
Lesson Plan Overview

Course	Refugee, Asylum and International Operations Directorate Officer Training Asylum Division Officer Training Course
Lesson	<i>Affirmative Asylum Process and Procedures</i>
Rev. Date	July 11, 2013
Lesson Description	This lesson provides an overview of the affirmative asylum adjudication process. The lesson explains the jurisdiction of the asylum program, describes the application process, and explains who may be included as a dependent to an asylum application. The lesson provides basic information on each step of the affirmative asylum process from time of filing an application through adjudication.
Terminal Performance Objective	The Asylum Officer will be able to determine whether an applicant for affirmative asylum is eligible to apply, determine jurisdiction of the case, and establish whether claimed dependents may be included in the request for asylum.
Enabling Performance Objectives	<ol style="list-style-type: none">1. Define the jurisdiction of Asylum Officers to adjudicate requests for asylum. (AA1) (AAS3)(OK4)2. Define the jurisdiction of the Office of the Immigration Judge to adjudicate requests for asylum. (AAS3)(OK8)3. Identify the procedures for adjudicating asylum claims. (AIL1)(ACRR1)4. Explain when a spouse or child is eligible to derive asylum status from an approved principal applicant. (ACRR1)(AA1)
Instructional Methods	Lecture, class discussion, visual aids
Student Materials/References	Lesson Plan Affirmative Asylum Procedures Manual (AAPM) Asylum Officer Performance Plan & Appraisal (PPA) and related documents
Method of Evaluation	Written test
Background Reading	<ol style="list-style-type: none">1. Langlois, Joseph E., Director, Asylum Division, US Citizenship and

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- Immigration Services. *Securing Compliance with Fingerprinting Requirements Prior to the Asylum Interview and Amending Procedures for Issuance of Recommended Approvals*, Memorandum to Asylum Office Directors and Deputy Directors, Supervisory Asylum Officers, Quality Assurance/Training Officers and Asylum Officers (Washington, DC: 12 September 2006), 14 pp., plus attachments.
2. USCIS Customer Guide: *I Am a Refugee or Asylee. How Do I Show My Employer I am Authorized to Work?* (Washington, DC: August 2008), 2 pp.
 3. Joseph E. Langlois. Director, Asylum Division, US Citizenship and Immigration Services. *The Effect of the “Real ID” Act on the Processing of Coercive Population Control (CPC) Cases*, Memorandum for all Asylum Office Personnel (Washington, DC: 16 June 2005), 3pp.
 4. Joseph E. Langlois. Director, Asylum Division, US Citizenship and Immigration Services. *Updated Fact Sheet on Confidentiality*, Memorandum to Asylum Office Directors and Deputy Directors (Washington, DC: 18 October 2012), 1 p., plus attachment.
 5. Langlois, Joseph E., Director, Asylum Division, US Citizenship and Immigration Services. Letter to Donald M. Kerwin, Executive Director, Catholic Legal Immigration Network, Inc. (CLINIC), 23 September 2004, 1 p., plus attachment (CLINIC, *Asylee Eligibility for Resettlement Assistance: A Short Guide*)
 6. Yates, William R., Assoc. Director for Operations, US Citizenship and Immigration Services. *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al. (Washington, DC: 17 August 2004), 4 pp., plus attachments.
 7. Aguirre, Eduardo, Director, US Citizenship and Immigration Services. *Delegation to Asylum Office Directors of District Director Authority and Discretion to Issue Form I-863, “Notice of Referral to Immigration Judge,” to Certain Asylum Applicants*, Memorandum to Regional Directors, Asylum Office Directors, and District Office Directors (Washington, DC: 26 July 2004), 2 pp.
 8. Langlois, Joseph E., Director, Asylum Division, US Citizenship and Immigration Services. *Procedures for Handling Approved Asylum Cases Returned to the Asylum Office Based on Possible Grounds for Termination Discovered During the Asylee Adjustment Process*, Memorandum for Asylum Office Directors (Washington, DC: 19 July

2004), 6 pp., plus 6 attachments (See Lesson, Fraud in the Context of Asylum Adjudications)

