

Following the refugee crisis after World War II, the international community agreed to a basic set of principles regarding international refugee protection. As a signatory to the 1967 Protocol Relating to the Status of Refugees, which updated and outlined the 1951 UN Refugee Convention, the U.S. is obligated to follow these basic principles when dealing with refugees, asylum seekers, and others who arrive at our borders seeking humanitarian protection.

## Who is an Asylum Seeker and What is Asylum?

An asylum seeker is a person who is seeking protection outside their country of origin because of a well-founded fear of persecution in their home country. In the United States, asylum seekers may apply for protection from inside the country or at the border.<sup>1</sup>

Asylum is a protection granted to people from other countries fleeing persecution based on their race, religion, nationality, political opinion, or membership in a particular social group. An asylum seeker is someone who has applied for protection but has not yet received any legal recognition or status.<sup>2</sup> Asylum seekers in the U.S. may apply for asylum from inside the country or at the border.

## Refugees and Asylum Seekers: What's the Difference?

An asylum seeker is someone seeking international protection. Similar to a refugee, an asylum seeker has been forced from their home, cannot return, and has a well-founded fear of persecution. A refugee also flees their home country due to a well-founded fear of persecution but has been granted refugee status by the United Nations High Commissioner for Refugees (UNHCR) after it has been determined that they meet the criteria laid out in the 1951 Refugee Convention and 1967 Protocol.<sup>3</sup> Unlike a refugee, an asylum seeker must wait for a determination of status from the country to which they have fled.

In the U.S., refugees and asylum seekers differ primarily in regard to where they ask for protection and how they enter the United States. Refugees are granted refugee status overseas and referred to the United States Refugee Admissions Program (USRAP) for resettlement. Asylum seekers must be physically present at a port of entry or elsewhere in the U.S. to ask for protection. In the U.S., once an individual has been granted asylum, they are provided the same legal status, eligible for similar benefits, and have all the same rights as resettled refugees.

## Seeking asylum in the U.S.

To make a claim for asylum in the U.S. an individual must present themselves to authorities at a port of entry or within the country. Under U.S. law, an individual may seek asylum whether they entered the country with or without documentation.<sup>4</sup>

---

<sup>1</sup> <https://www.americanimmigrationcouncil.org/research/asylum-united-states>

<sup>2</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum>

<sup>3</sup> <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/refugee/>

<sup>4</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>

There are different ways to apply for asylum in the U.S. **Affirmative asylum** applicants file an Application for Asylum and for Withholding of Removal with U.S. Citizenship and Immigration Service (USCIS) within a year of arriving in the U.S.<sup>5</sup> The asylum seeker then has an interview with an asylum officer who determines if they meet the requirements for asylum. If they do, their claim is granted. Individuals whose claims are denied by USCIS are given a hearing before an immigration judge.<sup>6</sup>

The **defensive asylum** process is available to an individual who has had their affirmative asylum claim denied, arrived at a port of entry without a valid visa, or been apprehended by Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP). The individual seeks asylum as a defense against removal from the U.S. To be in a defensive asylum process, an individual must be in removal proceedings.

In this case, an asylum seeker has a credible fear interview with a USCIS asylum officer who determines if the individual has a credible fear of persecution if returned to their home country.<sup>7</sup> The cases of asylum seekers who are found to have a credible fear of persecution are referred to an Immigration Judge for a full hearing on their claim. After hearing the claim, an Immigration Judge decides whether asylum will be granted.<sup>8</sup> An Immigration Judge's decision can be appealed.

During the adjudication of both affirmative and defensive asylum applications, asylum seekers undergo an extensive series of background checks by U.S. security agencies: the Federal Bureau of Investigation (FBI), the Department of Homeland Security (DHS), and the Department of State (DOS), among others.<sup>9</sup> These include fingerprinting, travel history, and a review of biographical information.

The government does not provide legal counsel in immigration court, so many asylum seekers are forced to represent themselves. Numerous factors can impact asylum seekers' access to counsel, specifically prolonged detention. Individuals in detention do not have the same opportunity to obtain legal counsel as non-detained individuals because they cannot meet with attorneys as freely or are unaware of their rights. Fourteen percent of detained individuals acquire legal counsel compared to 66 percent of non-detained individuals.<sup>10</sup> This can put detained asylum seekers at a distinct disadvantage when facing government lawyers and complex immigration laws, can directly impact how long their case is pending, and in many cases, can have a direct impact on the decision.<sup>11</sup>

The asylum process can take months, and in many cases, years. During this wait, asylum seekers are left in limbo, unable to work and ineligible for government support. Only after their case has been pending for 150 days can asylum seekers apply for work authorization - a process that can take up to a year. Individuals who are eventually granted asylum status may be eligible for some state and federal

---

<sup>5</sup> <https://www.americanimmigrationcouncil.org/research/asylum-united-states>

<sup>6</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>

<sup>7</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening>

<sup>8</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>

<sup>9</sup> <https://www.uscis.gov/faq-page/asylum-background-and-security-checks-faq#t12818n40080>

<sup>10</sup> Women's Refugee Commission (2017). The Real Alternatives to Detention. Washington, DC.

<sup>11</sup> TRAC Immigration (2017). Asylum Representation Rates Have Fallen Amid Rising Denial Rates. Syracuse, NY.

benefits, as well as the right to petition for immediate family members abroad to come to the U.S. After one year, asylum seekers may apply for Lawful Permanent Resident (LPR) status. If LPR status is granted, an individual can apply for citizenship after four years.<sup>12</sup>

### **HIAS' work with asylum seekers**

HIAS works within the United States and in ten countries around the world, helping to secure protection and legal status for those seeking asylum. We have provided comprehensive legal services to asylum seekers for decades and have long been at the forefront of national and international advocacy for just and humane asylum laws. HIAS' U.S. legal program seeks to safeguard and increase the rights of asylum seekers upon their arrival in the U.S. and throughout their journey to citizenship. Our U.S. legal team provides pro bono representation to individuals going through deportation proceedings and assists asylum seekers trying to obtain humanitarian visas and asylum status.

#### **In 2018, HIAS' U.S. Legal Protection department:**

- **Served over 300 clients, a majority of whom were asylum seekers (169)**
- **Represented clients for Asylum, U-visas, T visas, Special Immigrant Juvenile Status, and Adjustment of Status, and Refugee/Asylee Relative Petition cases**
- **Served clients from over 50 countries**

*Founded in the 1880s to help resettle Jews fleeing persecution, HIAS is the world's oldest refugee agency. Today, guided by our Jewish values and history, we bring more than 130 years of expertise to our work providing services to all refugees in need of assistance, regardless of their national, ethnic, or religious background. To learn more about our work visit us at [HIAS.org](https://www.hias.org)*

---

<sup>12</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum>