

U.S. ASYLUM PROCESS

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Application for Asylum

Fleeing persecution, a person** requests asylum at the border from a Customs and Border Protection (CBP) office

**Unaccompanied minors, when they arrived in the USA, even if they're in removal proceedings, can apply for affirmative asylum in a USCIS office based in Nebraska who schedules an interview at a local asylum office/service center.

Affirmative Asylum

- Is seeking asylum
- Is in the USA with a tourist visa or some other legally acceptable document
- not in removal proceedings

Placed in Detention Center



Individuals transferred by ICE

Credible fear interview & security screening

"Title 42" is still in place at the border. Title 42 uses COVID-19 as the justification to allow asylum seekers into the U.S. (arguably in violation of our international treaty obligations).

Removal proceedings begin

Apply for asylum defensively (apply for an I-589 in immigration court)

Negative CFI Determination

Positive CFI determination

NOTE: The Biden Administration, pursuant to a federal court order, recently reinstated the "Migrant Protection Protocol" AKA "Remain in Mexico Policy."

The consequence is that many asylum seekers arriving at ports of entry can now be placed into MPP and forced to await their hearings in Mexico.

However, the Biden Administration broadened the definition of "vulnerable populations" that are exempt from MPP. Unaccompanied minors, pregnant women, and others have hopes of avoiding MPP.

Scheduled for an asylum interview

Takes place in a non-adversarial (neutral) office meaning there is no government attorney arguing against you

Apply for asylum at a designated asylum service center with an I-589 form

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Waiting for Asylum Interview

Can apply for Employment Authorization Documents after waiting 365 days from the date of the I-589 application.



Notifications & Summons

Can apply for Employment Authorization Documents after waiting 365 days from the date of application.

Receive biometrics notice to appear to get finger-printed for a criminal background check appointment

Receive an asylum interview notice with 2-4 weeks notice. (No same-day decision)

Receive instructions to appear for a decision

DECISION OUTCOMES

U.S. ASYLUM PROCESS (cont.)

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DECISION OUTCOMES

**If you win asylum, you have to wait one year, you're then eligible to apply for a green card. Processing time for a green card is currently over one year. Once you receive the green card, then you're eligible to naturalize (as a U.S. Citizen) after 3 years.*

Asylum Granted

Given work authorization, you can apply for a work permit which serves as a photo ID

Asylum case is referred to an immigration judge

You are referred back to immigration court, and you begin applying for defensive asylum. You then argue your case in front of an immigration judge with a government attorney arguing against your claim. How long this will take depends on your location.

Option A-

you win asylum (but the government can appeal to the Board of Immigration Appeals.)*

Option B-

You lose asylum. have the right to appeal. Both the government and the asylum seeker have 30 days to appeal (asylum seeker appeals with a fee of approximately \$410). You can apply for a fee waiver which requires you to detail expenses which is generally approved if the net income of the individual is \$0 or a low income.

COMMITTING A CRIME AT ANY POINT IN THIS PROCESS

REFERRED TO ICE FOR POSSIBLE DETENTION

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What if I lose asylum?

If you lose you have the right to appeal. Both the government and the asylum seeker have 30 days to appeal (asylum seeker appeals with a fee of approximately \$410). You can apply for a fee waiver which requires you to detail expenses which is generally approved if the income of the individual is \$0 or a low income.

- BIA issues a briefing schedule.** Waiting period is ~1-2 years. You have 3 weeks to prepare this case. You can request a 3-week extension with some explanation.
- You submit a brief,** requesting a remand for a better articulated opinion or a reversal saying asylum should've been granted (or if you are defending the asylum grant against the government's appeal you're seeking affirmance of the original grant of asylum). **While you're in appeal, you can renew your EAD (work permit)*
- If you're appealing a denial,** and the BIA affirms the denial, you appeal to the Federal Circuit Court of Appeals with a Petition for Review
 - It's highly recommended that you have an attorney at this level*
 - Very strict time and submission requirements*
 - If the asylum seeker loses here, you can technically apply at the U.S. Supreme Court. It's very rare they would accept the case.*
 - You cannot renew your EAD (work permit) while your case is on appeal to a Circuit Court of Appeals*
- If you lose,** you would then be ordered to report to the local ICE office for removal (deportation).