

# **The United States of America's Asylum System**

## **Introduction**

The United States has a long and generous history of providing asylum to those who are in danger of persecution. However, in recent years, the United States has become less receptive to asylum seekers, establishing more restrictive asylum practices. These new practices include stricter border enforcement, increased detention of asylum seekers, and an introduction of expedited first-instance determination processes.

The majority of those who are granted asylum in the United States apply from abroad. They are referred to as “refugees”. There is a ceiling for refugee admissions to the United States that is set by the American President. A much smaller percentage of those who are granted asylum apply from inside the United States. They are referred to as “asylees”.<sup>1</sup> Asylees may be granted protection on a permanent or temporary basis. This study focuses on the asylum processes available to prospective asylees.

Prospective asylees may file their claim either affirmatively or defensively. Those who are not facing removal proceedings file an affirmative application. Affirmative applications are processed by an immigration officer in the United States Citizenship and Immigration Services (USCIS) Department of Homeland Security (DHS). If denied by the DHS immigration officer, affirmative asylum claims are adjudicated by an immigration court in the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR). Those who are facing removal proceedings file a defensive application. Defensive claims are filed directly to an immigration court in the DOJ EOIR. Both affirmative and defensive claims may be granted on a permanent or temporary basis.

Asylum claims that are denied by an immigration court in the DOJ EOIR may be appealed to the appellate division of the DOJ EOIR, the Board of Immigration Appeals (BIA). A further appeal is available to the federal circuit Courts of Appeals. However, the Courts of Appeals are often very deferential to the BIA, rendering it the last effective appeal for asylum seekers. The BIA has recently faced public criticism for its lack of independence and weak procedural fairness protections. This loss of public confidence in the BIA has led to an increase in appeals of BIA decisions to the Courts of Appeals.

## **1. Types of Protection**

**In the United States, asylum seekers may qualify for either permanent protection under the Convention or various other forms of temporary protection.**

### **i) Asylum under the 1951 United Nations Refugee Convention**

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<sup>1</sup> In 2009, approximately 22,000 people were accepted asylees, whereas approximately 74,000 people were accepted as refugees. See Daniel Martin, *Refugees and Asylees: 2009* (Washington: Office of Immigration Statistics, 2010), <[http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_rfa\\_fr\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2009.pdf)>.

The United States is a party to the 1967 Protocol to the Refugee Convention but not the 1951 Convention itself. However, by virtue of its accession to the Protocol, it is obliged to give protection to Convention Refugees (CRs).

CRs are those who (1) are outside their country of origin (2) have a well-founded fear of persecution (3) due to reasons of race, religion, nationality, political opinion or membership in a particular social group and (4) are unable or unwilling, by reason of their fear, to secure protection from their country of origin. The entire definition is available at <http://www.unhcr.org.au/basicdef.shtml>. Asylum seekers must meet the criteria set out in this definition on a standard of proof of a reasonable likelihood.

The United States has incorporated this international obligation into its domestic legislation through section 101 of the *Immigration and Nationalization Act*.<sup>2</sup> When asylum seekers are granted refugee status inside the United States, they are referred to as asylees.

Asylees may apply for permanent residence one year after being granted asylum.<sup>3</sup> At that time, they can also sponsor their family members (their spouse and children under 21 years of age) who are considered to be *derivative asylees*. After five years, the asylee can seek American citizenship.

ii) **Withholding of Removal under the *Immigration and Nationalization Act (INA)***

Individuals who are denied asylum status may still be eligible for withholding of removal under section 241(3) of the *Immigration and Naturalization Act (INA)*.<sup>4</sup> This more limited form of protection cannot be granted by asylum officers. It may only be granted by Immigration Judges at the EOIR during regular removal proceedings.

To qualify for withholding of removal, asylum seekers must meet a higher standard of proof than that required for applications under the Convention asylum. Applicants must demonstrate that their life or freedom are *more likely than not* (over 50% chance) to be threatened in the proposed country of removal. The risk must be based on one of the five enumerated grounds in the Convention definition.