9. Langlois, Joseph E., Director, Asylum Division, Office of International Affairs. [*Issuance of Final Affirmative Asylum Procedures Manual \(AAPM\)*](#), Memorandum for Asylum Office Personnel (Washington, DC: 6 February 2003), 2 pp., plus attachment.
10. Langlois, Joseph E., Director, Asylum Division, Office of International Affairs. [*H.R. 1209 – Child Status Protection Act*](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: 7 August 2002), 2 pp., plus [attachment](#).
11. Langlois, Joseph E., Acting Director, Asylum Division, Office of International Affairs. [*Final Rule amending the asylum regulations in 8 C.F.R. 208*](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: 6 December 2000), 8 pp., plus attachment. (See, lesson, [*History of the Affirmative Asylum Program*](#))
12. Langlois, Joseph E., Chief, Asylum Division, Refugee, Asylum and International Operations Directorate. [*Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: 14 August 2007), 9 pp.
13. Langlois, Joseph E., Chief, Asylum Division, Refugee, Asylum and International Operations Directorate. [*Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*](#), Memorandum to Asylum Office Staff (Washington, DC: 25 March 2009), 7 pp., plus [attachment](#).
14. Kim, Ted, Acting Chief, Asylum Division, Refugee, Asylum and International Operations Directorate. [*Termination and related Post-Adjudication Eligibility Review \(PAER\) procedures for cases in which the alien was granted asylum affirmatively and has already adjusted to lawful permanent resident status*](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: 5 June 2012), 6 pp., plus [attachment](#).

CRITICAL TASKS

Knowledge of U.S. case law that impacts RAIO

Knowledge of the Asylum Division jurisdictional authority.
 Knowledge of procedures and legal requirements for Asylum and Withholding of Removal (I-589)
 Knowledge of policies and procedures for reviewing case files.
 Knowledge of Executive Office for Immigration Review.
 Knowledge of Asylum Division guidelines and procedures for processing children’s claims.
 Knowledge of case law that impacts the Asylum Division policies and procedures.

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Presentation

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I. INTRODUCTION

The purpose of this lesson is to introduce the student to the asylum process. This lesson provides an overview of the laws, regulations, and procedures pertaining to asylum and refugee status. The lesson follows the path that an asylum applicant takes from the point of filing with U.S. Citizenship and Immigration Services (USCIS) through adjudication by the asylum program.

Each aspect of the asylum process will be covered in greater detail in subsequent lessons.

II. OVERVIEW OF ASYLUM ELIGIBILITY

A. Statutory Authority

Under the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) has the authority to grant asylum to aliens who meet the definition of a refugee.

A refugee is:

...any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to avail himself or herself of the protection of that country 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...[forced abortion, involuntary sterilization, or persecution for resistance to coercive population control programs constitute persecution on account of political opinion].

An alien who meets the definition of a refugee may not be granted asylum if he or she:

1. Participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
2. Has been convicted of a particularly serious crime;
3. Has committed a serious nonpolitical crime outside the United States;

[INA § 208\(b\)\(1\)](#); see Asylum lesson, *History of the Asylum Program* for more information on the development of the definition of a refugee in US law.

[INA § 101\(a\)\(42\)](#); see RAI0 Modules: Refugee Definition; Past Persecution; Well Founded Fear; Nexus and Protected Grounds; and Nexus – PSG for more information on the definition of a refugee.

[INA § 208\(b\)\(2\)](#); see RAI0 Modules:, Discretion; Firm Resettlement; Persecutor Bar; National Security; Inadmissibility; and Asylum Lesson: Mandatory Bars – Criminal Bars for more information on the mandatory bars to granting asylum.

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4. Poses a danger to the security of the United States;
 5. Is described in particular inadmissibility or removability grounds relating to terrorism; or
 6. Was firmly resettled in another country prior to arriving in the United States.

An alien who has been granted asylum may not be returned to his or her country of nationality or, in the case of a person having no nationality, the country of the alien's last residence.

[INA § 208\(c\)\(1\)\(A\)](#)

B. Regulatory Framework

Because asylum is a discretionary benefit, DHS is not required to grant asylum to an alien, even if the alien meets the definition of a refugee and is otherwise eligible for asylum.

The administrative regulations that establish the procedure for an alien present in the U.S. or at a land border or port of entry to apply for asylum are found at Title 8 of the Code of Federal Regulations (C.F.R.) § 208, et seq. These regulations govern not only basic asylum procedures, but also substantive eligibility issues such as burden of proof, standard of proof, and mandatory grounds for denial.

The regulations delineate how DHS will exercise its discretion to grant asylum to refugees. For example, an asylum applicant who meets the definition of a refugee based on past persecution, but due to a fundamental change in circumstances no longer has a well-founded fear of persecution or can avoid persecution by relocating internally in the country of nationality will generally not be granted asylum, unless the past persecution suffered was severe or there is a reasonable possibility that the applicant will suffer other serious harm upon return to the country of nationality.

