

## **FACT SHEET: THE BASICS OF U.S. ASYLUM LAW**

### **Who are refugees?**

- Refugees are often survivors of unimaginable atrocities. Many have had family members killed in conflict or been separated from their parents or children due to violence or chaos. They have been arrested, jailed, beaten, raped, tortured, threatened with death, or otherwise persecuted because of their political or religious beliefs, or their race, ethnicity, or other fundamental aspects of their identity. Many fled war, ethnic or sectarian conflict, genocide, or other persecution.
- Refugees come from all walks of life. They could be journalists, teachers, preachers, human rights advocates, farmers, parents, or political dissidents. Their list of home countries reflects the arc of recent world history and conflict—Laos, Afghanistan, the former Yugoslavia, the former Soviet Union, Ukraine, Vietnam, Cuba, Somalia, Sudan, Liberia, Russia, Burma, Bhutan, Iran, and Iraq—as well as the pernicious presence of persecution in many other places.

### **Why do some refugees seek asylum protection in the United States?**

- The United States has a long and proud history of providing refuge to victims of religious, political, ethnic, and other forms of persecution. This tradition reflects a core component of this country's identity as a nation committed to freedom and respect for human dignity.
- According to the U.N. High Commissioner for Refugees (UNHCR), of the estimated 15.4 million refugees worldwide, 80% are hosted by other war-torn, conflict-ridden and/or developing countries.<sup>1</sup>
- In 2009, 923,400 individual applications for asylum or refugee status were submitted to governments or UNHCR offices in 161 countries or territories.<sup>2</sup> 47,900 of those claims – the equivalent of 5% – were filed in the United States.<sup>3</sup> According to data from the U.S. Departments of Homeland Security and Department of Justice 21,113 individuals were granted asylum in Fiscal Year 2010.<sup>4</sup>

### **How does an individual apply for asylum in the United States?**

- Applicants must file for asylum with either the U.S. Citizenship and Immigration Service (USCIS) Asylum Division or – if facing deportation – before an Immigration Judge. The process requires applicants to provide detailed information regarding their past activities, associations, experiences

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<sup>1</sup> “World Refugee Day: UNHCR Report Finds 80% of Refugees in Developing Countries,” June 20, 2011, available at <http://www.unhcr.org/4dfb66ef9.html>.

<sup>2</sup> UNHCR Statistical Yearbook 2009, Chapter IV: Asylum and Refugee Status Determinations, available at <http://www.unhcr.org/4ce531e09.html>.

<sup>3</sup> Id.

<sup>4</sup> U.S. Department of Homeland Security, “Annual Flow Report of Refugees and Asylees: FY 2010,” available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_rfa\\_fr\\_2010.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf).

of persecution, and current fear of future persecution. They must also provide information on conditions in their home country to support the accuracy of their claim. This information must be consistent with an applicant's account of events and objectively support his/her fear of return.

- An asylum applicant will be carefully questioned by either the USCIS Asylum Officer or – if before an Immigration Judge – challenged by the Judge and/or cross examined by the attorney from the government representing U.S. Immigration and Customs Enforcement (ICE).
- An asylum applicant does not enjoy any presumption of credibility. Under the law an applicant will be denied if the adjudicator does not find the claim truthful. Any falsehoods or inconsistencies can lead to an adverse credibility finding.<sup>5</sup>
- The burden of proof is on the applicant to establish that s/he meets the legal definition of refugee in the Immigration and Nationality Act (INA).<sup>6</sup> Adjudicators often require evidence to corroborate the applicant's testimony, if s/he is reasonably able to obtain it. The adjudicator then assesses the credibility of applicant's testimony, weighing it against any evidence of record.

#### What is the legal definition of a “refugee”?

To be eligible for asylum in the United States, the applicant must demonstrate that s/he is a “refugee” as defined by INA §101(a)(42), which includes several elements, each of which has been defined in greater detail through regulations and case law:

- **outside of country** of nationality or, for those without a nationality, outside country last habitually resided;
- **unable or unwilling** to return to that country and unable or unwilling to avail self of protection of that country;
- **because of** persecution or a well-founded fear of persecution;
- **on account** of race, religion, nationality, membership in a particular social group, or political opinion.

#### Who is barred and/or excluded from asylum protection in the United States, even if s/he otherwise qualifies as a “refugee” under INA §101(a)(42)?<sup>7</sup>

- Applicants who have engaged in the persecution of others;

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<sup>5</sup> INA §208(b)(2)(B)(iii).

<sup>6</sup> INA §208(b)(2)(B)(i).

<sup>7</sup> INA §208(a)(2)(B) and INA §208(b)(2)(A). As with the elements of the refugee definition, the bars to asylum have been defined in greater detail through regulations and case law.

- Applicants who have been convicted of a particularly serious crime and constitute a danger to the community of the United States or if there are serious reasons to believe they committed, a serious nonpolitical crime outside the United States;
- Applicants for whom there are reasonable grounds to regard as a danger to the security of the United States;
- Applicants who have engaged in terrorist activity;
- Applicants who have been “firmly resettled” in another country prior to arriving in the United States; and
- Applicants who failed to file their applications within one year of arrival, absent changed or extraordinary circumstances.

 **What mechanisms are in place to prevent abuse of the asylum system.**

- Immigration Judges, ICE trial attorneys, and USCIS Asylum Officers receive extensive and on-going training on fraud detection and credibility determinations;
- To ensure appropriate consequences for making false statements, asylum applications must be signed under penalty of perjury by both the asylum applicant and the individual preparing the application;
- Any fraudulent asylum applicants are permanently barred from receiving any immigration benefit, meaning that they would never be able to work legally in the United States or receive permanent lawful resident status here;
- An asylum seeker’s identity must be checked in a series of Department of Homeland Security and other federal databases. These checks help identify fraudulent cases as well as any individual who might present a security risk;
- Asylum officers and immigration judges are not authorized to grant asylum until the applicant’s fingerprints have been run through the FBI fingerprint database.
- Asylum applicants’ names are checked against the FBI name database;
- U.S. Citizenship and Immigration Services has an Office of Fraud Detection and National Security that aids in identifying fraudulent asylum claims, and asylum officers may also refer suspected fraudulent applications to U.S. Immigration and Customs Enforcement for criminal investigation and prosecution;
- Documents provided in support of asylum claims are often sent to the Department of Homeland Security’s Forensic Document Laboratory where 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; and
- Individuals who file fraudulent claims – as well as preparers and attorneys – can be investigated and criminally prosecuted.