

Asylum and Refugee Status: What to Expect

A comprehensive guide from EB5 Attorneys

Asylum protection in the United States is available to persons who have suffered persecution or have a well founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. To apply, most people must file Form I 589 within one year of arriving in the United States. The process runs either through USCIS (affirmative asylum) or immigration court (defensive asylum), and the outcome determines whether a person stays in the country or faces removal.

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The Legal Standard for Asylum: Persecution on a Protected Ground

Asylum protection is grounded in Section 208 of the Immigration and Nationality Act (INA) and the 1967 Protocol Relating to the Status of Refugees, to which the United States is a signatory. To qualify, an applicant must establish that they are a refugee as defined under INA 101(a)(42): a person who is outside their country of nationality and is unable or unwilling to return because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Persecution means serious harm inflicted by the government or by forces the government is unwilling or unable to control. Physical harm is most clearly recognized, but courts have also found that severe psychological harm, economic deprivation targeting protected characteristics, imprisonment, torture, and forced sterilization may qualify. Not every difficult circumstance is persecution; the harm must be significant and tied to the protected ground.

The five protected grounds are construed by case law across circuit courts and the Board of Immigration Appeals (BIA). Membership in a particular social group is the most litigated ground. The BIA in *Matter of M E V G*, 26 I&N Dec. 227 (BIA 2014) established a tripartite test requiring the group to be: (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. Courts have recognized groups including women in certain countries who cannot leave domestic relationships, LGBTQ individuals in countries that criminalize such status, and persons who have resisted extortion demands by criminal organizations, though outcomes vary by circuit.

The well founded fear standard has both subjective and objective components under *INS v. Cardoza Fonseca*, 480 U.S. 421 (1987). The applicant must genuinely fear persecution (subjective), and that fear must be objectively reasonable given country conditions. The standard does not require certainty of persecution; a ten percent probability of persecution can meet the test.

The One Year Filing Deadline

INA 208(a)(2)(B) requires that an asylum applicant file Form I 589 within one year of the date of last arrival in the United States. This is one of the most consequential procedural requirements in U.S. immigration law. Missing the one year deadline generally bars the applicant from asylum eligibility entirely, leaving only lesser forms of protection such as withholding of removal or Convention Against Torture (CAT) relief.

The deadline runs from the date of last arrival, meaning each entry into the United States resets the clock. An applicant who entered on a visa, departed, and re entered on another date will have the clock run from the most recent arrival. The arrival date is typically evidenced by an I 94 record, passport entry stamps, or other USCIS or CBP records.

Two categories of exceptions can excuse an untimely filing. First, changed circumstances that materially affect eligibility: a change in country conditions in the applicant's home country, a change in the applicant's own circumstances (such as religious conversion or coming out as LGBTQ), or a change in U.S. law after arrival. Second, extraordinary circumstances relating to the delay: serious illness or mental or physical disability during the one year period, legal disability, ineffective assistance of a prior attorney, or the applicant's maintenance of valid nonimmigrant status until shortly before filing. The applicant must file within a reasonable time given the changed or extraordinary circumstances.

USCIS and immigration judges scrutinize deadline exceptions carefully. Applicants relying on an exception must provide documentation establishing the exception and the causal connection to the delay. An applicant who waited years after the triggering event to file faces skepticism about whether the delay was reasonable. Prompt consultation with an asylum attorney upon arrival in the United States is essential to preserve eligibility and understand the filing timeline.

Affirmative Asylum: USCIS Asylum Interviews

Affirmative asylum is the procedure available to individuals who are not currently in removal proceedings. The applicant proactively files Form I 589 (Application for Asylum and Withholding of Removal) with USCIS. There is no filing fee for Form I 589.

After filing, USCIS schedules a biometrics appointment and an asylum interview with a specially trained asylum officer at an Asylum Office. USCIS operates eight Asylum Offices nationally (Arlington, Boston, Chicago, Houston, Los Angeles, Miami, New York, and San Francisco). Interview wait times have varied substantially; as of 2025, some applicants wait months while others wait years depending on caseload and current policies.

The asylum interview is a non adversarial proceeding, meaning the officer is not an advocate for either side. The officer asks questions designed to elicit the factual basis for the claim, assess credibility, and identify any bars to asylum. The applicant may bring an attorney who can speak during the interview, and an interpreter is provided if needed. The interview typically lasts from 45 minutes to several hours depending on case complexity.