Once applicants are granted a withholding of removal status, they are permitted to temporarily remain and work in the United States. However, they may not sponsor their family or apply for permanent residency or citizenship. A withholding of removal status also does not preclude removal to a third country where the applicant's life or freedom would not be threatened.<sup>5</sup>

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<sup>2</sup> 8 U.S.C. 1101.

<sup>3</sup>US Citizenship and Immigration Services. "I am a refugee or asylee...How do I become a permanent resident" (2008), <[http://www.U.S.C.is.gov/U.S.C.IS/New%20Structure/3rd%20Level%20\(Left%20Nav%20Children\)/Resources-3rd%20level/How%20Do%20I%20Guides/D3en.pdf](http://www.U.S.C.is.gov/U.S.C.IS/New%20Structure/3rd%20Level%20(Left%20Nav%20Children)/Resources-3rd%20level/How%20Do%20I%20Guides/D3en.pdf)>.

<sup>4</sup> 8 U.S.C. 1208.

<sup>5</sup> US Department of Justice, Executive Office for Immigration Review, "Asylum and Withholding of Removal Relief Convention Against Torture Protections, Fact Sheet" (2009),

iii) **Withholding of Removal under the *Convention against Torture* (CAT)**

Individuals denied asylum status may also be eligible for withholding of removal under the *Convention against Torture* (CAT).<sup>6</sup> The United States is a party to CAT. Under article 3 of the CAT, the USA may not remove an individual to a country if the person is more likely than not to be tortured if returned to that country.<sup>7</sup> Relief under the CAT may only be granted by an Immigration Judge or by the BIA.

Once granted withholding of removal under the CAT, an individual may not be removed from the United States unless DHS establishes that they are not likely to face torture in the proposed country of removal. However, like those with withholding status under the INA, those who are granted withholding status under CAT are only granted temporary status to remain and work in the United States. They may not sponsor their family or apply for permanent residency or citizenship. Additionally, they may be detained, even if granted protection, or removed to a third country where they would not be at risk.

iv) **Deferral of Removal under the *Convention against Torture* (CAT)**

Deferral of removal status can also be granted under the CAT. This status is a less robust form of protection than the withholding of removal status. Deferral of removal status is extended to certain classes of individuals ineligible for withholding of removal, for example due to criminal ineligibility. Deferral of removal status is subject to review. It may be terminated more easily.

v) **Temporary Protected Status and Deferred Enforced Departure**

Temporary Protected Status (TPS)<sup>8</sup> may be granted to people who originate from countries that the DHS has designated as having “ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions.”<sup>9</sup>

TPS is designated for specific and limited periods of time. Individuals who benefit from TPS protection may remain and work in the United States during this time, but may not apply for permanent residence. At the end of the designated period, their immigration status reverts to the same status they held before receiving TPS. As of June 2010, the countries granted TPS are El Salvador, Haiti, Honduras, Nicaragua, Somalia, and Sudan.

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<<http://www.usdoj.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf>> at 6 [“Fact Sheet”].

<sup>6</sup> GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984); 1465 UNTS 85.

<sup>7</sup> “Fact Sheet,” *supra* note 5 at 7.

<sup>8</sup> 8 U.S.C. 1254

<sup>9</sup> Department of Homeland Security, US Citizenship and Immigration Services, “Temporary Protected Status & Deferred Enforced Departure” (2010),

<<http://www.U.S.C.is.gov/portal/site/U.S.C.is/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=390d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=390d3e4d77d73210VgnVCM100000082ca60aRCRD>> .

Deferred Enforced Departure (DED) is a temporary and discretionary administrative stay of removal granted by Presidential order to individuals from designated countries.<sup>10</sup> This rarely-used form of protection allows individuals to remain in the United States and to obtain work permits. In 2009, the DED designation for Liberia was extended until March 2010.

