



Asylum in the United States

Each year, thousands of noncitizens arriving at our border or already in the United States apply for asylum, or protection from persecution. Asylum-seekers must navigate a difficult and complex process that involves multiple government agencies. Those granted asylum have the opportunity to apply to live in the United States permanently, receive certain benefits, and be reunited with their family members. This fact sheet describes the asylum system in the United States, including how asylum is defined, eligibility requirements, and the application process.

What is asylum?

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.” The United Nations 1951 Convention and 1967 Protocols defines a refugee as a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted “on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹ Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980.²

As a signatory to the 1967 Protocol, and through U.S. immigration law, the United States has legal obligations to provide protection and certain rights to those who qualify as refugees. The Refugee Act established two paths to obtain refugee status—either from abroad as a resettled refugee or in the United States as an asylum-seeker.³ This fact describes aspects of the process for asylum-seekers.

What are the benefits of asylum?

An asylee, or a person granted asylum, is authorized to work in the United States, may apply for a social security card, may request permission to travel overseas, and can petition to bring family members to the United States.⁴ Asylees may also be eligible for federal or Office of Refugee Resettlement benefits, such as Medicaid or Refugee Medical Assistance.⁵

After one year, an asylee may apply for lawful permanent resident status (i.e., a green card). Once the individual becomes a permanent resident, he or she must wait four years to apply for citizenship.⁶

What is the asylum application process?

With or without counsel, an asylum-seeker has the burden of proving that he or she meets the definition of a refugee. Asylum-seekers often provide substantial evidence throughout the affirmative and defensive processes demonstrating either past persecution or that they have a “well-founded fear” of future persecution in their home country.⁷ However, the individual’s own testimony is usually the most influential in their asylum determination.

Certain factors bar individuals from either applying for asylum or receiving an asylum grant, such as missing the one-year filing deadline or posing a danger to the United States.⁸

There are two primary ways in which a person may apply for asylum in the United States: the **affirmative** process and the **defensive** process. Both processes require the asylum-seeker to be physically present in the United States.

- **Affirmative Asylum:** A person who is not in removal proceedings may affirmatively apply for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). If the USCIS asylum officer does not grant the asylum application, the applicant is referred to removal proceedings, where he or she may renew the request for asylum through the defensive process and appear before an immigration judge.⁹
- **Defensive Asylum:** A person who is in removal proceedings may apply for asylum defensively by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR) in the Department of Justice. In other words, asylum is applied for “as a defense against removal from the U.S.”¹⁰ Unlike the criminal court system in the U.S., EOIR does not guarantee appointed counsel for individuals in immigration court, even if they are unable to retain an attorney on their own.¹¹

What happens to asylum-seekers with an expedited removal 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** and **reasonable fear** screening processes are available to asylum-seekers in expedited removal processes.

Credible Fear

Noncitizens who are encountered by or present themselves to a U.S. official near the border are subject to **expedited removal**, an accelerated process which authorizes DHS to perform rapid deportations of certain individuals.¹²

Individuals who tell a Customs and Border Protection (CBP) official that they fear persecution, torture, or returning to their country and wish to apply for asylum are afforded a credible fear interview, conducted by an officer in the USCIS Asylum Division.¹³

If the officer determines that the asylum-seeker has credible fear of persecution or torture, it means that the person has proven that he or she has a “significant possibility” of establishing eligibility for asylum.¹⁴ The individual will then be referred to immigration court to proceed with the defensive asylum application process.

If the USCIS officer determines the person does **not** have a credible fear, the individual’s removal proceedings resume. However, an asylum-seeker may appeal the decision by (1) pursuing a truncated review process with an immigration judge and, if the judge upholds the earlier decision, (2) submitting a request for reconsideration with the asylum office, which may revisit their original negative determination, even after a judge has affirmed that decision. If none of these additional requests are successful, the asylum-seeker will generally be placed in removal proceedings.¹⁵

- In FY 2015, USCIS found 33,988 individuals to have credible fear.¹⁶ These individuals, many of whom were detained during this screening process, will be afforded an opportunity to apply for asylum defensively and establish that they meet the refugee definition.
- The number of credible fear cases has skyrocketed since the procedure was implemented—in FY 2009, USCIS completed 5,523 cases. In FY 2014, case completions reached an all-time high of 49,607.¹⁷

Reasonable Fear

Individuals who re-enter the United States after a prior deportation order and noncitizens convicted of certain crimes are subject to a different expedited removal process called **reinstatement of removal**. Like individuals in expedited removal, those in reinstatement of removal proceedings who express a fear of returning to their country are afforded a reasonable fear interview with an asylum officer.