If the asylum officer grants asylum, the applicant receives a grant letter and may immediately apply for a Social Security number, apply for work authorization, and after one year apply for adjustment to lawful permanent resident status under INA 209(b). If the asylum officer does not grant asylum, the officer will either issue a Notice of Intent to Deny (NOID) for certain non citizens or refer the case to immigration court. Referral to immigration court does not mean the claim was denied; it means the case will be decided by an immigration judge, who conducts a new hearing and is not bound by the asylum officer's findings.

Strong preparation for the affirmative asylum interview includes: a detailed, corroborated written declaration; country condition evidence from State Department reports, UNHCR reports, and human rights organizations; corroborating documentation of the harm suffered (medical records, police reports, photographs); expert witness letters where appropriate; and thorough interview preparation with the attorney to practice answering questions clearly and consistently.

Defensive Asylum: Immigration Court Proceedings

Defensive asylum arises when an individual is already in removal proceedings before an immigration judge and raises asylum as a defense to removal. The defensive process applies to persons who entered without authorization and were apprehended at or near the border, were referred from the affirmative process after the asylum officer did not grant asylum, or were placed in removal proceedings for other reasons.

Removal proceedings in immigration court involve a master calendar hearing (an administrative scheduling and preliminary proceeding) followed by one or more individual hearings where the applicant presents testimony and evidence. The asylum applicant bears the burden of proof. The government is represented by a DHS trial attorney who can cross examine the applicant and challenge evidence.

Credible fear is a threshold screening standard applied at the border or ports of entry for asylum seekers who may be subject to expedited removal. Under INA 235(b)(1), an officer can order expedited removal without a full hearing unless the person indicates a fear of persecution. A credible fear interview determines whether there is a significant possibility that the person could establish eligibility for asylum. Those who pass credible fear screening are placed in regular removal proceedings where they can apply for asylum. Those who fail the credible fear screening can be removed quickly, though they may request review by an immigration judge.

Reasonable fear is a related but distinct standard used for individuals who have prior removal orders or are considered to be convicted aggravated felons. Under 8 CFR 208.31, a reasonable fear interview determines whether there is a reasonable possibility of persecution or torture. A positive reasonable fear determination allows the person to apply for withholding of removal or CAT protection but not asylum itself.

The immigration court backlog as of 2025 has exceeded 3.5 million pending cases, resulting in individual hearing dates often scheduled years after the initial master calendar hearing. While cases are pending, applicants may be eligible for work authorization under the asylum clock rules and may apply for advance parole in some circumstances.

Work Authorization and the Asylum Clock

One of the most practically significant aspects of asylum procedure is the timeline for obtaining work authorization. Under INA 208(d)(2) and 8 CFR 208.7, asylum applicants may not apply for employment authorization until 180 days after filing a complete asylum application. This 150 day waiting period before applying (plus 30 days for processing) is commonly called the asylum clock.

The asylum clock stops running when the applicant causes delays. Specifically, the clock stops if the applicant requests a continuance or extension of time in immigration court, fails to appear for a scheduled interview or court date, files an application with incomplete information, or takes other actions that delay adjudication. An attorney can help applicants understand how to protect their asylum clock from unnecessary stops.

Form I 765 (Application for Employment Authorization) is filed after the 150 day waiting period under the (c)(8) category (pending asylum applicant). Work authorization is granted in one year increments renewable while the case remains pending. Work authorization is not automatically issued; the applicant must file the I 765 application and receive an Employment Authorization Document (EAD) from USCIS before beginning work.

There is no government filing fee for the initial I 765 filing under the asylum applicant category (c)(8) or for renewals. Work authorization is typically processed within 30 to 90 days after the waiting period is complete. After receiving asylum, the asylee may apply for work authorization immediately based on their asylum grant status, and spouses and unmarried children under 21 who are included as derivatives on the asylum grant may also apply for work authorization.

Bars to Asylum and Alternative Forms of Protection

Not every person who fears persecution qualifies for asylum. INA 208(b)(2) lists mandatory bars to asylum that preclude a grant regardless of the strength of the underlying persecution claim.

Persecution of others is a bar: if the applicant persecuted others on account of race, religion, nationality, political opinion, or social group membership, they are barred. This bar targets individuals who participated in atrocities, ethnic cleansing, or organized persecution.