## **2. Access to Asylum**

Asylum seekers are legally entitled to apply for asylum at a port of entry or within the USA, unless they fit within one of the exceptions below:

### **i) Safe Third Country**

An asylum seeker may be removed by the USA to a third country that the United States has deemed “safe”.<sup>11</sup> The United States has designated Canada to be a safe country through the Canada-U.S. Safe Third Country Agreement, in force since 2004. The Agreement sets out that individual must make their refugee claim in the country that they have entered first. The Agreement allows for certain exceptions based on family ties, public policy and other reasons.<sup>12</sup> The country of first entry for most asylum seekers is the United States, so the Agreement has had a disproportionate effect on applicants seeking to reach Canada.

### **ii) One Year Time Limit**

An individual is required to apply for asylum within one year of arrival in the USA unless there are compelling circumstances for delaying the application.<sup>13</sup> The time limit does not apply to unaccompanied minors.

Refugee advocates have criticized this one-year bar for having a disproportionate impact on claims grounded on persecution based on gender or sexual orientation. Applicants in these cases often delay filing claims due to shame and fear.<sup>14</sup> As a result of the one-year bar, these applicants are often limited to applying for withholding of removal only, which has a much lower rate of success.

### **iii) Previous Failed Claims**

An individual whose previous request for asylum has been rejected may not apply for asylum again unless they can demonstrate a change in circumstances.<sup>15</sup>

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<sup>10</sup> *Ibid.*

<sup>11</sup> 8 U.S.C. 1158 at para. (2)(A).

<sup>12</sup> Citizenship and Immigration Canada, “Canada-U.S. Safe Third Country Agreement” (2007), <<http://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html>>.

<sup>13</sup> 8 U.S.C. 1158 at paras. (2)(B) & (D).

<sup>14</sup> *Canadian Council for Refugees v. Canada*, 2007 FC 1262, <<http://reports.fja.gc.ca/eng/2007/2007fc1262/2007fc1262.pdf>> at paras. 162–163.

<sup>15</sup> 8 U.S.C. 1158 at para. (2)(C).

### **3. Eligibility Screening for Asylum**

An asylee may be found to be ineligible for asylum on the following grounds:

#### **i) Serious Criminality**

Individuals who have been convicted of “particularly serious” crimes, including aggravated felonies,<sup>16</sup> may be ineligible for asylum. Individuals who otherwise pose a danger to the security of the USA may also be barred from protection.<sup>17</sup>

#### **ii) Terrorism**

Asylum seekers who have engaged in terrorist activity or have links with terrorist organizations may be ineligible for asylum.

#### **iii) Frivolous Claims**

Individuals whose claim is deemed by an immigration judge to be frivolous are also ineligible for asylum. A frivolous claim is defined as having elements that are deliberately fabricated.<sup>18</sup> Before declaring a claim to be frivolous, the immigration judge must be satisfied that the applicant, during the course of the proceedings, had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

Once an immigration judge decides that a claim is frivolous, the applicant is permanently barred from claiming asylum.<sup>19</sup> The applicant will still be able to apply for a withholding of removal.

#### **iv) Firm Resettlement**

An applicant will be ineligible for asylum in the United States if they have some type of legal status in another country and if they have traveled to that country as a result of their flight from persecution.<sup>20</sup>

### **4. The Asylum Process**

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<sup>16</sup> Aggravated felony includes drug possession, trafficking in drugs, a crime of violence with 1 year sentence of jail, crime of theft or burglary, murder, rape, and smuggling of persons. See 8 U.S.C. 1101.

<sup>17</sup> Department of Homeland Security, US Citizenship and Immigration Services, “Bars to Applying For and Receiving Asylum” (2009), <<http://www.U.S.C.is.gov/portal/site/U.S.C.is/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=60826138f898d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=3a82ef4c766fd010VgnVCM1000000ecd190aRCRD>>.

<sup>18</sup> 8 U.S.C.1158 (d)(6); See also 8 C.F.R. 1208.20.

<sup>19</sup> For a study of the consequences of this permanent ban, see E. Lea Johnston, “An administrative ‘death sentence’ for asylum seekers : deprivation of due process under 8U.S.C.1158 (d) (6)’s frivolousness standard” (2007) 82 Wash. L. Rev. 831.