[8 C.F.R. § 208.13\(b\)\(1\)\(iii\)](#)
*See also RAIIO Module:
Discretion*

III. APPLYING FOR ASYLUM

A. Jurisdiction

Regulations provide that an asylum seeker may apply for asylum any time while physically present in the United States or at a port of entry, *regardless of the individual's immigration status.*

[INA § 208\(a\)](#)

1. Affirmative applications

An asylum officer has jurisdiction to adjudicate or refer a request for asylum if the applicant is not in immigration proceedings before the Office of the Immigration Judge.

[8 C.F.R. § 208.2](#)

An applicant is in the jurisdiction of the Immigration Court when he or she has been served with a:

[8 C.F.R. § 208.2\(b\)](#)

- a. Form I-221 Order to Show Cause,
- b. Form I-122 Notice to the Applicant for Admission Detained for a Hearing before an Immigration Judge, or
- c. Form I-862 Notice to Appear,

and the charging document has been filed with the Immigration Court.

The Immigration Court also has jurisdiction over any asylum applications filed prior to April 1, 1997 by alien crewmembers who have remained in the United States longer than authorized, applicants for admission under the Visa Waiver Pilot Program (VWPP), and aliens who have been admitted to the United States under the VWPP.

[8 C.F.R. § 208.2\(b\)](#)

2. Defensive applications

Immigration judges have *exclusive* jurisdiction over asylum applications after a charging document has both been served on the applicant and filed with the Office of the Immigration Judge.

[8 C.F.R. § 208.2](#)

This means that if charging documents are filed with the Office of the Immigration Judge at any time, even after an individual has affirmatively applied for asylum (and may have been interviewed), the Asylum Office loses jurisdiction.

This also means that, even if the applicant has been personally served with charging documents, the Asylum Office retains jurisdiction until those charging documents are actually filed with the Office of the Immigration Judge.

3. Unaccompanied Alien Children

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, signed into law on December 23 and effective 90 days thereafter on March 23, 2009, provided asylum officers with “initial jurisdiction over any asylum application filed by” an unaccompanied alien child (UAC). This means that UACs will have an opportunity to file for asylum with USCIS, even if the UAC has been issued a Notice to Appear. This applies to all UACs who file for asylum on or after March 23, 2009 as well as to the asylum claims filed by UACs with pending proceedings in Immigration Court or cases on appeal to the Board of Immigration Appeals or on petition for review in federal court.

4. Determining jurisdiction

When reviewing a file prior to the asylum interview, the asylum officer should check for any documents indicating that the applicant has been placed in deportation, exclusion, or removal proceedings.

If it appears that an applicant may have had previous contact with an immigration officer, the asylum officer should ask the asylum applicant appropriate questions to determine whether the applicant has been placed in proceedings and the outcome of those proceedings. If the asylum officer determines that proceedings against the applicant were terminated, the application for asylum is properly in the jurisdiction of the asylum office and can be interviewed by the asylum officer. If it is determined that proceedings were administratively closed, all matters relating to the alien are in the jurisdiction of the Immigration Court and the alien cannot be interviewed by the asylum officer.

If after an approval of an asylum it is discovered that the applicant was not properly in the jurisdiction of the asylum office, the offer of asylum is rescinded.

5. Jurisdiction of asylum offices

The jurisdiction of an asylum office to adjudicate a particular asylum applicant is determined by the place of residence of the asylum applicant. Most applicants within an asylum

For specific information on

office's jurisdiction are interviewed at the asylum office's home office. However, those applicants who live far from the home office are scheduled to be interviewed at a USCIS district office closer to the applicant's residence. These locations are called "circuit ride" locations.

the localities over which each asylum office has jurisdiction, see "[Asylum Office Locator](#)," on the USCIS website.

B. Restrictions on Filing

Only an asylum officer, immigration judge, or the Board of Immigration Appeals (BIA) can make a determination on whether a restriction to filing applies.

[8 C.F.R. § 208.4\(a\)\(1\)](#)

1. One-year filing deadline

Asylum applications must be filed within one year after the alien's arrival in the U.S., unless the applicant can demonstrate "changed circumstances" that materially affect eligibility for asylum or "extraordinary circumstances" for failing to apply for asylum within one year.

[INA §§ 208\(a\)\(2\)\(B\) and \(D\)](#); [8 C.F.R. §§ 208.4\(a\)\(2\), \(4\), and \(5\)](#)

The one-year filing deadline is discussed in detail in the Asylum lesson [One-Year Filing Deadline](#)

The one-year deadline is calculated from the date of the alien's last arrival in the U.S. or April 1, 1997, whichever is later.