If the USCIS officer finds that the person has a reasonable fear of persecution or torture, he or she will be referred to immigration court. The person has the opportunity to prove to an immigration judge that he or she is eligible for withholding or deferral of removal—protection from future persecution. While withholding of removal has the same grounds as asylum, the relief it provides is narrower.

If the USCIS officer determines the person does **not** have a reasonable fear of future persecution if returned, the individual may appeal the negative decision to an immigration judge. If the judge upholds the asylum officer’s determination, the individual is turned over to immigration enforcement officers for removal.¹⁸

- In FY 2015, USCIS found 2,631 individuals to have reasonable fear.¹⁹

How long does the asylum process take?

Overall, the asylum process can take years to conclude. In some cases, a person may file their application and receive a hearing or interview date years in the future.

- In 2016, the U.S. immigration court and asylum systems were backlogged with more than 620,000 pending removal and asylum cases, resulting in combined wait times of up to six years for asylum-seekers.²⁰
- Asylum-seekers pursuing status through the defensive process (in immigration court) face wait times of more than three years, on average. In some states, the wait times can be as long as five years, as is the case in Texas.²¹
- Those applying for asylum affirmatively through USCIS wait, on average, at least two years for their initial interview with an asylum officer.²²

Asylum-seekers, and any family members waiting to join them, are left in limbo while their case is pending. The backlogs and delays can cause prolonged separation of refugee families, leave family members abroad in dangerous situations, and impede the asylum seeker's access to pro bono counsel.²³

Although asylum-seekers may apply for work authorization after their case has been pending for 150 days, the uncertainty of their future impedes employment, education, and trauma recovery opportunities.²⁴

What happens to asylum-seekers while their application is processed?

Asylum-seekers include some of the most vulnerable members of society—children, single mothers, victims of domestic violence or torture, and other individuals who have suffered persecution and trauma. Some of these individuals live in the United States while their application is processed, while others—including children and families—are detained for some or all of this time.²⁵

Detention exacerbates the challenges asylum-seekers already face, and can negatively impact a person's asylum application. Studies have found that those in detention “are five times less likely to obtain legal counsel and five and a half times less likely to be successful on their asylum claims.”²⁶ Children and families who are detained suffer mental and physical health problems, including depression, post-traumatic stress disorder, and frequent infections.²⁷

The duration of an asylum-seeker's detention varies since “there are no statutory limits to the amount of time a non-citizen may be held in immigration detention.”²⁸ Some asylum applicants may be “kept in immigration detention for several months or even years.”²⁹

Is there a deadline for asylum applications?

An asylum-seeker generally must apply for asylum status within one year of entering the United States.³⁰ DHS is not clearly required to notify asylum-seekers of this deadline, and many individuals are not aware that it exists.

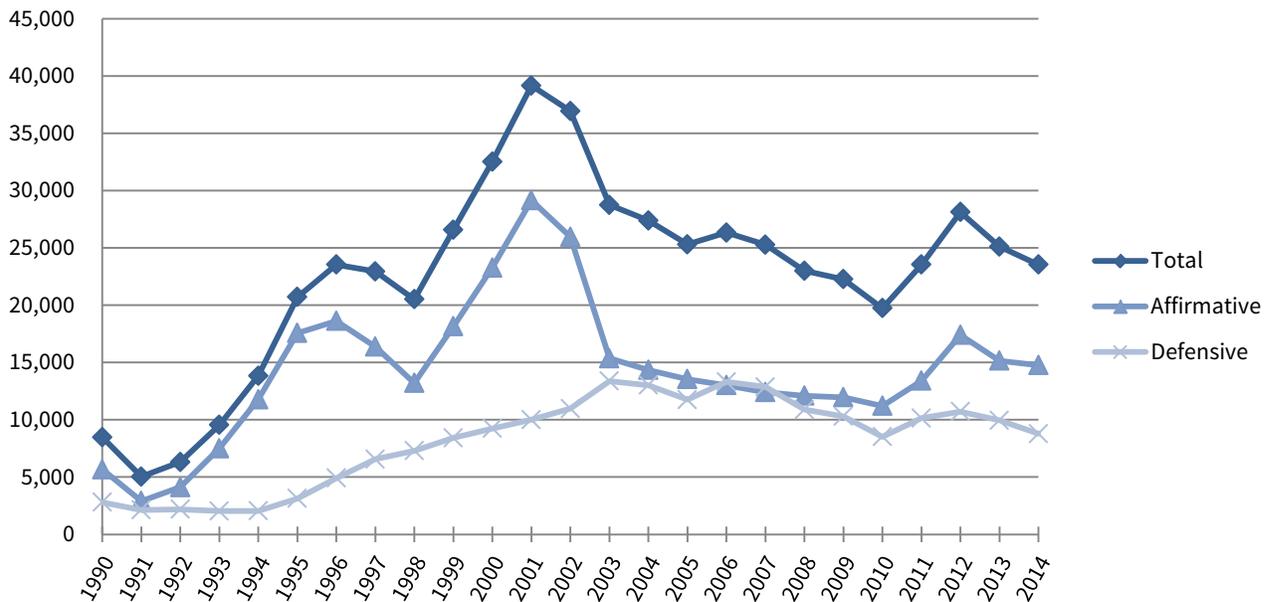
Asylum-seekers in the affirmative and defensive processes face many obstacles to meeting this deadline. Some individuals face traumatic repercussions from their time in detention or journeying to the U.S. and may never know that a deadline exists. Even those who are aware of the deadline encounter processing and filing backlogs that can make it impossible to file their application in a timely manner.³¹