<sup>20</sup> 8 C.F.R. 208.15.

Asylum seekers may face one of three different asylum determination procedures, depending on where and when they file their applications for protection.

**i) At the Border**

Individuals making an asylum claim at a point of entry will be referred to an asylum officer for a “credible fear” interview.<sup>21</sup> In this interview, asylum officers will determine whether the asylum seekers have a significant chance of demonstrating to an immigration judge that they have a credible fear of persecution or torture.<sup>22</sup> Asylum seekers may request to have a legal representative present during the interview.

Asylum seekers who are found to have a credible fear may make a defensive application for asylum. They will have opportunity to have a full hearing before an immigration judge. Unless the asylum seekers can establish that they have a sponsor with whom they can stay, they will be detained while their claims are processed.<sup>23</sup>

Asylum seekers who are not found to have a credible fear will be removed to their home countries. They can ask for a review of the asylum officer’s decision by an immigration judge.<sup>24</sup> The immigration judge must render a decision within seven days. The asylum seeker is detained during this time period. The immigration judge will either refer asylum seekers to a full hearing or order them to be deported. Generally, no further review of the asylum officer’s decision is available.<sup>25</sup>

**ii) Affirmative Asylum Procedure**

Individuals who are in the United States may voluntarily present themselves to one of the eight regional asylum offices to make an affirmative asylum application within one year after entering the United States. This procedure is also available to individuals without legal status in the United States as long as they have not been arrested by DHS and placed in removal proceedings.

Within 21 days of filing, an asylum officer will conduct a non-adversarial interview with them to assess whether the applicant meets the refugee criteria.<sup>26</sup> At the interview, asylum seekers are entitled to have a legal representative with them at their own expense.

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<sup>21</sup> 8 U.S.C. 1225 (b)(1)(A)(ii)

<sup>22</sup> 8 U.S.C. 1225 (b)(1)(B)(v).

<sup>23</sup> Travelers & Immigrants Aid/Chicago Connections, *Know your rights, Information packet about detention, deportation and defenses under US Immigration Law* (2003), <[http://www.asylumlaw.org/docs/site\\_docs/KnowYourRights%202003.pdf](http://www.asylumlaw.org/docs/site_docs/KnowYourRights%202003.pdf)> at p. 8; See also U.S. Citizenship and Immigration Services, “Credible Fear FAQ” (2008), <<http://www.U.S.C.is.gov/portal/site/U.S.C.is/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=98ea0f953ff9c110VgnVCM1000004718190aRCRD&vgnnextchannel=3a82ef4c766fd010VgnVCM1000000ecd190aRCRD>> [“Credible Fear FAQ”].

<sup>24</sup> 8 U.S.C. 1225 (b)(1)(B)(III).

<sup>25</sup> “Credible Fear FAQ,” *supra* note 23.

<sup>26</sup> Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Phillip G. Schrag, *Refugee roulette: Disparities in Asylum Adjudication* (2007) 50 Stan. L. Rev. 295, <<http://isim.georgetown.edu/publications/andypubs/refugeeroulette.pdf>> at 306 [*Refugee roulette*].

The asylum officer may find that the applicant meets the refugee criteria and grant asylum to the applicant. Alternatively, the asylum officer may make a finding that applicant does not meet the refugee criteria. If the applicant has legal status to stay in the United States, the officer may deny the applicant's claim outright. If the applicant does not have status, the asylum officer may place the applicant in removal proceedings and refer the applicant's claim to the immigration court for a new, full hearing.

Most decisions by asylum officers lead to referrals to the immigration court.<sup>27</sup> Asylum seekers may also be referred to the immigration court if they do not show up for their interview with the asylum officer or if they applying for asylum more than one year after arriving in the United States and does not have a justification for the delay.<sup>28</sup>

### **iii) Defensive Asylum Procedure**

If an individual without valid immigration status is apprehended by DHS, they are automatically placed in removal proceedings before an immigration court. They can then claim asylum as a "defense" against removal. The claim will be referred for a full hearing before an immigration court. The asylum seeker is then usually detained for the duration of this procedure and any subsequent appeal.<sup>29</sup>

### **iv) Full Hearing at the Immigration Court**

As discussed above, asylum seekers may be referred to a full hearing before an immigration court from both the affirmative and defensive asylum procedures. The hearing is adversarial; DHS attorneys will cross-examine the applicant and may dispute the validity of the applicant's asylum claim.<sup>30</sup> Applicants are permitted to have legal representation at their own expense.