2. Prior denial

Prior denial of an asylum application makes an alien ineligible to apply for asylum, unless the applicant demonstrates "changed circumstances" that materially affect eligibility for asylum.

[INA §§ 208\(a\)\(2\)\(C\) and \(D\)](#); [8 C.F.R. §§ 208.4\(a\)\(3\) and \(4\)](#)

This denial must have been made by an immigration judge or the BIA. Therefore, an applicant who received a final denial from an asylum office is not precluded from filing a subsequent asylum application, even if there have been no changed circumstances.

3. Safe third country

An asylum applicant who may be returned to a "safe third country," other than the country of nationality (or last habitual residence, if the applicant is stateless) is ineligible to apply for asylum.

[INA § 208\(a\)\(2\)\(A\)](#)

A "safe" country is one that has entered into a bilateral or multilateral agreement with the United States so that an

On December 5, 2002, the governments of the United States and Canada entered

applicant will not be returned to a country where his or her life or freedom would be threatened on account of one of the five grounds and where the applicant will have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

into a safe-third country agreement. A final rule implementing this agreement was published on November 29, 2004. See Asylum lesson [Safe Third Country Threshold Screening](#) for more information.

C. Who May Be Included in the Asylum Application

1. Principal applicant

Any alien physically present in the United States or who arrives in the United States, irrespective of immigration status may apply for asylum. The principal applicant is the individual within the case who is claiming to be a refugee eligible for asylum.

[INA § 208\(a\)](#)

2. Dependents

The applicant's spouse and children who are physically present in the United States may be included in the request for asylum. To be included, a child must be under 21 years of age and unmarried at the time of filing.

[8 C.F.R. §§ 208.3\(a\); 208.21\(a\); INA § 208\(b\)\(3\)](#) Spouse and child are defined in section [INA §§ 101\(a\)\(35\)](#) and [101\(b\)\(1\)](#). See, Joseph E. Langlois, Director, Asylum Division, Office of International Affairs. [H.R. 1209 – Child Status Protection Act](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: 7 August 2002), 2 pp., plus attachment.

The spouse and children of an alien granted asylum may be granted the same status, even if the spouse and children are not eligible for asylum. However, a spouse or child cannot be granted asylum if he or she is subject to one of the mandatory bars listed above, with the exception of firm resettlement.

D. What to File

1. Completed form I-589 (Application for Asylum and for Withholding of Deportation), with any additional supporting material and evidence of relationship to any dependents included in the application, in triplicate (original plus two copies)

Supporting documents could include, but are not limited to, country conditions information, newspaper articles, affidavits of witnesses or experts, medical and psychological records.

Documents that are not in English must be accompanied by a certified translation into English.

2. An additional copy of the principal applicant's I-589 for each dependent included as a derivative and a copy of the evidence of relationship to the principal applicant

For applications filed on the October 18, 2001 or December 10, 2001 revisions of the I-589 (the

only versions accepted after June 30, 2002), the principal applicant need only submit one copy of pages 1, 2, 3 (including Supplement A Form I-589 as needed) and 9 of his or her application for each dependent included as a derivative.

3. One passport-style photograph of the principal applicant and each dependent
4. One copy of Form G-28, Notice of Entry of Appearance as Attorney or Representative for the principal applicant and each dependent, if the applicant is represented by an attorney or other representative

E. Where to File

[8 C.F.R. § 208.4\(b\)](#)

In most cases, affirmative asylum applications must be filed by mail with the appropriate Service Center. Certain applications, however, may be filed with the Asylum Office, the Immigration Judge, the Board of Immigration Appeals, or the District Director.

IV. POST-FILING PROCESS

The following procedures are followed for most cases; different procedures are followed for certain cases, such as class members to the settlement agreement under *American Baptist Churches v. Thornburgh*, and cases in which expeditious processing is required.

A. Pre-Interview Process

1. The Service Center prepares the application to be sent to the asylum office with jurisdiction over the asylum application.

The Service Center also sends applications to the Department of State. [8 C.F.R. § 208.11\(a\)](#)

The Service Center is responsible for:

- a. receiving and receipting the I-589;
- b. checking available databases for duplicate filings and multiple alien-numbers (A-numbers) or for evidence that the applicant is or has been in proceedings;
- c. matching an I-589 with already existing alien-files (A-files) where they exist;

See *Affirmative Asylum Procedures Manual (AAPM)*, sec. II(C), “INS Receives I-589,” for more information.

- d. creating a new A-file where there is no prior A-file for the asylum applicant;
- e. entering the biographical information from the I-589 into the Refugee Asylum and Parole System (RAPS); and
- f. forwarding the file to the appropriate asylum office.

