

Basic Eligibility

INA § 208 (8 USC 1158) Asylum

Authority to apply for asylum

1. In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section [235\(b\)](#) of this Act [8 U.S.C 1225(b)] .

2. Exceptions

A. Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

B. Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

C. Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

D. Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C) , if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

E. Applicability

Subparagraphs [\(A\)](#) and [\(B\)](#) shall not apply to an unaccompanied alien child (as defined in *section 279(g) of title 6*).

Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph [\(2\)](#).

b. Conditions for granting asylum

1. In general

A. Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section [101\(a\)\(42\)\(A\)](#) of this Act [8 U.S.C 1101(a)(42)(A)] .

B. Burden of proof

i. In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section [101\(a\)\(42\)\(A\)](#) of this Act [8 U.S.C 1101(a)(42)(A)] . To establish that the applicant is a refugee within the

meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

ii. Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

iii. Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility,

however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

2. Exceptions

A. In general

Paragraph [\(1\)](#) shall not apply to an alien if the Attorney General determines that—

- i. the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;**
- ii. the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;**
- iii. there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;**
- iv. there are reasonable grounds for regarding the alien as a danger to the security of the United States;**
- v. the alien is described in subclause [\(I\)](#), [\(II\)](#), [\(III\)](#), [\(IV\)](#), or [\(VI\)](#) of section [212\(a\)\(3\)\(B\)\(i\)](#) of this Act [8 U.S.C 1182(a)(3)(B)(i)] or section [237\(a\)\(4\)\(B\)](#) of this Act [8 U.S.C 1227(a)(4)(B)] (relating to terrorist activity), unless, in the case only of an alien described in subclause [\(IV\)](#) of section [212\(a\)\(3\)\(B\)\(i\)](#) of this Act [8 U.S.C 1182(a)(3)(B)(i)] , the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or**

vi. the alien was firmly resettled in another country prior to arriving in the United States.

B. Special rules

i. Conviction of aggravated felony

For purposes of clause [\(ii\)](#) of subparagraph [\(A\)](#), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

ii. Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause [\(ii\)](#) or [\(iii\)](#) of subparagraph [\(A\)](#).

C. Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section , under which an alien shall be ineligible for asylum under paragraph [\(1\)](#).

D. No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph [\(A\)\(v\)](#).

3. Treatment of spouse and children

A. In general

A spouse or child (as defined in section [101\(b\)\(1\)\(A\)](#) [8 U.S.C 1101(b)(1)(A)] , [\(B\)](#), [\(C\)](#), [\(D\)](#), or [\(E\)](#) of this Act) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section , be

granted the same status as the alien if accompanying, or following to join, such alien.

B. Continued classification of certain aliens as children

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section , shall continue to be classified as a child for purposes of this paragraph and section [209\(b\)\(3\)](#) of this Act [8 U.S.C 1159(b)(3)] , if the alien attained 21 years of age after such application was filed but while it was pending.

C. Initial jurisdiction

An asylum officer (as defined in section [235\(b\)\(1\)\(E\)](#) of this Act [8 U.S.C 1225(b)(1)(E)]) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in *section 279(g) of title 6*), regardless of whether filed in accordance with this section or section [235\(b\)](#) of this Act [8 U.S.C 1225(b)] .

c. Asylum status

1. In general

In the case of an alien granted asylum under subsection [\(b\)](#) of this section , the Attorney General—

A. shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

B. Shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization;

and

C. may allow the alien to travel abroad with the prior consent of the Attorney General.

2. Termination of asylum

Asylum granted under subsection [\(b\)](#) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

A. the alien no longer meets the conditions described in subsection [\(b\)\(1\)](#) of this section owing to a fundamental change in circumstances;

B. the alien meets a condition described in subsection [\(b\)\(2\)](#) of this section ;

C. the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

D. the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

E. the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

3. Removal when asylum is terminated

An alien described in paragraph [\(2\)](#) is subject to any applicable grounds of inadmissibility or deportability under section [212\(a\)](#) [8 U.S.C 1182(a)] and section [237\(a\)](#) of this Act [8 U.S.C 1227(a)] , and the alien's removal or return shall be directed by the Attorney General in accordance with section [240](#) [8 U.S.C 1229a] and section [241](#) of this Act [8 U.S.C 1231] .

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