

## Bars & Security Screening in the Asylum & Refugee Processes

In the aftermath of World War II, the United States played a leading role in building an international system for the protection of refugees, to ensure that the nations of the world would never again refuse to offer shelter to people fleeing persecution. The United States passed the Refugee Act of 1980 in order to bring our nation's laws into compliance with the 1951 Refugee Convention and its 1967 Protocol. That legislation incorporated into the Immigration and Nationality Act ("INA") provisions establishing the domestic asylum and refugee resettlement systems that in the years since then have helped over two million refugees escape persecution and begin new lives in this country.

The Refugee Convention's requirements of protection are subject to exceptions, however: the Convention's "exclusion clauses" require host countries to exclude from its protections any person who has committed heinous acts or grave crimes that make him undeserving of international protection as a refugee, even if that individual has a well-founded fear of persecution. A separate provision of the Convention **allows the return of a refugee who poses a danger to the security of the host country**. The United States incorporated into its law the Refugee Convention's promise to provide protection to refugees, but also codified **bars to asylum and withholding of removal** intended to reflect the Convention's exceptions.

### Bars Applying to Refugees and Asylees

U.S. immigration laws **prohibit granting asylum and any form of refugee protection** to:

- People who engaged in or assisted in or incited the persecution of others;
- People who have been convicted of a particularly serious crime in the United States;
- People who have committed a serious non-political crime abroad;
- People who have engaged in terrorist activity;
- People who are representatives of foreign terrorist organizations; or
- People who otherwise pose a threat to the security of the United States.

Refugees seeking resettlement from overseas, and refugees and asylees applying for permanent residence after their arrival, **can be denied permanent residence** based on provisions of U.S. immigration law that bar them from the United States:

- People who are believed to be seeking to enter the U.S. to engage in unlawful activity;
- People whose entry or proposed activities in the United States the Secretary of State believes would have potentially serious adverse foreign policy consequences for the United States;
- People who have been members or affiliates of a totalitarian party;
- People who have been involved in genocide, torture, or extrajudicial killings;
- People who have been associated with a terrorist organization and intend to engage in activities in the United States that could endanger the welfare, safety, or security of the United States;
- People who are believed to have trafficked in controlled substances or to have colluded with others in doing so;
- People who admit having committed a crime involving moral turpitude;
- People who have sought to procure a visa or other immigration benefit or admission to the United States through fraud or willful misrepresentation of a material fact;
- People who have encouraged or assisted another person in trying to enter the U.S. illegally; as well as
- People who have voted in violation of any Federal, State, or local law, have engaged in prostitution, have engaged or assisted in international child abduction, or are coming to the United States to practice polygamy.

In addition, non-citizens, including those lawfully admitted to the United States or previously granted asylum, refugee status, or other permanent status here, can be deported from the United States for a broad range of violations of law both civil and criminal. The full lists of grounds that can make a non-citizen deportable from, or inadmissible to, the United States are found at sections 237 and 212 of the INA. They are extensive, ranging from failing to register a change of address to a very broad range of criminal offenses, including an extremely broad array of terrorism-related activities, including:

- Any unlawful use of a weapon or other dangerous device with intent to injure, directly or indirectly, the safety or one or more people or to cause substantial damage to property, for any purpose other than mere personal monetary gain;
- Any incitement, preparation, planning, or gathering of information for such purposes;
- Any material support to any terrorist organization (defined extremely broadly to include any group of two or more people, foreign or domestic, that engages in the use of a weapon or other dangerous device as just described);
- Membership in a terrorist organization;
- Any solicitation of funds or persons for purposes of terrorist activity or membership in a terrorist organization.

### **Security and Background Checks in the Asylum Application Process**

Regarding the asylum application process, the Department of Homeland Security (DHS), U.S. Citizenship & Immigration Service (USCIS) has enumerated **the following mechanisms intended to ensure the integrity of the system**, including:

- Mandatory biographical checks (using the applicant's name, date of birth, and aliases) in multiple databases;
- Mandatory biometric checks (using the applicant's fingerprints and photograph) in multiple databases;
- Additional biographical screening by the National Counterterrorism Center (NCTC) of all asylum applicants starting in August 2011;
- Mandatory supervisory review of all asylum decisions;
- Random case assignment;
- Fraud detection and national security teams;
- Trained document experts;
- Government-funded interpreter monitors<sup>1</sup>

### **Security and Background Checks in the Refugee Process**

In the refugee process, multiple biographic and biometric checks are performed by U.S. security vetting agencies and coordinated by the Departments of State and Homeland Security. DHS stated in 2012: "We are committed to conducting the most rigorous screening in order to ensure that those being admitted through the refugee program are not seeking to harm the United States...The security check regime, including both biographic and biometric checks, has been enhanced periodically over the last several years as new opportunities and interagency partnerships with the law enforcement and intelligence communities have been identified. These enhancements are a reflection of the commitment of DHS and other agencies to conduct the most thorough checks possible to prevent dangerous individuals from gaining access to the United States through the refugee program. The latest enhancement to the refugee security check regime involves a new '**pre-departure**' check shortly before refugees are scheduled to travel to the U.S. It is intended to identify whether any new derogatory information exists since the initial checks were conducted. These pre-departure checks went into effect in late 2010. No case is finally approved until results from all security checks have been received and analyzed."<sup>2</sup>

When individuals, including asylees and refugees, apply for permanent residence, they are required to submit to a collection of biometric data and another round of security and background checks. The same thing occurs when an asylee or refugee later applies for naturalization to become a U.S. citizen. If these checks reveal derogatory information that would make the person ineligible for the status he/she has applied for, USCIS will deny the application, and may initiate removal proceedings against him or her.

<sup>1</sup> See fact sheet on file with Human Rights First.

<sup>2</sup> See <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=df4c47c9de5ba110VgnVCM1000004718190aRCRD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCRD> (accessed 4/19/13).