The Service Center forwards the new files to the appropriate asylum office within 21 days of receipt of the complete I-589.

RAPS tracks the processing of affirmative asylum and NACARA cases under the asylum program's jurisdiction through the adjudication by the asylum program. The system allows the user to see whether a particular A-number pertains to a case within the Immigration Court system. See [AAPM](#), sec. I(B)(3), "Computer Databases," for more information.

- 2. Service Center schedules all applicants for biometrics (signature and photograph) collection at a USCIS Application Support Center. Individuals between 12 years and nine months and 75 years of age have fingerprints collected for forwarding to the FBI. RAPS automatically requests scheduling of a fingerprint appointment within 3 days of the case being entered into RAPS, except for cases that will be interviewed at a circuit ride location.
- 3. Asylum Office schedules interview.

Most interviews are scheduled automatically by RAPS according to established priorities. Interviews can be manually scheduled in the discretion of the asylum office director. After an interview is scheduled in RAPS, the system automatically generates an interview notice, which will be mailed to the applicant (and the representative of record, if applicable), no less than 18 days before the scheduled interview date. The majority of cases are interviewed within 43 days after the filing date. Applicants interviewed at a circuit ride location are generally interviewed more than 43 days after filing

B. Interview Process

- 1. Asylum applicant is enrolled in Asylum-IDENT.

IDENT is an automated single, left and right index

For more information on

fingerprint identification system, designed to quickly identify entries against selected DHS records. Through the Asylum-IDENT database, the asylum office can determine whether an applicant has appeared before for interview at any asylum office, perhaps under a different name.

2. Case is assigned to an asylum officer for interview.

Cases are assigned to asylum officers for interview at random. Only an asylum office director or deputy director can make any exceptions to the random assignment of cases.

3. Asylum officer interviews applicant.

The asylum officer conducts a non-adversarial interview of the applicant. At the outset of the interview, the applicant is informed of purpose of the interview, the rights and responsibilities of those present, and what can be expected after the interview. During the interview, the asylum officer has an affirmative duty to elicit all information relevant to the applicant's claim.

Asylum-IDENT and the other IDENT databases against which asylum applicants are checked, *see*, Asylum materials on [Fraud in the Context of Asylum Adjudications](#)

See [8 C.F.R. § 208.9](#)

For more information on the asylum interview, *see*, RAIO Modules: Non-Adversarial Interviewing; Eliciting Testimony; and other interviewing modules

C. Post-Interview Process

1. Asylum officer verifies that all information in RAPS is correct and updates as appropriate.

2. Asylum office personnel complete the *Asylum and NACARA § 203 Background Identity and Security Checklist*.

The *Asylum and NACARA § 203 Background Identity and Security Checklist* is Appendix 62 to the [AAPM](#)

- a. INA § 208(d)(5) prohibits an asylum office from granting asylum to an applicant who filed for asylum on or after April 1, 1997, until the identity of the applicant has been checked against all appropriate records.

[INA § 208\(d\)\(5\)](#)

- b. Currently the asylum program checks applicants against the:

- (i) Central Index System (CIS);
- (ii) Deportable Alien Control System (DACS);
- (iii) Interagency Border Inspection System (IBIS);
- (iv) IDENT databases (includes IDENT-Asylum, Lookout and Recidivist databases); and

For more information on these databases, *see*, [AAPM](#), section I(B)(3), "Computer Databases," and Asylum materials on [Fraud in the Context of Asylum Adjudications](#)

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- (v) FBIQUERY (for fingerprint and name checks).
 - c. Local office policy dictates who is responsible for completing the *Checklist* and at what stage in the processing it is completed.
3. Asylum officer prepares a written decision and appropriate decision letters.
- a. If the decision is to grant asylum, the asylum officer will prepare a grant assessment and either:
 - (i) a recommended approval letter when the results of identity and security checks for the principal applicant and all dependents are incomplete, or when the asylum office has only a working file or temporary file (not the A-file); or
 - (ii) final approval letter and I-94 (Arrival Record/Departure Record) when the results of all identity or security checks for the principal applicant and all dependents are current and complete, and the case is not being granted solely on the basis of CFP or the asylum office has received a CFP Authorization number for a case granted solely on CFP.
 - b. If the decision is not to grant asylum and the applicant is not in lawful status, the officer prepares:
 - (i) an assessment to refer;
 - (ii) a referral notice; and
 - (iii) charging documents.
 - c. If the decision is not to grant asylum and the applicant is maintaining valid immigrant, nonimmigrant or Temporary Protected States (“in-status”), then the asylum officer prepares a Notice of Intent to Deny (NOID), which the applicant will have an opportunity to rebut.
4. The supervisor reviews the assessment, decision notice, and charging documents (if required), or the NOID. The

Preparation of the I-94 and charging documents may be completed by support staff, depending on office procedures and circumstances.

supervisor then signs the documents or, if necessary, returns them to the asylum officer for corrections.

