

Frequently Asked Questions about Asylum And Withholding Of Removal

- **Q: What is USCIS?**

A: USCIS stands for U.S. Citizenship and Immigration Services. It is the agency of the U.S. government principally responsible in matters dealing with aliens in the United States. This includes giving it jurisdiction over aspects of asylum and withholding of removal. Prior to March of 2003, the USCIS was called the Immigration and Naturalization Service (INS). For a brief period of time, it was known as the Bureau of Citizenship and Immigration Services (BCIS). It is also sometimes just referred to as the CIS. For purposes of this web site, we use the current accepted name of U.S. Citizenship and Immigration Services or USCIS.

- **Q: Who is handling my case if I retain Tesfaye I Amare?**

A: Our attorneys handle their clients' cases individually by preparing petition letters, contacting clients, and following up pending cases. That's why we have more attorneys than clerks. Our clerks' main objective is to help attorneys prepare clients' packages, and each client's package will be reviewed by one of our most experienced attorneys for final checking before sending out the package to the USCIS.

- **Q: How does the asylum process work?**

A: This depends on whether the asylum application is made affirmatively or in response to removal proceedings.

For an affirmatively filed asylum application, the asylum application is filed with a USCIS Service Center having jurisdiction over asylum cases in the state in which the applicant resides. NOTE: This is not necessarily the same service center for processing general immigration matters for this state. After being filed at the Service Center, the application is forwarded to a local asylum office that will schedule the applicant for an interview with an asylum officer, usually within 30 days of receiving the application. The applicant will be questioned about his asylum claim during the interview. If the applicant does not speak English, a friend, relative, or interpreter may accompany him to the interview to translate. The applicant may also have an attorney present with him during the interview. At the end of the interview, the applicant is usually asked to return to the asylum office on a certain date to get the decision of the case.

For an application in response to removal proceedings, the asylum application is filed in the immigration court hearing the removal proceedings. A hearing will be set for the judge to hear evidence in support of and against the asylum application. An interpreter will be provided by the court if needed. An attorney for the government will be present and will have the right to ask questions and argue against a granting of asylum. After all evidence and arguments are heard the immigration judge will decide whether or not to grant asylum.

- **Q: Do I need an attorney to file an asylum application?**

A: It is very important to understand that the person making a decision on your asylum claim may not be familiar with your country or the political and social circumstances there. As a result, asylum claims are decided based primarily on the evidence submitted as well as on the credibility of your written and oral statements. If you do not provide very detailed information in a well-organized manner, your claim for asylum will likely be denied, even if you have a genuine fear of persecution in your country. Moreover, time is of the essence in asylum applications. Because of the time limits on filing an asylum claim, it is important to begin as early as possible the preparation of your application and the evidence that will be submitted in support of your application.

- **Q: Will a translator be provided for me at the asylum interview?**

A: No. If you are not fluent in English, you will need to provide a translator over the age of 18 who is not your attorney or your witness. If you do not provide a proper translator for your interview, it will result in a determination that you did not appear at your hearing.

- **Q: What happens after my asylum case is approved by the asylum officer?**

A: If your case is approved by the asylum officer and you remain in the U.S. for one year, you are eligible to apply for permanent residency.

- **Q: May I file for asylum if I am out of status?**

A: Yes, only physical presence in the United States is required. A person who is out of status may obtain legal status if granted Asylum. The only problem is that if the Asylum application is denied, the alien will be placed in removal proceedings.

- **Q: May I file for asylum if I am in legal status?**

A: Yes, anyone physically present in the United States may file for Asylum. If asylum is granted, the alien will receive a new status, Asylee. If asylum is denied, the alien will be returned to whatever legal status he or she would otherwise have. CAUTION, if your status expires, by the time of your asylum interview, then you will be placed in removal proceedings unless the asylum interviewer determines that you should be given asylum.

- **Q: What kind of information is required for an asylum application?**

A: In addition to the actual asylum application form itself, most successful asylum applications usually contain hundreds of pages of supporting documentation, including newspaper articles; statements by country experts; reports from government and human rights organizations; and affidavits from the applicant and from the applicant's family, colleagues, or friends. As you can see, an asylum application is a time-consuming process. This is one of the reasons why we recommend you contact an experienced immigration attorney as early as possible in order to meet the statutorily imposed one-year time limit.

- **Q: May I leave the country after I have submitted my asylum application?**

A: No. An applicant who leaves the United States is presumed to have abandoned his application for asylum or withholding of deportation.

- **Q: Why would I want to seek withholding of removal?**

A: Withholding of Removal is purely an alternative relief to be sought while seeking asylum. Everyone would always prefer to seek Asylum, but there are many bars to asylum that do not apply to Withholding of Removal (such as the 1 year filing requirement).

- **Q: Do I need to prove past persecution to qualify?**

A: No. You only need to prove a well-founded fear of persecution to qualify for asylum. If you are a member of a group whose members are being persecuted in your home country or country of last habitual residence, you may qualify for asylum on the basis of a fear of persecution in the future.