The immigration judge may grant asylum status, order a withholding of removal or other relief, or order that the applicant be deported. Appeals of the immigration judge's decision may be made to BIA.

## **5. Appeal and Judicial Review of the Initial Decision**

### **i) Board of Immigration Appeals (BIA)**

An applicant whose request for asylum is denied by an immigration judge may appeal the decision to EOIR's appellate body, the BIA. The BIA conducts a "paper review" of

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<sup>27</sup> *Refugee roulette*, *supra* note 26 at 307.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* at 309.

<sup>30</sup> "Fact Sheet," *supra* note 5 at 4.

cases. Oral hearings are possible but very rare.<sup>31</sup> BIA decisions are binding on immigration judges and DHS asylum officers.

The BIA is an administrative tribunal created under the authority of the Attorney General. The members of the tribunal serve at the pleasure of the Attorney General and exercise his or her delegated authority.<sup>32</sup> The Attorney General may overrule members' decisions and change the process of adjudication.<sup>33</sup>

Serious concerns have been raised about the erosion of procedural fairness afforded to asylum seekers before the BIA. This erosion is primarily the result of reforms in 2002 intended to streamline the asylum procedure.

Previously, appeals of immigration court decisions were decided by a three-member BIA panel. Since the 2002 reforms, the vast majority of cases are only reviewed by a single-member BIA panel.<sup>34</sup> There are now only six situations in which a three-member panel is now required: 1) settling inconsistencies in rulings between immigration judges; 2) establishing a precedent regarding a new point of law, procedures, regulations; 3) reviewing a decision which does not follow precedents or the law; 4) resolving a controversy of major national importance; 5) reviewing a "clearly erroneous factual determination" by an immigration judge; or 6) reversing a decision of an immigration judge, other than reversal under s. 3.1(e)(5).<sup>35</sup>

Additionally, in an attempt to reduce a growing backlog at the BIA, the Attorney General introduced the use of summary affirmances, decisions made by a single member without any written analysis, for a limited class of immigration cases. The 2002 reforms expanded summary affirmances to all case types including asylum-related appeals.<sup>36</sup>

The 2002 reforms also included stricter time limits for rendering decisions, an elimination of de novo appeals of factual findings, and a reduction in the number of BIA member positions. The reforms did manage to decrease the backlog at the BIA, but also arguably contributed to a lower quality of decision-making. This is evidenced by an increase in appeals of BIA decisions. One year after the 2002 reforms were implemented, appeals of BIA decisions to the federal Courts of Appeals jumped from 200 to 400 per month.<sup>37</sup>

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<sup>31</sup> U.S. Department of Justice, "Board of Immigration Appeals," <<http://www.usdoj.gov/eoir/biainfo.htm>>. See also Dorsey & Whitney, L.L.P., *Study Conducted For: The American Bar Association Commission on Immigration Policy, Practice, and Pro Bono Re: Board of Immigration Appeals: Procedural Reforms to Improve Case Management*, 40 (2004) at 25 [Dorsey Study].

<sup>32</sup> *Refugee roulette*, *supra* note 26 at 309.

<sup>33</sup> The Board is not an independent body. It was "purged" in 2002 to comply with the Attorney General policy in matters of asylum adjudication. For more information on facts and about independence of the BIA, see *Refugee Roulette*, *supra* note 26 at 350-352.

<sup>34</sup> *Dorsey Study*, *supra* note 31 at 21.

<sup>35</sup> 8C.F.R. par 1003.1 (e) (6)

<sup>36</sup> *Refugee roulette*, *supra* note 26 at 351.

<sup>37</sup> *Ibid.* at 355.

