

August 2014

ASYLUM IN THE UNITED STATES

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.” A refugee is defined as a person who has been persecuted or has a well-founded fear of being persecuted “on account of race, religion, nationality, membership in a particular social group, or political opinion.” This definition derives from the United Nations 1951 Convention and 1967 Protocols (“Convention and Protocols”)—international agreements to which the United States is a signatory. Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. Also, the Convention and Protocols and U.S. law protect the asylum-seeker from “non-refoulement.” In other words, under international law, a country cannot return or expel people to places where their lives or freedoms could be in jeopardy. Asylum status is granted by asylum officers or immigration judges. In FY 2012, 29,484 individuals were granted asylum.

There are two asylum processes in the United States: the *affirmative* process and the *defensive* process.

- An affirmative asylum application occurs when an asylum-seeker files an application for asylum with U.S. Citizenship and Immigration Services (USCIS). If the asylum officer does not grant the asylum application, then the applicant is put into removal proceedings and can renew the request for asylum there.
- A defensive asylum application occurs when one who has already encountered the government, and is in removal proceedings, applies for asylum to an immigration judge. In other words, asylum is applied for “as a defense against removal from the U.S.”¹

What does an asylum-seeker have to show to be granted asylum?

- An asylum seeker has the burden to show either persecution or a “well-founded fear” of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.”² Asylum seekers often provide substantial evidence. However, asylum can be granted solely on the asylum seeker’s testimony.³

What happens when an asylum seeker’s case goes to court?

- Asylum seekers and other foreign nationals in immigration proceedings do not have the right to have an attorney provided for them.⁴

- In FY 2012, asylum applicants “made up more than a quarter (29.4%) of all cases closed under the prosecutorial discretion initiative...These closures are not included in the 11,939 individuals who won their asylum cases” in the same year.⁵

What is credible fear?

- Credible fear is a screening process, not a status. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created a streamlined removal process called “expedited removal,” which authorizes the Department of Homeland Security (DHS) to perform rapid deportations of noncitizens found within 100 miles of a border without proper papers. In 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 screening process was created.
- Persons who express fear of returning to their home country or who ask to apply for asylum are afforded a “credible fear interview,” conducted by a USCIS officer. Credible fear is a lower standard than the “well-founded fear” ultimately necessary for asylum. If USCIS finds that the person has a credible fear, USCIS is saying that the individual *might* qualify for asylum status.
- In Fiscal Year (FY) 2013, USCIS found 30,393 individuals to have credible fear.⁶ These individuals will be afforded an opportunity to apply for asylum defensively and establish that they meet the refugee definition.
- Individuals not found to have credible fear are generally removed.
- Also, a different streamlined removal process called “reinstatement of removal” applies to those who re-enter the U.S. after a prior deportation order. Those in reinstatement of removal are provided a “reasonable fear” interview, similar to the “credible fear” interview above.

Upon entering the United States, an asylum-seeker must generally apply for asylum status within one year.

- Under revisions to the asylum laws enacted in 1996, every asylum applicant, with a few exceptions, must demonstrate “by clear and convincing evidence that the [asylum] application has been filed within 1 year after the date of...arrival in the United States.”⁷
- According to the National Immigrant Justice Center (NIJC), one in five asylum applicants are denied asylum because they missed this deadline.⁸
- In a 2010 study of more than 3,472 asylum cases decided by the Board of Immigration Appeals, the NIJC found that “in approximately 46 percent of cases where the filing deadline is an issue, it is the only reason cited...as justifying the denial of asylum.”⁹

Many asylum seekers are detained while their cases are determined.

