

# **Security Procedures in the U.S. Asylum System**

(August 2004)

September 11 forced Americans to learn to think of security first. We must make sure that we do not take security risks as we uphold our national tradition of serving as a safe haven to people fleeing persecution abroad. To that end, this document describes the security precautions that are built into our national asylum program.

The United States government, after an in-depth examination of an individual's case, grants asylum to refugees who prove that they have suffered persecution in the past or have a well-founded fear of future persecution – but not before conducting multiple security checks on each and every applicant. This is required by U.S. statutory law and is enforced in practice.

## **Statutory Bars Deny Asylum to Terrorists**

U.S. law “categorically disqualifies” for asylum persons who have committed certain crimes in the United States or any of a wide range of crimes abroad, as well as persons who are deemed security risks, or suspected terrorists.<sup>1</sup> The law specifically prohibits a grant of asylum to anyone who

- (1) has been convicted of a particularly serious crime, including any of the broad range of crimes designated as aggravated felonies under the immigration laws, and constitutes a danger to the community or
- (2) has committed a serious nonpolitical crime abroad or
- (3) is or may reasonably be considered a danger to the security to the security of the United States or
- (4) has engaged in terrorist activity.<sup>2</sup>

## **Extensive Security Checks are Required in the Asylum Process**

To ensure that asylum is not granted to any individual who is barred from receiving this protection, the Immigration and Nationality Act (“INA”) requires extensive security checks. Specifically, the INA (as amended by § 604 of IIRIRA), §208 (d)(5)(A)(i), provides:

asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State . . . to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum.

Asylum applicants' names and birth dates must be checked against legacy INS databanks now housed at the Department of Homeland Security as well as databanks operated by the FBI, the State Department, and the CIA. Applicants' fingerprints are also taken and sent to the FBI for a criminal background check, which includes comparing the applicants' fingerprints with all

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<sup>1</sup> Deborah E. Anker, *Law of Asylum in the United States*, at 416-417.

<sup>2</sup> INA § 208(b)(2)(A)(ii) – (iv).

arrest records in the FBI's database. Finally, a special immigration database, IDENT, compares each applicant's fingerprints against those of all others who have applied since 1998, to prevent people from thwarting the system by applying more than once under different names.

1. Database Checks – The INA requires that checks be carried out in specific databases.

Pursuant to this law, it has been determined that three databases, which were previously INS databases and which continue to be operated by immigration authorities now within the Department of Homeland Security, must be checked. These databases are: 1) CIS - Central Index System; 2) DACS - Deportable Alien Control System; and 3) NAILS - National Automated Immigration Lookout System.<sup>3</sup> CIS and NAILS provide information about an individual's immigration history, including file location, applications for benefits, and detention and deportation issues. NAILS is an inter-agency database that includes important data from the Department of State and other agencies, including information about suspected terrorists. NAILS includes information on people who have been placed on "lookout" because: "(1) there is confirmed case information that may exclude the individual from entering the country; or (2) there is potential information, which the agency is seeking to confirm, that may exclude the individual from entry into the country.

An additional database known as IBIS – Interagency Border Inspection System – must also be checked. This database was initially developed by the United States Custom Service and is also now housed within the Department of Homeland Security. This inter-agency database contains law enforcement data, such as information on wanted persons, missing persons, stolen property, criminal history, criminal investigations, terrorists and foreign fugitives.<sup>4</sup>

In addition, immigration authorities send information regarding all asylum applicants to the FBI. The FBI then conducts a name and date-of-birth check against its databases. Immigration officials must obtain the results of the FBI checks by accessing a database known as FBIQuery.<sup>5</sup> Finally, information regarding all asylum applicants is sent to the CIA to be checked against that agency's databases.

These various databases generally allow immigration officials to search by date of birth, by exact name, by "sounds like" or similar names, by alias, by case number and by other text information.

2. Fingerprint Checks

Asylum applicants must also be fingerprinted, and their fingerprints must be submitted to the FBI for a "background/security check" which includes comparing the fingerprints with those in all arrest records in the FBI database.<sup>6</sup> Before granting asylum, the results of this fingerprint

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<sup>3</sup> See INS Internal Guide, Asylum Identity Checks Quick Reference Guide (February 1998) [hereinafter Asylum Checks Guide]; Office of International Affairs Asylum Division, Affirmative Asylum Procedures Manual (February 2003) [hereinafter Asylum Manual].

<sup>4</sup> Asylum Manual, at 4.

<sup>5</sup> Asylum Manual, at 95-96; Asylum Checks Guide.

<sup>6</sup> INA § 208(d)(1); Asylum Manual, at 97-108.

check must be obtained by using FBIQuery.<sup>7</sup> Asylum applicants' fingerprints may also be compared against other databanks, such as those of INTERPOL. The only exceptions are for: 1) applicants under 14; 2) applicants over 74, who submit a sworn statement; and 3) applicants with disabilities that make fingerprinting impossible or whose prints are deemed unclassifiable by the FBI. All of the applicants still must be submitted for name and date-of-birth database checks.

### 3. IDENT Database Checks

Finally, immigration officials adjudicating asylum cases use a special database, called IDENT, to compare the fingerprints of applicants appearing before the Asylum Office against those of others who have applied for asylum in order to thwart an attempt by an individual to apply for asylum using a different name. IDENT also contains two additional sets of information, known as Lookout and Recidivist databases. These two additional databases include information about individuals who have been convicted of certain crimes that would result in exclusion or removal and contain data regarding the immigration history of persons applying for benefits.<sup>8</sup>

### **Procedures Ensure Rigid Application of these Security Checks**

Each of these security checks must be conducted for all asylum applicants, whether they apply for political asylum affirmatively (i.e. by presenting themselves to the Bureau of Citizenship and Immigration Services with an application for asylum) or in Immigration Court (i.e. by requesting protection from removal on asylum grounds).

In the affirmative asylum process, procedures forbid an asylum officer from issuing a final approval of an asylum application, until after receiving the results of all of the fingerprint and database checks described above, with the exception of the CIA security clearance. The CIA security clearance must be requested but need not be received for a grant of asylum to be issued.<sup>9</sup> Similarly, when an Immigration Judge grants political asylum in Immigration Court, all of the security checks must be conducted before an individual may be given immigration documentation establishing his political asylum status.<sup>10</sup>

### **Additional Features Further Enhance Security in the U.S. Asylum System**

Additional procedures enhancing security in the political asylum process include: required timely processing of asylum applications,<sup>11</sup> the requirement of an in-person interview, and the availability of entry-exit information in the Non-Immigration Information System (NIIS) database.<sup>12</sup>

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<sup>7</sup> Asylum Checks Guide; Asylum Manual, at 97-108.

<sup>8</sup> Asylum Manual, at 11.

<sup>9</sup> INA §208 (d)(5)(A)(i); Asylum Manual, at 93.

<sup>10</sup> INA §208 (d)(5)(A)(i); Internal Memo, Change in Process Procedures for Applicants Granted Asylum by the Immigration Judge (June 2004).

<sup>11</sup> INA §208 (d)(5)(A) (ii)-(iv).

<sup>12</sup> Asylum Manual, at 3.