According to a 2010 study of more than 3,472 asylum cases decided by the Board of Immigration Appeals (which hears appeals of immigration judge decisions), one in five asylum applicants are denied asylum because they missed this deadline.³² And, “in approximately 46 percent of cases where the filing deadline is an issue, it is the only reason cited [for] justifying the denial of asylum.”³³

Who is granted asylum?

In FY 2014, 23,533 individuals were granted asylum: 14,758 affirmatively and 8,775 defensively (Figure 1).³⁴ Between FY 2004 and FY 2014, the United States has granted asylum (affirmatively or defensively) to an average of 24,500 individuals each year.³⁵

Figure 1: Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2014

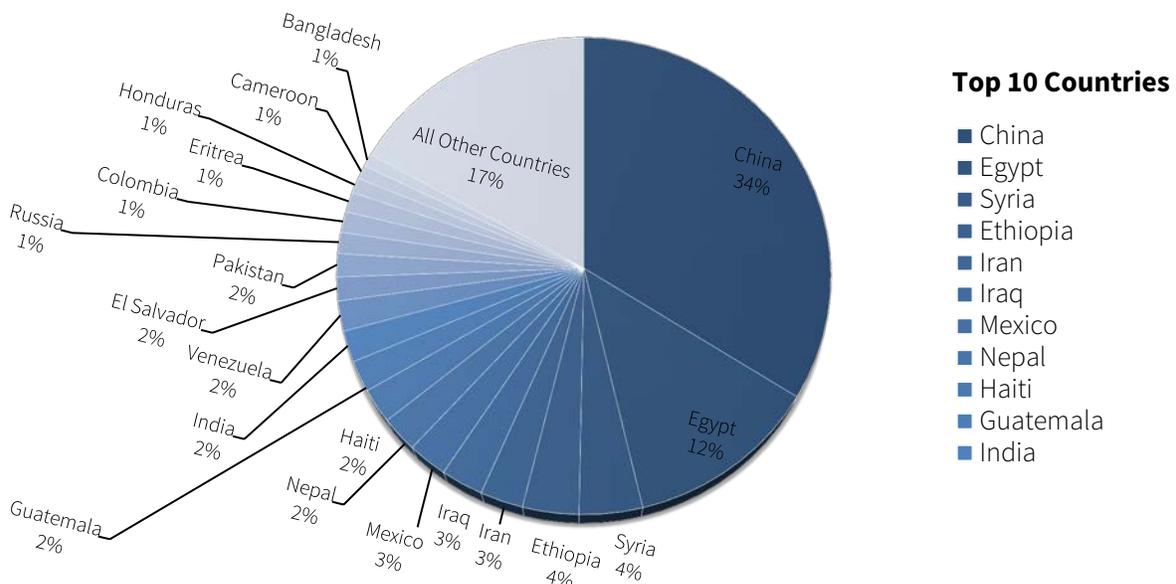


Source: DHS Yearbook of Immigration Statistics: 2014 Refugees and Asylees

The countries of nationality for individuals granted asylum have largely remained the same in that 10-year period, with nationals of China and Egypt accounting for nearly half (46 percent) of grants each year since FY 2012.³⁶ The rest of the asylum grants provided in that time period consistently went to nationals of Ethiopia, Venezuela, Haiti, Iran, Iraq, Guatemala, Russia, Nepal, and Eritrea.³⁷

In FY 2014, the most recent year with available data, more individuals from Syria were granted asylum than in any previous year (4 percent of all grants). Individuals from China, Egypt, and Syria combined accounted for half of the nearly 24 thousand individuals granted asylum—either affirmatively or defensively—in FY 2014 (Figure 2).³⁸ A total of 96 nationalities were represented among all individuals granted asylum in FY 2014.³⁹

Figure 2: FY 2014 Asylum Grants by Country of Origin



Source: DHS Yearbook of Immigration Statistics: 2014 Refugees and Asylees

Endnotes

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