- **Q: If I am in removal proceedings may I apply?**

A: Yes. Asylum and Withholding of Removal can be used to prevent removal, even if one would otherwise be removable. If the Immigration Court finds you to be removable (e.g. your legal status has expired), the Court will then decide whether, you qualify for Asylum or Withholding of Removal, provided that you have filed an Application for Asylum or Withholding of Removal. If the court rules in your favor, you will not be removed to the country where persecution is alleged.

- **Q: If I have been in the United States for over one year, may I file for asylum or withholding of removal?**

A: Yes, but your request for asylum will be approved only if you can show one of the exceptions to the one-year filing deadline. Also, there is no one-year filing requirement for Withholding of Removal.

- **Q: If I have been in the United States for over one year, and I do not qualify for any of the exceptions, may I apply for asylum?**

A: No, you may seek asylum only if you file within one year of your entry into the United States. If you have been placed in removal proceedings, you may seek Withholding of Removal.

- **Q: If I have had an asylum application denied in the past, can I still apply for asylum?**

A: Possibly. A prior denial is a basis to deny a new asylum application only if the denial was from an Immigration Court or the Board of Immigration Appeals. If your asylum claim was denied by an Asylum Officer and you were simply returned to your other legal status, then you may still apply for asylum.

- **Q: What happens if my asylum case is denied by the asylum officer?**

A: If your asylum claim is denied by the asylum officer, you will be placed into removal proceedings if you are out of status or it is determined that you are otherwise subject to removal. However, we can renew your asylum claim in Immigration Court and have it re-heard by the Immigration Judge. If your status is current when you filed for asylum, the denial of your asylum will have no effect on your status.

- **Q: What happens if I am in legal status and my Asylum application is denied?**

A: You will simply be returned to the legal status you had before you applied for asylum.

- **Q: Can I apply for asylum for my family?**

A: Yes, a spouse and minor children who are in the U.S. can be included in your asylum application. If you do not include such relatives who are in the U.S., they will not qualify for asylum together with you. Instead, you will need to file a separate petition for them after your own asylum is approved. If they are out of the U.S., you may apply for their entry into the U.S. after you are granted asylum.

- **Q: What are the benefits from asylum?**

A: There are several benefits from asylum. First the alien is in legal Asylee status for as long as the conditions in the home country are cause for a well-founded fear of persecution. This is

particularly valuable for those who have lost legal status or whose status will soon expire. Second, the Asylee can get a work authorization. Third, the asylee may petition for his or her spouse and minor children to enter the US. Finally, the asylee, spouse and minor children may petition for adjustment of status to permanent resident after a year of the grant of Asylum.

- **Q: How long does it take to process an asylum application?**

A: The total amount of time can vary depending on whether the asylum application is processed as an affirmative application or as defense to removal proceedings. In an affirmative petition, the Asylum Office is supposed to give an asylum interview within 45 days of the filing of the application. A decision from the Asylum Office usually comes within a few weeks. If the Asylum Office does not approve the application and the applicant is placed in removal proceedings or if the asylum application is filed only after first being placed in removal proceedings, the alien will have a first hearing before an immigration court within a few weeks. In removal proceedings in which an asylum application is filed, the immigration court is supposed to set a hearing to determine whether to grant asylum within 180 days of the date of the hearing in which the Court determines that an Asylum Application has been filed, although the hearing can be postponed in some circumstances.

- **Q: If I am out of status and my asylum application is denied, what will happen?**

A: First you must understand that an asylum application by a person out of status cannot be denied by the asylum officer in an affirmative petition. If the asylum officer chooses not to approve the application, the officer may only refer the case to an immigration court for removal proceedings. Only in the removal proceedings before the immigration court can the applicant be denied asylum. If such denial is made, the alien will be ordered removed from the U.S. Of course, an appeal can be made to such a determination.

- **Q: If I am in status, and my affirmative application is denied by the asylum officer, may I appeal the decision?**

A: No. There is only an appeal from an order of removal by an immigration court. If the applicant's petition is denied by the asylum officer, the applicant is restored to his or her previous non-immigrant status, but there is no appeal.

- **Q: If I am in removal proceedings and I have been in the country for over one year and do not have any excuse for not seeking asylum sooner, do I have any defense through asylum or withholding of removal?**

A: Possibly. The failure to file the application within one year is not a bar to seeking "Withholding of Removal". If you can establish that it is more likely than not that you will be persecuted in the home country, you may still remain in the U.S. because of Withholding of Removal.

- **Q: How do I seek asylum if I am not in removal proceedings?**

A: By filing an Application for Asylum and Withholding of Removal (Form I-589) with the USCIS Service Center having jurisdiction over asylum cases in your area. NOTE: This is not necessarily the same service center for processing general immigration matters for this state.