Criticisms have been leveled at the highly political nature of member appointments, particularly during the Bush administration. Researchers have pointed out the lower grant rates by Bush appointees compared to other BIA members.<sup>38</sup>

There were more proposed reforms in 2006 and 2008 that intended to respond to some of these criticisms, but to date, little has been implemented.<sup>39</sup>

## ii) United States Courts of Appeals

An asylum applicant may appeal an adverse BIA decision to a federal circuit Court of Appeals in its district. The Court of Appeals has the power to reject the appeal or remand the decision back to the BIA. The Court of Appeals will rarely substitute its own decision for that of the BIA and tends to be very deferential to BIA decisions.<sup>40</sup>

The BIA itself must follow decisions of a Court of Appeals in its district. Because the Court of Appeals is deferential to the BIA,<sup>41</sup> in effect the BIA still wields considerable precedent-setting power.<sup>42</sup>

## iii) United States Supreme Court

Theoretically, a final appeal is available to a failed asylum-seeker at the United States Supreme Court. However, leave to appeal at the Supreme Court is hardly ever granted. Therefore, in practice, the Courts of Appeals are the final level of appeal available to a failed asylum seeker.<sup>43</sup>

# 6. Detention

## 1) Grounds for detention of asylum seekers

Upon arrival to the United States, asylum seekers without legal status in the United States are subject to mandatory detention for an indefinite time period.<sup>44</sup> The DHS is responsible for the detention of asylum seekers. The decision to detain an asylum seeker cannot be appealed to an independent judge.<sup>45</sup> An asylum seeker may be released on parole if they fulfill criteria such as establishing their identity, family or community ties in the US or if they do not pose a danger to the community.<sup>46</sup>

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<sup>38</sup> See *Ibid.* and *Dorsey Study*, *supra* note 31, for a more detailed discussion of this issue.

<sup>39</sup> American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (2010), <[http://new.abanet.org/Immigration/PublicDocuments/full\\_report\\_part3.pdf](http://new.abanet.org/Immigration/PublicDocuments/full_report_part3.pdf)> at 9.

<sup>40</sup> For more details, see *Refugee roulette*, *supra* note 26 at 350.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.* at 349.

<sup>43</sup> *Ibid.* at 310.

<sup>44</sup> INA §235

<sup>45</sup> Human Rights First, *In liberty's shadow, US detention of Asylum Seekers in the era of Homeland Security* (New York: Human Rights First, 2004) [*In liberty's shadow*]. See also 8C.F.R. 1003.19 (h)(2)(i) (B).

<sup>46</sup> 8 C.F.R. §212.5 (a)

## **2) Detention Statistics**

It is difficult to determine with certainty how many asylum seekers are detained by DHS every year. The NGO *Human Rights First* estimates that over 48,000 asylum seekers have been detained between 2003 and 2009.<sup>47</sup>

## **3) Detention Conditions**

Independent observers have repeatedly criticized the conditions in American detention facilities for immigrants and asylum seekers. Chief complaints include severe restrictions on freedom of movement, overcrowding, poor sanitation and a lack of adequate health-care. Additionally, non-criminal foreigners are routinely housed in private or county jails, together with convicted criminals.<sup>48</sup>

## **7. Removal of Refused Asylum Seekers**

Reliable statistics related to the removal of refused asylum seekers are unavailable. In 2007, a total of 319,382 foreign nationals were removed, of whom 106,196 were removed through the expedited process.

## **8. State Support for Asylum Seekers**

### **i) Employment**

Upon arrival in the United States, asylum seekers are not allowed to work. However, they may apply for a work permit 180 days after lodging their asylum claim.<sup>49</sup> Work permits are rarely granted for two reasons. Firstly, asylum claims are sometimes decided in less than 180 days. Secondly, if the asylum seekers makes a request to postpone a removal hearing (in order to find a lawyer, for example), the clock in the 180-day waiting period is reset back to zero.<sup>50</sup>

Asylum seekers automatically receive work permits once granted asylee status.