5. When the assessment and all accompanying paperwork are completed to the supervisor's satisfaction, the file is turned over to the clerical section for additional processing.
6. If the determination is to refer, then a hearing date is scheduled with the appropriate Office of the Immigration Judge.
7. If a NOID was sent to the applicant, the asylum officer reviews any rebuttal received within the prescribed time, then makes a final decision, which is mailed to the applicant's last known address.
8. In most cases, the applicant returns to the Asylum Office to pick up the final decision to grant or the referral. In more than 75% of the cases, a decision is served on the applicant within 60 days after filing.
 - a. If the determination is to refer, the applicant is also served with documents initiating removal proceedings.
 - b. If the applicant receives a final grant of asylum, through an interface with RAPS, the asylum office triggers the automatic generation of an Employment Authorization Document.

[8 C.F.R. § 208.19](#)

D. Termination of Asylum Status

Asylum does not convey a right to remain permanently in the United States and may be terminated under certain circumstances.

[INA § 208\(c\)\(2\); 8 C.F.R. 208.24](#)

1. Any grant of asylum can be terminated if there is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted.
2. For an application filed on or after April 1, 1997, asylum may be terminated if the alien:
 - a. no longer meets the definition of a refugee due to a fundamental change in circumstances;
 - b. meets the conditions of one of the mandatory bars for asylum under INA § 208(b)(2);

[8 C.F.R. § 208.24\(a\)\(1\)](#)

[INA § 208\(c\)\(2\)](#)

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- c. may be removed pursuant to a safe third country agreement;
 - d. has voluntarily re-availed him- or herself of the protection of the country of feared persecution by returning to such country with the reasonable possibility of obtaining permanent resident status with the same rights and obligations of other permanent residents of the country; or
 - e. has acquired a new nationality and enjoys the protection of that country.
3. For an application filed before April 1, 1997, asylum may be terminated if the alien: [8 C.F.R. § 208.24\(a\)\(3\)](#)
- a. no longer has a well-founded fear of persecution due to a change of country conditions in the alien’s country of nationality or last habitual residence; or
 - b. has committed any act that would have been grounds for a mandatory denial of asylum under 8 C.F.R. § 208.13(c)(2).
4. Asylum office termination procedure *See generally, [AAPM](#), section III(X), “Termination of Asylum Approval”*
- a. The asylum office does not have jurisdiction to terminate asylum granted by an Immigration Judge.
 - b. Prior to termination of a grant of asylum, the asylum office notifies the individual of USCIS’s intent to terminate asylum status through the issuance of a Notice of Intent to Terminate (NOIT). To issue a NOIT, the asylum office must have information establishing a *prima facie* case supporting termination. The NOIT notifies the applicant of the grounds for termination and includes a summary of the unclassified information that supports the ground of termination.
 - c. A termination interview is conducted at least 30 days after the date of mailing the NOIT. The termination interview, like an asylum eligibility interview, is non-adversarial in nature.
 - d. USCIS has the burden to demonstrate that a

preponderance of the evidence supports termination.

- e. If the asylum status of the principle applicant is terminated, the asylum status of all dependents who obtained derivative asylum status through that principal applicant will also be terminated. If the termination grounds apply only to a dependent, only the asylum status of the dependent is terminated.

V. ASYLUM VS. OVERSEAS REFUGEE PROGRAM

Congress created two separate programs to provide protection to refugees -- one applies to refugee applicants outside the United States seeking resettlement (overseas refugee program) and the other to asylum-seekers within the United States or at a port of entry (asylum program). Traditionally, most refugees assisted by the United States have been granted refugee status and resettled in the United States through the overseas refugee program. According to data from the Office of Immigration Statistics (OIS) and internal statistics, the Asylum Division has approved 291,823 cases from FY1980 through FY2012. From 1980 - 2012, the cumulative total number of refugees admitted to the U.S. through overseas programs is 2,651,463. Note that the number of refugees admitted refers to individuals, while the asylum number refers to total cases, and not individuals.

INA §§ [207](#), [208](#); Beyer, [Reforming Affirmative Asylum Processing in the United States](#), 9 *American University Journal of International Law & Policy*, pp. 43-44.

