

# Asylum Grant Discretion & Humanitarian Asylum

If an applicant meets the statutory definition of a refugee and is not subject to any mandatory bars to asylum, the grant of asylum is ultimately discretionary.

## Discretionary Grant

The Immigration and Nationality Act states that the Attorney General (and by delegation, Immigration Judges and Asylum Officers) *may* grant asylum to an alien who is found to be a refugee. This means that even if an applicant is eligible, asylum is not guaranteed. Adjudicators consider positive and negative factors in exercising discretion.

**Relevant Law:** INA § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A).

**Relevant Case Law:** *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987) outlines factors considered in the exercise of discretion, such as the seriousness of any criminal or immigration violations, family ties in the U.S., and humanitarian concerns.

# Humanitarian Asylum

**This is a specific basis for granting asylum even if the applicant does not demonstrate a well-founded fear of *future* persecution. Humanitarian asylum can be granted if the applicant establishes that they suffered past persecution so severe that returning to their country would be inhumane, even if there is no likelihood of future harm. This is based on compelling reasons arising out of the severity of the past persecution.**

**Relevant Regulation: 8 CFR § 208.13(b)(1)(iii).**

**Relevant Case Law: *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) is a key precedent decision establishing the basis for humanitarian asylum due to exceptionally severe past persecution.**

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