number of people are considered "inadmissible" by the United States. These individuals cannot enter the country as immigrants, refugees, or asylum seekers because they failed to meet the requirements for admissibility. Among the primary reasons for inadmissibility are the following:

- *Communicable diseases:* These include tuberculosis, AIDS, and other serious diseases that can easily be transmitted. The reason is obvious; someone carrying a serious or deadly disease can infect others and potentially endanger the health of large numbers of people. It is possible for someone with a serious communicable disease to have a finding of inadmissibility overturned, if he or she can prove that the disease in question has been cured. For some incurable diseases, such as AIDS, it is possible to get a [WAIVER](#).
- *Criminal record:* Those found to have committed "aggravated felonies" are generally denied admission to the United States. Aggravated felonies include serious crimes such as murder, rape, and drug trafficking; they also include [TREASON](#), [ESPIONAGE](#), and terrorist activities. Clearly the U.S. Government does not want to admit people who may commit violent crimes or engage in subversive activities. In some cases an asylum seeker can get a waiver, also known as a "Withholding of Removal." Someone [ACCUSED](#) of an aggravated [FELONY](#) but whose sentence ran less than five years and whose crime has been deemed "not serious" by a judge may be eligible for this protection.
- *Physical and mental disorders:* As with communicable diseases, decisions based on physical or mental disorders can be overturned if the asylum seeker can prove that the condition has been cured or is under control. In some cases, as well, waivers may be granted.
- *People likely to become dependent on welfare:* The United States does not wish to encourage people to seek asylum if they are unwilling to become productive citizens. While it is not obligatory for the asylum seeker to have a job waiting, it is important that those seeking asylum are doing so for legitimate reasons, not merely to gain entry into a country with more benefits for the jobless.
- *Terrorists and spies:* Anyone who is likely to engage in subversive activity against the United States will be denied asylum. There are no waivers available under these circumstances.

Individuals who wish to obtain a waiver of inadmissibility do not need to disprove the grounds of inadmissibility; in other words, the premise is that the asylum seeker will be granted asylum despite a situation that would normally result in inadmissibility. Asylum seekers who do wish to disprove their inadmissibility may do so. For example, those undergoing an INS medical exam may challenge the findings if INS says there are certain medical conditions that would prohibit asylum. The key to making a successful

appeal is having strong documentation.

## The Asylum Process

Individuals who seek asylum in the United States must meet the definition of "refugee" as provided by the Immigration and Nationality Act: essentially, a refugee is anyone who is either unwilling or unable to return to his or her home country because persecution (or well-founded fear of persecution) on the basis of race, religion, or social or political beliefs awaits the individual.

A person can apply for asylum at a port of entry into the United States (ports of entry include airports, seaports, and border crossings) or any time up to one year from the date of entry. The standard application, known as INS Form I-589, is the first step. There is no fee for filing this form. After the form is filled out, it must be sent to a processing center (which center depends on the place from which it is mailed.) All questions on the form must be answered, even if the answer is "none" or "unknown." If even one question is left blank, the entire form will be deemed incomplete and mailed back to the applicant. Applicants who do not speak English must find a competent translator to complete the form; INS does not supply translation services.

Applicants who wish to go to work while waiting for their application to be approved must wait 150 days from the date the application was *accepted* by INS. Accepting work also requires filling out a separate Employment Authorization Form.

Once the application has been received and processed, the applicant will be called in for an interview with an asylum officer. Applicants are allowed to bring legal [COUNSEL](#) and witnesses to the interview. (As with the application, the asylum seeker is responsible for providing a translator if he or she does not speak English.) Usually the asylum officer will issue a decision that will be reported to the applicant at a later date, although officers sometimes announce their decision at the end of the interview.

### ***Derivative Asylum***

Frequently an asylum seeker will have a spouse and children who are also seeking asylum. Anyone seeking asylum may include a spouse and children on his or her Form I-589. Individuals who have already been granted asylum may apply for *derivative asylum* for a spouse and all children under the age of 21. Stepchildren are also eligible if the applicant and spouse married before the child's 18th birthday. Adopted children must have been adopted before their 16th birthday and the applicant must have been the legal parent for at least two years. If an applicant has a child by a woman to whom he is not married, he can apply for derivative asylum for the child, but not for the mother unless he was married to her by the date he was granted asylum. Derivative asylum must be requested within two years of the applicant's own grant of asylum.

### ***Torture***

One type of "withholding of removal" is offered in response to the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Under the terms of this 1999 Convention, a person who can show that he or she is more likely than not to be tortured if returned home can be granted asylum unless deemed to be a serious criminal or a potential subversive. Applicants who wish to be considered for this status are advised to check the box on the first page of Form I-589; an INS Immigration Judge will make the decision based on the [EVIDENCE](#) submitted.

Although Article 3 of the Convention Against Torture prohibits the United States from returning an asylum seeker to a country in which torture is likely, it does *not* prevent the United States from sending the applicant

to a third country where there is no danger of torture.

## Appealing a Rejected Application

The asylum officer may decide to refer an application to an Immigration Judge for a final decision. If the judge denies the application, the asylum seeker will get a letter explaining how to appeal. The appeal is sent to the Board of Immigration Appeals (it must be received within 33 days of receiving the denial notice), where a final decision will be made.

A derivative asylum application that is denied cannot be appealed, but the person who made the application may submit a motion to reopen or reconsider the case. A motion to reopen must be accompanied by new documentation that could change the decision. A motion to reconsider, however, needs to show that the denial was based on incorrect application of the law or of INS policy.

Asylum law and the procedures are complex, involved in seeking and getting protection are complex and the process of seeking asylum can leave people confused at a particularly vulnerable time. INS provides comprehensive information on its web site, <http://www.ins.usdoj.gov>. There are INS district offices throughout the country, and they are usually able to offer information about not-for-profit groups that help immigrants and asylum seekers through the process. The United Nations High Commissioner for Refugees, whose Washington D. C. phone number is (202) 296-5191, can also provide advice. Those who can afford legal counsel would do well to seek the advice and assistance of an experienced immigration lawyer.

## Additional Resources

*Emigrating to the USA: A Complete Guide to Immigration, Temporary Visas, and Employment.* Beshara, Edward C., and Richard & Karla Paroutard, Hippocrene Books, 1994.

*The Immigration and Naturalization Service.* Dixon, Edward H., and Mark A. Galan, Chelsea House, 1990.

*Immigration Made Simple: An Easy-to-Read Guide to the U. S. Immigration Process.* Brooks Kimmel, Barbara, and Alan M. Lubiner, Next Decade, 2000.

*Meeting the Challenge through Innovation.* U. S. Department of Justice, Immigration and Naturalization Service, 1996.

*Refugee Law and Policy: International and U. S. Responses.* Nanda, Ved P., editor, Greenwood Press, 1989.

*Refugee Rights and Realities: Evolving International Concepts and Regimes.* Nicholson, Frances, and Patrick Twomey, editors, Cambridge University Press, 1999.

## Organizations

*United States Association for the United Nations High Commissioner for Refugees (UNHCR)*

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## Encyclopedia of Everyday Law: Asylum

Fax: (202) 296-1081

URL: <http://www.usaforunhcr.org>

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### *U. S. Department of Justice, Immigration and Naturalization Service (INS)*

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