

ANTI-FRAUD AND SECURITY SAFEGUARDS IN THE ASYLUM SYSTEM¹

The U.S. asylum system and U.S. law contain many measures that are specifically aimed at, and closely tailored to, weeding out fraudulent filings in the system. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) contained strict security provisions, including a requirement that identity checks be conducted against federal government databases and records for all individuals applying for asylum. Since then, many additional measures have been added. Outlined below are just some of the mechanisms that are designed to protect the immigration and asylum systems from abuse.

- **Asylum Applications Signed Under Penalty of Perjury.**

When the legacy Immigration and Naturalization Service (INS) overhauled the asylum system in 1995, it revised the asylum application form to require both the asylum applicant and the individual preparing the application to sign the application “under penalty of perjury” to ensure that there would be “appropriate consequences or making false statements.”

- **Fraudulent Applicants Permanently Barred.**

IIRIRA included a provision that permanently barred anyone who files a fraudulent asylum application from receiving any immigration benefit – meaning that such an individual would never be able to work legally in the United States, or to receive permanent lawful resident status here.

- **Fraudulent Filers, Preparers, and Attorneys Can Be Prosecuted.**

Individuals who seek to defraud the immigration and asylum system can be and have been prosecuted. Unscrupulous “notarios” and attorneys take advantage of immigrants by untruthfully telling them they are eligible for certain benefits and then preparing fraudulent applications – including asylum applications – for large fees. To facilitate prosecution of fraudulent filers, the US Citizenship and Immigration Service (USCIS), whose Asylum Division adjudicates affirmative asylum claims, is a member of the Immigration and Customs Enforcement’s (ICE) Document and Benefit Fraud Task Force, which coordinates with U.S. Attorney’s Offices to identify and prosecute fraudulent immigration benefit claims. Charges have been brought against such preparers in many states, including California, New York, Texas, Florida, and Arizona.²

¹ This document is an excerpt from Human Rights First’s October 2010 report, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf>.

² Many advocates have called for a federal law making it a felony for a “notario,” attorney, or other preparer to defraud someone under the U.S. immigration system. On June 9, 2011 the Federal Trade Commission with the Departments of Justice and Homeland Security announced a multi-agency, nationwide initiative to combat immigration services scams. More information on that initiative can be found at <http://www.justice.gov/opa/pr/2011/June/11-atj-750.html>. Meanwhile, the American Bar Association’s Commission on Immigration recently launched a campaign to provide attorneys and others with training and resources for civil suits against fraudulent preparers under state consumer protection laws.

- **Forensic Testing of Documents.**

Documents provided in support of asylum claims are often sent to the Department of Homeland Security's (DHS) Forensic Document Laboratory. There, technicians analyze the documents' authenticity and, in the case of official documents, compare them to the lab's library of foreign travel and identity documents.

- **Multiple Identity and Security Checks for Asylum Seekers in DHS and Other Government Databases.**

IIRIRA requires that each asylum seeker's identity be checked in a series of federal databases. These checks can help identify fraudulent cases as well as any individual who might present a security risk. These checks include: Interagency Border Inspection System – a multi-agency database including information on immigration violations, criminal violations, and terrorist threats; (2) U.S. Visitor and Immigrant Status Indicator technology – a DHS database with biometric information on foreign nationals entering and exiting the United States; (3) Consular Consolidated Database – a Department of State database with information on visa applications and prior travel history; and (4) Deportable Alien Control System – a DHS database on aliens who have been detained or put in removal proceedings. Additionally, U.S. adjudicators may request records on asylum applicants from INTERPOL, the international police organization.

- **FBI Fingerprint and Name Checks for Asylum Applicants.**

Asylum officers and immigration judges are not authorized to grant asylum until the applicant's fingerprints have been run through the FBIQUERY database. Asylum applicants' names are also automatically checked against the FBI name database. USCIS's Office of Fraud Detection and National Security aids in identifying fraudulent asylum claims by training asylum officers and providing technical support. Through this office, asylum officers may refer suspected fraudulent applications to ICE for criminal investigation and prosecution.

- **An Asylum Applicant Does Not Enjoy Any Presumption of Credibility.**

Under the law an asylum applicant will be denied if the adjudicator does not find her claim truthful. Section 208(b)(2)(B)(i) of the Immigration and Nationality Act (INA) reads, "The burden of proof is on the applicant to establish that the applicant is a refugee..." Section 208(b)(2)(B)(iii) reads, "Credibility determination. – Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination of the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witnesses' account, the consistency between the applicant's or witness's written and oral statements..., the internal consistency of such statements with other evidence of record..., and any inaccuracies or falsehoods in such statements...There is no presumption of credibility." Immigration Judges, ICE trial attorneys, and USCIS Asylum Officers receive extensive training on fraud detection and credibility determinations.