

# Process for Seeking Asylum [L] (USCIS)



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Obtaining Asylum in the United States

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To continue to keep our workforce and applicants safe during the COVID-19 pandemic while maintaining efficiency and access to the asylum process, USCIS announced another extension to the [temporary final rule](#) (TFR) that requires certain asylum applicants to use our contract telephonic interpreters instead of bringing their own interpreters to their affirmative asylum interviews. This rule is in effect through March 16, 2023. For more information, please visit our [TFR webpage](#).

The two ways of obtaining asylum in the United States are through the affirmative process and defensive process.

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Affirmative Asylum Processing with USCIS

To obtain asylum through the affirmative asylum process you must be physically present in the United States. You may apply for asylum regardless of how you arrived in the United States or your current immigration status.

You must apply for asylum within one year of the date of your last arrival in the United States, unless you can show:

- Changed circumstances that materially affect your eligibility for asylum or extraordinary circumstances relating to the delay in filing; and
- You filed within a reasonable amount of time given those circumstances.

You may apply for affirmative asylum by submitting Form I-589, Application for Asylum and for Withholding of Removal, to USCIS.

If your case is not approved and you do not have a legal immigration status, we will issue a Form I-862, Notice to Appear (NTA), and refer your case to an immigration judge at the Executive Office for Immigration Review (EOIR). The immigration judge conducts a "de novo" hearing of the case. This means that the judge conducts a new hearing and issues a decision that is independent of the decision made by USCIS. In certain circumstances, if USCIS does not have jurisdiction over your case, the asylum office will issue a Form I-863, Notice of Referral to Immigration Judge, for an asylum-only hearing. See the section "Defensive Asylum Processing With EOIR" below if this situation applies to you.

If you were previously issued an NTA that was not filed and docketed with the EOIR immigration court, or your previously issued NTA was filed and docketed with EOIR either shortly before (within 21 days) or after you filed your Form I-589 with USCIS, USCIS will refile your NTA (if necessary) and send your Form I-589 to the immigration court for adjudication.

To determine where to file your Form I-589, follow the instructions under the "Where to File" section on our [Form I-589](#) page. For more information, please see [What Happens After You File Your Form I-589 With USCIS](#).

You may live in the United States while your Form I-589 is pending before USCIS. If you are found ineligible, you can remain in the United States while your Form I-589 is pending with the immigration judge. Asylum applicants are not authorized to work unless you meet certain requirements. For more information, please see [Permission to Work in the United States](#). Affirmative asylum applicants are rarely detained by U.S. Immigration and Customs Enforcement (ICE).

Please see the [Affirmative Asylum Process](#) for step-by-step information on applying for asylum through the affirmative asylum process.

Defensive Asylum Processing with EOIR

A defensive application for asylum occurs when you request asylum as a defense against removal from the United States. For asylum processing to be defensive, you must be in removal proceedings in immigration court with the Executive Office for Immigration Review (EOIR).

Individuals are generally placed into defensive asylum processing in one of two ways:

- They are referred to an immigration judge by USCIS after they have been determined to be ineligible for asylum at the end of the affirmative asylum process, or
- They are placed in removal proceedings because they:
  - Were apprehended in the United States or at a U.S. port of entry without proper legal documents or in violation of their immigration status; or
  - Were apprehended by U.S. Customs and Border Protection (CBP) trying to enter the United States without proper documentation, were placed in the expedited removal process, and were found to have a credible fear of persecution or torture by an asylum officer. See [Questions & Answers: Credible Fear Screenings](#) for more information on the credible fear process.

Immigration judges hear defensive asylum cases in adversarial (courtroom-like) proceedings. The judge will hear arguments from both of the following parties:

- You (and your attorney, if represented)
- The U.S. government, which is represented by an attorney from U.S. Immigration and Customs Enforcement (ICE)

The immigration judge then decides whether you are eligible for asylum. If the immigration judge finds you eligible, they will grant asylum. If the immigration judge finds you ineligible for asylum, they will determine whether you are eligible for any other forms of relief from removal. If the immigration judge finds you ineligible for other forms of relief, they will order you to be removed from the United States. Either party can appeal the immigration judge's decision.

See the [Granted a Green Card by an Immigration Judge or Board of Immigration Appeals](#) page for information about the grant of asylum by an immigration judge.

For information about the Executive Office for Immigration Review, including the Immigration Courts and the Board of Immigration Appeals, see [Executive Office for Immigration Review](#). To determine where to file your Form I-589, follow the instructions under the "Where to File" section on our [Form I-589](#) page.

Key Differences Between "Affirmative" and "Defensive" Asylum Process

Key Differences Between "Affirmative" and "Defensive" Asylum Process	
Affirmative	Defensive
Individual has not been placed in removal proceedings before an immigration judge.	Individual has been placed in removal proceedings before an immigration judge.
Individual affirmatively submits Form I-589 to USCIS.	Individual: <ul style="list-style-type: none"><li>Is placed in removal proceedings by an asylum officer;</li><li>Is placed in removal proceedings for immigration violations; or</li><li>Tried to enter the United States without proper documents and was found to have a credible fear of persecution or torture.</li></ul> If the individual was referred by USCIS, the asylum application already filed will carry over to the immigration judge. If the individual did not yet submit an asylum application, they will submit it to the immigration judge.
Individual appears before a USCIS asylum officer for a non-adversarial interview	Individual appears before an immigration judge with the Executive Office for Immigration Review for an adversarial, court-like hearing.
Individual must provide a qualified interpreter for the interview.	The immigration court provides a qualified interpreter for the hearing.

<https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states>

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