Asylum and overseas refugee processing are closely related functions, but there are distinctions. Because asylum officers may have the opportunity to participate in overseas refugee processing details, all should be aware of the distinctions between the two.

For more information regarding refugee processing, see appendix at the end of this lesson and see RAIO and Refugee Affairs Division training modules.

A. Location of the Applicant

1. Laws governing asylum apply to asylum-seekers physically present in the United States or seeking admission at a port of entry.
2. Refugee status is only granted to eligible individuals who are neither physically present in the United States nor seeking admission at a port of entry. Individuals seeking refugee status generally apply for admission to the United States by filing the appropriate application with the USCIS overseas officer in charge responsible for the area where the applicant is located.

[INA § 208\(a\)](#); [8 C.F.R. § 208.2](#)

[INA § 207](#); [8 C.F.R. § 207.1](#)

B. Quotas

1. There are no quotas limiting the number of individuals who may be granted asylum. [INA § 207\(a\)\(5\)](#)
2. The number of refugees to be admitted each year is determined by the President in consultation with Congress and varies each fiscal year. [INA § 207](#)
The FY 2013 annual admissions ceilings is 70,000

C. Eligibility

1. To be eligible for asylum, the applicant must meet the definition of "refugee" under the INA. Additionally, asylum is a discretionary benefit. Therefore, even if the applicant meets the definition of refugee and is otherwise eligible for asylum, there are some circumstances in which the applicant may be denied asylum in the exercise of discretion. [INA § 208\(a\)](#)
Note that there are mandatory bars both to a grant of asylum and to a grant of refugee status.
2. To be admitted as a refugee, the applicant must meet the definition of "refugee" as defined by statute, must be of special humanitarian concern to the United States, and must be admissible to the United States. Additionally, certain overseas refugee applications are governed by the Lautenberg Amendment, which created special evidentiary procedures for establishing eligibility for refugee status. [INA § 207; 8 C.F.R. § 207.2\(d\)](#)
Martin, David. INS General Counsel. Legal Opinion: [Application of the Lautenberg Amendment to asylum applications under INA section 208](#), Memorandum to John Cummings, Acting Assistant Commissioner, CORAP (Washington, DC: 6 October 1995), 3 p.

D. Adjustment of Status

1. Individuals granted refugee status are *required* to apply for adjustment of status to lawful permanent resident one year after admission to the United States as a refugee as long as they have not had their refugee status terminated, and have not already acquired permanent resident status. There is no quota for the number of individuals admitted as refugees who can adjust to permanent resident status each year. [8 C.F.R. § 209.1\(a\)](#)
2. Individuals granted asylum are *entitled* to apply for adjustment of status to lawful permanent resident one year after receiving the asylum grant as long as asylee status has [INA § 208\(c\)\(2\)](#)

not been abandoned or terminated, they continue to be admissible, they have not been firmly resettled in a third country, and they continue to meet the definition of a refugee.

E. Termination of Refugee Status

1. Unlike Asylum status, Refugee status is only terminated if it is determined that the original grant was in error and the individual did not actually meet the refugee definition at that time.

[8 C.F.R. § 207.9](#); [INA § 207\(c\)\(4\)](#)

VI. SUMMARY

A. Overview of Asylum Eligibility

Asylum, a discretionary benefit, may be granted to aliens physically present in the United States who meet the definition of a refugee and are not subject to a mandatory denial of asylum.

B. Applying for Asylum

Asylum officers have jurisdiction to adjudicate or refer requests for asylum filed by individuals who 1) are present in the United States and 2) have not been placed in deportation, exclusion, or removal proceedings.

Immigration judges have exclusive jurisdiction over asylum applications filed by applicants who have been served with charging documents after charging documents have been filed with the Office of the Immigration Judge.

An applicant's spouse and children (as defined by the INA) may be included in the asylum request and may be granted derivative asylum status if the principal applicant's request is approved.

C. Post-Filing Procedure

After the asylum application is processed at the Service Center and sent to the asylum office with jurisdiction, an asylum interview will be automatically scheduled for an interview to take place within 43 days of filing, in most cases.

A non-adversarial interview is conducted, and the interviewing asylum officer will write an assessment or NOID and prepare

required decision documents. In most cases, decision documents are served on the applicant in person within 60 days of filing.

D. Asylum vs. Overseas Refugee Program

Though both the asylum process and overseas refugee processing program provide protection to aliens who meet the definition of a refugee, there are significant difference in the location and identification of the applicants, the number of individuals authorized to receive such protection each year, and the requirements for adjustment to lawful permanent resident status.