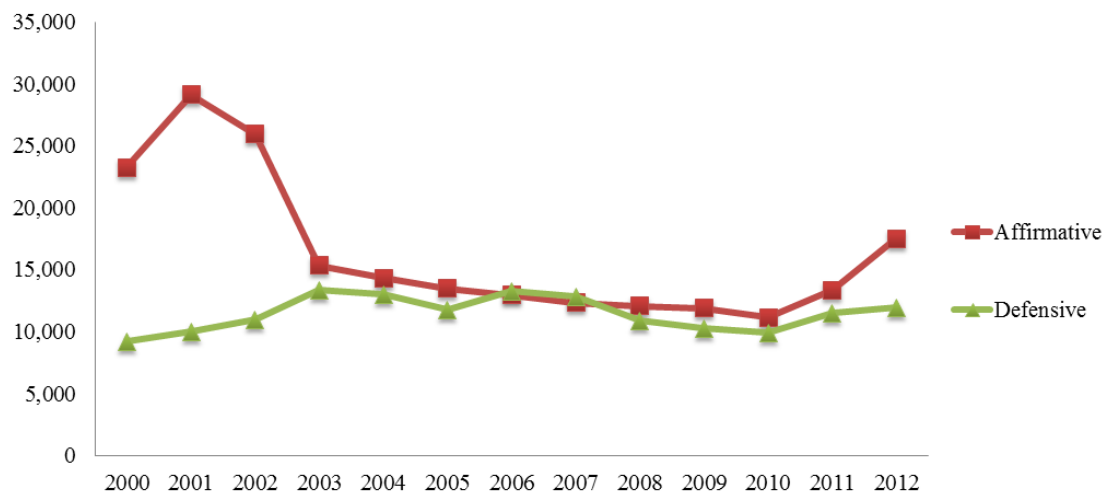
- According to a 2012 DHS report to Congress, U.S. Immigration and Customs Enforcement (ICE) detained 15,769 asylum applicants in FY 2010.¹⁰

- During this time, the average length of detention for affirmative asylum applicants was 65 days.¹¹
- Because “there are no statutory limits to the amount of time a non-citizen may be held in immigration detention,” the length of time in detention may vary. Some asylum applicants may be “kept in immigration detention for several months or even years.”¹²
- Approximately 3 percent of the detained asylum applicants in FY 2010 were under 18 years old.¹³
- Detention is mandatory pending credible fear and reasonable fear interviews.
- A 2013 report by The Center for Victims of Torture found that “in less than three years – from October 2010 to February 2013 – the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.”¹⁴
 - The report asserts that “the indefinite nature of immigration detention” contributes “to severe, chronic emotional distress” in asylum seekers who are survivors of torture.¹⁵

Who is granted asylum?

- In FY 2012, 29,484 individuals were granted asylum: 17,506 affirmatively and 11,978 defensively {Figure 1}.¹⁶

**Figure 1: Individuals Granted Asylum
Affirmatively or Defensively, FY 2000-2012**

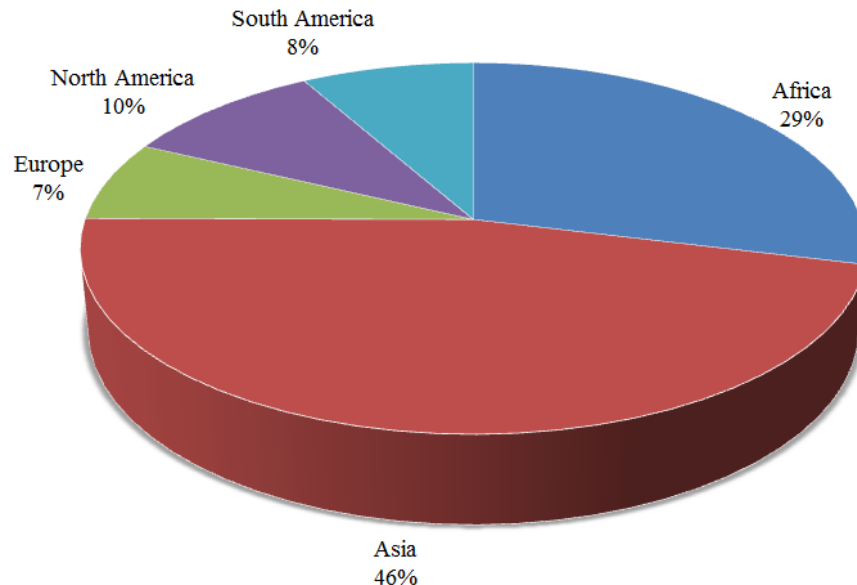


Source: DHS, *Yearbook of Immigration Statistics*: 2012, Table 16.

- Of the 17,506 individuals granted asylum affirmatively:
 - Slightly less than half (49 percent) were women.
 - 18 percent (3,098) were under the age of 19.