### **ii) Financial Assistance and Housing**

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<sup>47</sup> Human Rights First, *US Detention of Asylum Seekers: Seeking Freedom, Finding Detention* (New York: Human Rights First, 2009) at 3 [*US Detention of Asylum Seekers*].

<sup>48</sup> For a detailed overview of DHS detention procedures and conditions, see: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Addendum, Mission to the United States of America, Report of the 7th session of the Human Rights Council, UNHCR, 7<sup>th</sup> Session, A/HRC/7/12/Add.2, (2008), < <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/112/84/PDF/G0811284.pdf?OpenElement>>; *US Detention of Asylum Seekers*, *supra* note 47; *In Liberty's Shadow*, *supra* note 45.*

<sup>49</sup> 8U.S.C.1158 (d) (2)

<sup>50</sup> INA § 208(d)(2); 8 C.F.R. §1208.7(a).

No government assistance is available for asylum seekers prior to the final determination of their claim. Once granted asylum, asylees are given financial aid 8 months and they are eligible to receive public assistance for up to five years.<sup>51</sup>

### **iii) Education**

Asylum seekers have access to the same public education as citizens of the United States.

### **iv) Health Care**

An office of the United States Department of Health and Human Services, the Office of Refugee Resettlement, funds private and public organizations that help refugees and asylum seekers access health care.<sup>52</sup>

The DHS' Division of Immigration Health Services (DIHS) manages health services for asylum seekers who are in detention.<sup>53</sup> It provides emergency and non-emergency health care.<sup>54</sup> However, all health care must be authorized by the DIHS before administered to asylum seekers. Access to health care is often reported as inadequate.<sup>55</sup>

### **v) Legal Services**

No legal representation is provided by the US government during any stage of the process, and the asylum seekers must hire a lawyer at their own expenses or rely on private associations providing pro bono lawyers. Interpreters are similarly not provided by USCIS and must be brought at their own expense by the asylum seeker.

## **9. Asylum Statistics**

See accompanying document on US asylum statistics. Raw information is available from the United States Department of Homeland and Security at <http://www.dhs.gov/files/statistics/immigration.shtm>.

## **10. Legislative authorities for the Asylum system**

### **I) *Immigration and Nationality Act (1952)***

<http://www.uscis.gov/pub/ProPubVAP.jsp?dockey=cb90c19a50729fb47fb0686648558dbe>

<sup>51</sup> U.S. Committee for Refugees and Immigrants, *World Refugee Survey 2009 – United States*, <[http://www.worldrefugeesurvey.org/index.php?title=United\\_States](http://www.worldrefugeesurvey.org/index.php?title=United_States)>.

<sup>52</sup> U.S. Department of Health and Human Services, <<http://www.acf.hhs.gov/programs/orr/index.html>>.

<sup>53</sup> U.S. Department of Homeland and Security, Division of Health Services, “Managed Care,” <<http://www.icehealth.org/ManagedCare/Providers.shtm>>.

<sup>54</sup> U.S. Department of Homeland and Security, Division of Health Services, “Managed Care: Combined Benefit Package,” <<http://www.icehealth.org/ManagedCare/Combined%20Benefit%20Package%202005.doc>>.

<sup>55</sup> For example, see Human Rights Watch, “Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States” (2007), <[http://www.hrw.org/reports/2007/us1207/3.htm#\\_Toc184105374](http://www.hrw.org/reports/2007/us1207/3.htm#_Toc184105374)>.

**II) *The Refugee Act (1980)***

<http://www.law.cornell.edu/uscode/8/1522.html>

**III) *Real ID Act (2005)***

<http://www.gpo.gov/fdsys/pkg/PLAW-109publ13/html/PLAW-109publ13.htm>

**IV) *Code of Federal Regulations, Title 8***

<http://www.gpoaccess.gov/cfr/index.html>

[http://www.access.gpo.gov/nara/cfr/waisidx\\_08/8cfrv1\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/8cfrv1_08.html)

**V) *United States Code, Titles 8 and 22***

<http://www.gpoaccess.gov/uscode/index.html>