The particularly serious crime bar applies if the applicant has been convicted of a particularly serious crime and constitutes a danger to the community. For purposes of this bar, an aggravated felony under INA 101(a)(43) is generally considered particularly serious, though the analysis is fact specific.

Security bars apply to persons who have engaged in, prepared for, or engaged in terrorist activity; are members of a terrorist organization; or have persecuted others under the auspices of a government or organization.

Firm resettlement is a bar when the applicant was firmly resettled in a third country before arriving in the United States, as defined under 8 CFR 208.15.

When asylum is unavailable due to bars or untimely filing, two alternative protective statuses may still be available. Withholding of removal under INA 241(b)(3) is a narrower form of protection: the applicant must show it is more likely than not (a greater than 50 percent standard) that their life or freedom would be threatened on account of a protected ground. Withholding of removal does not lead to a green card or citizenship and does not protect the applicant from removal to a third country where they would not face persecution.

Protection under the Convention Against Torture (CAT) under 8 CFR 208.16 18 is available if the applicant demonstrates it is more likely than not they would be tortured by or with the acquiescence of the government if returned. CAT protection does not require a nexus to a protected ground, making it broader in that respect, but the torture standard is demanding. CAT protection similarly does not confer a path to permanent residence.

Refugee Status: Differences from Asylum

Refugees and asylees both receive protection based on the same underlying international definition, but their immigration procedures differ significantly. Asylum is applied for inside the United States or at a U.S. port of entry. Refugee status is applied for outside the United States through the U.S. Refugee Admissions Program (USRAP) administered by the Department of State, Department of Homeland Security, and the United Nations High Commissioner for Refugees (UNHCR).

The refugee admissions process begins with referral to USRAP, typically by UNHCR, a U.S. embassy, or certain designated non governmental organizations. Referred individuals undergo security checks, interviews with DHS refugee officers, medical examinations, cultural orientation, and domestic travel arrangements before being admitted to the United States as refugees. The annual refugee admissions ceiling is set by the President in consultation with Congress under INA 207(e). The ceiling for fiscal year 2025 was set at 125,000 refugees.

Upon admission, refugees are immediately authorized to work, are eligible for certain federal resettlement assistance programs, and after one year may apply for adjustment to lawful permanent resident status under INA 209(a). Asylees, by contrast, receive their protection after arriving in the United States and must wait one year from the asylum grant date before applying for a green card under INA 209(b).

Spouses and unmarried children of refugees may accompany or follow to join the refugee (following within four months of the principal refugee's admission). Derivatives of asylees may apply to be included on the asylum grant if they are in the United States, or may apply as derivative asylees abroad within two years of the principal's grant.

Processing times under USRAP are highly variable, ranging from months to years, and are subject to policy changes affecting admissions ceilings, security screening procedures, and partner resettlement agency capacity.

Building a Strong Asylum Case: Evidence and Strategy

Asylum cases succeed or fail on the strength and credibility of the evidence presented. The applicant bears the burden of proof by a preponderance of the evidence, a standard requiring that the claim is more probable than not under INA 208(b)(1)(B)(ii).

The personal declaration is the foundation of every asylum case. It must describe in chronological, specific detail the incidents of harm or threats the applicant experienced; the identities and roles of the persecutors; the protected ground(s) to which the harm was connected; and the reasons the applicant cannot safely return or relocate within their home country. Vague, inconsistent, or internally contradictory declarations undermine credibility. Inconsistencies between the declaration and hearing testimony are a leading cause of denial.

Country condition evidence corroborates the objective risk of persecution. The most authoritative sources include: U.S. Department of State Country Reports on Human Rights Practices (published annually for virtually every country in the world); U.S. Department of State Country Conditions on Asylum (where available); UNHCR country guidance and eligibility guidelines for specific nationalities; Human Rights Watch and Amnesty International annual reports; academic and journalistic reporting from credible outlets; and NGO reports specifically addressing the treatment of the applicant's claimed group.

Supporting documentation may include: police reports filed in the home country documenting threats or attacks; medical records documenting injuries from persecution; death threats received in writing or recorded; letters from witnesses in the home country; evidence of the applicant's membership in the targeted group (religious affiliation records, political party membership, LGBTQ advocacy documentation); evidence of harm to family members with the same profile; and photographs documenting harm or relevant conditions.