APPENDIX

OVERVIEW OF REFUGEE PROCESSING

Section 207 of the INA gives the Attorney General the statutory authority to admit, in his or her discretion, any refugee who is not firmly resettled in a third country, who is determined to be of special humanitarian concern, and who is admissible as an immigrant. This authority has been delegated to USCIS.

1. Application process

- a. Each applicant must submit a Form I-590 (Registration for Classification as Refugee). Applicants 14 years of age and older must also submit a Form G-325C (Biographical Information), and a Form G-646 (Sworn Statement of Refugee Applying for Entry into the United States).

- b. Voluntary agencies or Overseas Processing Entities (OPE), under contract to the Department of State usually assist in prescreening applicants, preparing forms, and presenting cases to USCIS for adjudication.

The role of the OPE varies in locations where the U.S. operates in-country programs.

- c. The applicant is interviewed by a USCIS officer, in a nonadversarial setting, under oath. As in asylum, the burden of proof for establishing a claim to refugee status rests with the applicant.

- d. Applicants found eligible for refugee status must be medically cleared and must receive a sponsorship assurance prior to traveling to the United States. A sponsorship assurance ensures that a refugee will receive resettlement assistance during the first 30 days after his or her arrival.

- e. The spouse and unmarried minor children of a refugee shall be entitled to the same status if accompanying or following to join the refugee, provided they are admissible to the United States as immigrants, and are not otherwise ineligible under INA Section

The following agencies are among those which have been under such contract to the Department of State: International Catholic Migration Commission (ICMC); International Rescue Committee (IRC); Hebrew Immigrant Aid Society (HIAS); Church World Service (CWS); and Immigration and Refugee Services of America (IRSA).

JVAs usually assist U.S. approved refugee applicants in completing post-interview processing requirements.

[INA § 207\(c\)\(2\)](#)

101(a)(42). There is no requirement that they establish a refugee claim.

2. Ineligibility for consideration for the U.S. refugee program

[8 C.F.R. § 207.1\(d\)](#)

Individuals who are not eligible to apply for the U.S. refugee program include:

- a. individuals who qualify as the immediate relative of a U.S. citizen or as a special immigrant, and
- b. individuals who do not fall within designated processing priorities

See [INA § 101\(a\)\(27\)](#) for definition of special immigrant.

3. Ineligibility for approval

[INA §207\(c\)\(1\)](#)

- a. firm resettlement in a third country

Aliens who are firmly resettled in a third country may not be granted refugee status under INA §207.

A refugee is considered to be ‘firmly resettled if he or she has been “offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his/her flight from persecution.”

[8 C.F.R. § 207.1\(b\)](#). See also [8 C.F.R. § 207.1\(c\)](#); [INA § 207\(c\)\(1\)](#)

- b. inadmissibility grounds

Refugees must be admissible as immigrants to be granted refugee status under INA §207. However, not all inadmissibility grounds found in INA Section 212(a) (Classes of Aliens Ineligible for Visas or Admission) apply to refugees. The following grounds do not apply to refugees:

[INA § 207\(c\)\(1\)](#)

- 212(a)(4) (public charge);
- 212(a)(5) (labor certification); and
- 212(a)(7)(A) (documentation requirements).

Refugees may file for a waiver of an inadmissibility ground on Form I-602. Waivers may be granted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The Attorney General may waive all other exclusion grounds except for:

- 212(a)(2)(C) (drug trafficking);
- 212(a)(3)(A) (national security);

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- 212(a)(3)(B) (terrorist activity);
 - 212(a)(3)(C) (adverse foreign policy consequences); and
 - 212(a)(3)(E) (participants in Nazi persecution or genocide).

4. Refugee Admission to the U.S.

- a. At the port of entry, the refugee's I-94 is endorsed with the following: "Admitted as a Refugee pursuant to Section 207 of the Act for an indefinite period of time. If you depart the U.S. you will need prior permission to return. Employment authorized."

Refugees are authorized employment incident to their status and do not need to apply for an Employment Authorization Document (EAD). Their I-94 is accepted as a document which establishes employment authorization.

- b. From the port of entry, the refugee's travel packet is forwarded to the Files Control Office (FCO) with jurisdiction over the refugee's place of residence.

Refugee admissions codes in CIS: Principal Applicant - RE1; Spouse - RE2; Child - RE3.

A refugee (or asylee) who wishes to temporarily travel abroad must be in possession of a valid Refugee Travel Document (Form I-571) to return to the U.S. Applicants need to complete Form I-131 (Application for Travel Document) for this purpose.

[8 C.F.R. §§ 223.2\(b\)\(2\)](#)

Form I-131 is filed with the Lincoln, Nebraska Service Center.