- o 47 percent (8,165) were married or widowed.¹⁷
- Among those individuals granted asylum affirmatively, nearly half (46 percent) were from Asia and more than a quarter (29 percent) from Africa {Figure 2}.¹⁸

Figure 2: Individuals Granted Asylum Affirmatively, by Region, FY 2012



Source: DHS, *Yearbook of Immigration Statistics: 2012*, Table 17.

- o The majority of all individuals granted asylum came from the People's Republic of China (approximately 34.5 percent, or 10,151 people).¹⁹
 - o Other significant countries of origin in 2012 included Egypt, Venezuela, and Ethiopia.²⁰
 - o Only about 7.6 percent of all individuals granted asylum in 2012 came from Mexico or South America.²¹
- Of those granted asylum affirmatively, 8,609 were female and 8,897 were male. Among these were 2,554 children.²²
- About two-thirds of individuals granted asylum in 2012 lived in California, Florida, or New York.²³

What happens when someone is granted asylum?

- If someone is granted asylum they are eligible to work immediately,²⁴ and to apply for a Social Security card, a green card, and immigration benefits for their spouse and any unmarried children under 21.²⁵

Endnotes

- ¹ USCIS, “Obtaining Asylum in the United States,” March 10, 2011.
- ² 8 U.S.C. § 1158(b)(1), § 1101(a)(42)(A).
- ³ 8 U.S.C. § 1158(b)(1)(B).
- ⁴ Lutheran Immigration and Refugee Service, “Asylum and Asylum Seekers,” accessed July 29, 2014.
- ⁵ TRAC Immigration, “FY 2012 A Record Year for Asylum Cases,” January 15, 2012.
- ⁶ USCIS Asylum Division, “Credible Fear Workload Report Summary FY 2013 Total Caseload,” “Credible Fear Workload Report Summary, FY 2013 Inland Caseload,” and “Credible Fear Workload Report Summary, FY 2013 Port of Entry (POE) Caseload.”
- ⁷ INA §208(a)(2)(B).
- ⁸ National Immigrant Justice Center, “Repeal the One-Year Asylum Deadline.”
- ⁹ National Immigrant Justice Center, *The One-Year Asylum Deadline and the BIA: No Protection, No Process: An Analysis of Board of Immigration Appeals Decisions 2005-2008*, October 2010.
- ¹⁰ DHS, *Detained Asylum Seekers: Fiscal Year 2009 and 2010 Report to Congress*, August 20, 2012.
- ¹¹ Ibid.
- ¹² The Center for Victims of Torture, *Tortured & Detained: Survivor Stories of U.S. Immigration Detention*, November 2013.
- ¹³ DHS, *Detained Asylum Seekers: Fiscal Year 2009 and 2010 Report to Congress*, August 20, 2012.
- ¹⁴ The Center for Victims of Torture, *Tortured & Detained: Survivor Stories of U.S. Immigration Detention*, November 2013.
- ¹⁵ Ibid.
- ¹⁶ DHS, *Yearbook of Immigration Statistics: 2012*, “Table 16: Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2012.”
- ¹⁷ DHS, *Yearbook of Immigration Statistics: 2012*, “Table 18: Individuals Granted Asylum Affirmatively by Relationship to Principal Applicant and Sex, Age and Marital Status: Fiscal Year 2012.”
- ¹⁸ DHS, *Yearbook of Immigration Statistics: 2012*, “Table 17: Individuals Granted Asylum Affirmatively by Region and Country of Nationality: Fiscal Years 2003 to 2012” and “Table 19: Individuals Granted Asylum Defensively by Region and Country of Nationality: Fiscal Years 2003 to 2012.”
- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Ibid.
- ²² DHS, *Yearbook of Immigration Statistics: 2012*, “Table 18: Individuals Granted Asylum Affirmatively by Relationship to Principal Applicant and Sex, Age, and Marital Status: Fiscal Year 2012.”
- ²³ DHS, *Annual Flow Report*, “Refugees and Asylees: 2012,” April 2013.
- ²⁴ USCIS, “Asylum,” January 22, 2013.
- ²⁵ USCIS, “Types of Asylum Decisions,” March 15, 2011.