Expert witnesses provide opinion testimony that contextualizes country conditions, explains social and political dynamics, or assesses whether the applicant's profile places them at risk. Experts may be country specialists, political scientists, medical or psychological professionals, or human rights researchers. Expert letters must explain the basis for the expert's opinion and should be prepared in coordination with the applicant's attorney.

Frequently Asked Questions

1. What is the one year filing deadline for asylum, and what happens if I miss it?

Under INA 208(a)(2)(B), you must file Form I 589 within one year of your most recent arrival in the United States. If you miss this deadline, you generally cannot receive asylum. However, two exceptions may apply: changed circumstances that materially affect your asylum eligibility (such as a change in country conditions or your personal circumstances), or extraordinary circumstances that caused the delay (such as serious illness, legal disability, or ineffective assistance of a prior attorney). If you miss the deadline, you may still be eligible for withholding of removal under INA 241(b)(3) or protection under the Convention Against Torture, both of which have no one year deadline but offer narrower protection than asylum.

2. What is the difference between affirmative and defensive asylum?

Affirmative asylum is when you proactively file Form I 589 with USCIS before you are in removal proceedings. An asylum officer interviews you, and if you are granted asylum, you receive protection. If you are not granted, your case is generally referred to immigration court. Defensive asylum is when you are already in removal proceedings before an immigration judge and raise asylum as a defense to being removed. In defensive proceedings, a DHS attorney represents the government against you, and the immigration judge decides your case. Both paths can result in asylum protection, but defensive cases are more adversarial and often take longer due to immigration court backlogs.

3. When can I apply for work authorization as an asylum applicant?

Under INA 208(d)(2) and 8 CFR 208.7, you must wait at least 150 days after filing a complete Form I 589 before applying for work authorization. You then file Form I 765 under the (c)(8) category (asylum applicant pending). USCIS processes the I 765 within 30 days of the filing date in most cases, meaning the total wait before you can lawfully work is typically around 180 days from the filing of a complete application. The asylum clock can be paused if you cause delays in your case, so avoid requesting continuances or missing hearing dates unnecessarily. There is no government fee for the initial (c)(8) I 765 filing.

4. Can I include my spouse and children in my asylum application?

Yes. A spouse and unmarried children under 21 who are in the United States may be included as derivatives on your Form I 589 if they are listed in the application and present in the country at the time of filing. Derivatives share your asylum grant and receive the same protection. If your spouse or children are abroad, they may apply as derivative asylees through a U.S. embassy within two years of your asylum grant date, provided the family relationship existed at the time of your grant. Derivative family members also become eligible for work authorization and, after one year from the grant date, for adjustment to lawful permanent resident status.

5. What is the difference between asylum, withholding of removal, and CAT protection?

Asylum under INA 208 requires demonstrating a well founded fear of persecution on a protected ground, with a one year filing deadline, and grants a path to permanent residence and citizenship. Withholding of removal under INA 241(b)(3) requires showing it is more likely than not that life or freedom would be threatened on account of a protected ground, has no one year deadline, but does not grant permanent residence or protect against removal to a safe third country. Convention Against Torture (CAT) protection under 8 CFR 208.16 18 requires showing it is more likely than not that the person would be tortured with government involvement, has no protected ground or one year deadline requirement, but also does not lead to permanent residence. CAT protection can be granted even when asylum and withholding are barred by criminal convictions or other bars.

6. What happens if my asylum application is denied?

If USCIS denies an affirmative asylum application, your case is referred to immigration court where an immigration judge hears the case de novo (as if for the first time). If an immigration judge denies your case, you may appeal to the Board of Immigration Appeals (BIA). If the BIA dismisses your appeal, you may petition the appropriate federal circuit court of appeals for review under INA 242. Federal court review is limited to legal errors and constitutional claims; courts do not reweigh factual credibility determinations in most circumstances. Throughout the appeals process, if you remain in the United States, you may continue to apply for work authorization while proceedings are pending.

7. Does winning asylum lead to a green card and citizenship?

Yes, over time. After receiving asylum, you may apply for adjustment to lawful permanent resident status (a green card) after one year of continuous physical presence in the United States since the asylum grant under INA 209(b). The application is made on Form I 485 with no government filing fee for asylees. After holding a green card for five years (or four years for some pathways), you may apply for naturalization to U.S. citizenship under INA 316. Asylees generally count all time in asylee status toward the naturalization physical presence and residence requirements, making the path to citizenship achievable after roughly six years from the asylum grant date.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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