- **Q: How do I seek asylum if I am in removal proceedings?**

A: By filing an Application for Asylum and Withholding of Removal (Form I-589) with the immigration court hearing your removal proceedings.

- **Q: If I have been in the U.S. under legal status for over a year, will I still be subject to the one-year filing rule?**

A: Yes. The rule applies to legal stays as well as illegal stays. You may still qualify for one of the exceptions to the rule, however.

- **Q: What is the filing fee for an Asylum Application?**

A: None. There is no filing fee for these cases.

- **Q: What are my chances of getting Asylum or Withholding of Removal?**

A: Every case is different. You will need to consult directly with an attorney for this question.

- **Q: Who has the burden of establishing qualification for Asylum or Withholding of Removal?**

A: The alien seeking the relief has the burden of proof.

- **Q: What is the difference between Asylum and Withholding of Removal?**

A: Asylum is a means for acquiring legal status and several immigration benefits on the basis of one's fear of persecution in his/her home country. Apart from the right to remain in the United States, a person granted asylum (an asylee) may also work in the U.S., bring family members to the United States from his home country, and eventually apply for permanent residency. On the other hand, Withholding of Removal is merely a means of not being removed to a country where there is a likelihood that one would be persecuted. An alien granted Withholding of Removal is technically not in any legal status in the United States. The only other benefit Withholding of Removal is that the alien may work in the United States as long as he is protected from removal. In certain circumstances a person may be denied Asylum yet granted Withholding of Removal, such as discretionary denial of asylum that does not apply to Withholding of Removal and certain bars to asylum that do not apply to Withholding of Removal.

- **Q: Do I have to choose between Asylum and Withholding of Removal?**

A: No. You always seek asylum with withholding of removal being an alternative relief in the event that asylum is denied. Anyone seeking asylum will be considered to also be seeking withholding of removal.

- **Q: What do I need to prove to qualify for asylum?**

A: You need to prove that you have a well-founded fear of persecution on the basis of race, religion, nationality, political opinion and/or membership in a particular social group in your home country. A well-founded fear means that a reasonable person in your circumstances would fear persecution in the particular country. You do not need to prove that you are likely to be persecuted.

- **Q: What do I need to prove to qualify for Withholding of Removal?**

A: You need to prove that it is more likely than not that you will be persecuted on the basis of race, religion, nationality, political opinion and/or membership in a particular social group in your home country.

- **Q: If the burden of proof for Withholding of Removal is greater than that for asylum, how would anyone ever be able to qualify for Withholding of Removal and not Asylum?**

A: Although, one may meet the burden of proof to show he or she should get Asylum, there are other factors to show that he or she should not get Asylum. These factors include discretionary denial of an otherwise qualified applicant and a number of bars to Asylum eligibility. There is no discretionary denial of Withholding of Removal and many of the bars to Asylum do not apply to Withholding of Removal.

- **Q: What are the bars to asylum?**

A: The following factors may serve as a bar to asylum:

1. One-year filing deadline. If the applicant filed the application after one year of entry into the U.S. he or she is generally barred from asylum;
2. Prior denial of an asylum application from an Immigration Court or the Board of Immigration Appeals;
3. Firm resettlement in another country;
4. Safe Third Country as established by a treaty with such country.

Many of the above bars have exceptions. You should consult with an attorney if you fear that you may be subject to such a bar. The bar may not actually apply in your circumstances.

There are five other bars that do not have exceptions and also apply to Withholding of Removal Claims. These are:

- e. Commission of particularly serious crime while in the U.S.;
- f. Commission of a serious non-political crime in another country prior to entry in the U.S.;
- g. Participation in persecution of others;
- h. If there is reasonable grounds for regarding the applicant as a danger to the security of the U.S.; and
- i. Terrorism.

- **Q: Are there any bars to Withholding of Removal?**

A: Yes. The following bars apply:

0. Commission of particularly serious crime while in the U.S.;
1. Commission of a serious non-political crime in another country prior to entry in the U.S.;
2. Participation in persecution of others;
3. If there is reasonable grounds for regarding the applicant as a danger to the security of the U.S.; and
4. Terrorism.

All of these bars also apply to Asylum cases. There are no exceptions to these bars.

- **Q: How can Zhang & Associates P.C. help me?**

A: Our firm has successfully helped numerous people obtain Asylum or Withholding of Removal. We have considerable experience in representing clients with asylum claims. Our expertise includes knowing what is required in different situations. We help you polish the supporting evidence and present your case in the most favorable light.

We cannot promise that your case is a successful one. However, we promise you two things: First, we take your case as our own matter and give it the highest priority; and secondly, our quality of work is first rate.

- **Q: How much is your attorney's fee?**

A: We charge total \$5,000 in attorney's fee for Asylum application if it is successful. When you retain us, you need to pay \$2,000 in attorney's fee that is not refundable. If your case is approved, you need to pay an additional \$3,000. Please [click here](#) for a copy of Attorney-Client Agreement.

- **Q: How much is the filing fee?**

A: Zero.