

PRACTICE ADVISORY: PROTECTION-BASED RELIEF FROM REMOVAL

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This practice advisory is intended for federal criminal defense attorneys with noncitizen clients who have a fear of returning to their home country. Specifically, the advisory is intended to educate defenders on:

- The types of protection-based relief available to noncitizens and step-by-step procedures of how to seek such relief, in order that defenders in turn can advise their noncitizen clients, many of whom appear *pro se* in removal proceedings;
- How criminal convictions may impact clients' ability to seek protection-based relief;
- Procedural mechanisms for challenging removal based on fear of returning to one's home country (many of which mechanisms must be used while a criminal case is pending); and
- How a client's fear of persecution may be used as mitigation for sentencing in a criminal case.
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The advisory is divided into four sections: (I) an overview of different forms of immigration relief available to noncitizens – with a focus on noncitizens who have prior criminal convictions, (II) a description of special considerations for arriving asylum seekers and individuals subject to reinstatement of removal (*e.g.*, defendants in illegal reentry cases), (III) a discussion of protection-based claims and sentencing, and (IV) practical tips on how to screen clients for a fear of return and advise those who express a fear of return. The appendix includes sample immigration forms, and detailed explanations of how criminal convictions impact eligibility for protection-based relief.

The advisory has been prepared by Heartland Alliance's National Immigrant Justice Center ("NIJC"). NIJC is a Chicago-based immigration legal service provider dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum-seekers through a unique combination of direct services, policy reform, impact litigation, and public education. NIJC provides representation to asylum-seekers in affirmative and defensive proceedings. Through its asylum

¹ Sarah Rose Weinman is a Baker & McKenzie Equal Justice Works Fellow at the National Immigrant Justice Center. The author thanks Claudia Valenzuela and Hena Mansori for their invaluable assistance.

project, NIJC has saved the lives of clients fearing political, racial, ethnic, and religious persecution, gender-based violence, and abuse and discrimination based on sexual orientation. NIJC's Defenders Initiative offers training and individual case consultation to federal and state criminal defense attorneys regarding the immigration consequences of criminal convictions as well as educational materials on how to protect the rights of noncitizen defendants.

The advisory is not legal advice; attorneys must advise their clients based on the specific facts and applicable law that pertain to clients' cases, including legal developments that post-date this advisory. Likewise, the advisory is not intended to provide a detailed explanation of immigration laws, remedies, or the consequences of criminal convictions.² Rather, it is intended to provide information about immigration law that may impact their clients who fear return to their home countries.

I. THE DIFFERENT TYPES OF PROTECTION-BASED RELIEF: OVERVIEW OF SUBSTANTIVE AND PROCEDURAL CONSIDERATIONS

A. Asylum

Asylum is a lawful immigration status for individuals who fear persecution in their home countries. An applicant for asylum must meet the definition of refugee in the Immigration and Nationality Act: a person who has suffered past persecution or possesses a well-founded fear of future persecution "on account or face, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). These are known as the five protected grounds. Membership in a particular social group may include members of a village, family, clan, union, student group, human rights group; LGBT individuals; women fearing domestic violence or spousal abuse; women opponents of gender-based violence, including female genital mutilation; individuals who oppose their government's policies on birth control and/or family planning; or possibly individuals who members of groups that have been targeted by gangs or drug cartels.³

² NIJC's Defenders Initiative provides one-on-one phone and email consultation to defenders who represent noncitizen clients and have general or case-specific questions about immigration law and the immigration consequences of criminal convictions. You can contact the Defenders Initiative by phone at (312) 660-1610 or by email at defenders@heartlandalliance.org. The Defenders Initiative maintains some written resources on its webpage, available at <http://immigrantjustice.org/programs/defenders-initiative-0>. The Defending Immigrants Partnership's Library is another excellent source for resources on the immigration consequences of crimes. See <http://defendingimmigrants.org/>.

³ For more information, resources, and case discussions regarding asylum claims based on membership in a particular social group, including gender-based, LGBT-based, gang-based, and cartel-based claims, contact NIJC's Defenders Initiative at defenders@heartlandalliance.org or at (312) 660-1610, or visit NIJC's webpage on representing asylum-seekers, at <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>. NIJC also has a manual on representing individuals with LGBT- or HIV/AIDS-based asylum claims, available at <http://immigrantjustice.org/useful-documents-attorneys-representing-lgbt-and-hiv-positive-immigrants>.

Persecution may include physical harm (including gender-based harm⁴), psychological abuse, malicious or pretextual prosecution or severe punishment for a criminal offense, economic persecution and other forms of severe discrimination, or severe extortion or robbery, *if motivated by one of the five protected grounds*. Threats alone typically do not constitute persecution unless they “are so menacing as to cause significant actual suffering or harm.” *Li v. Att’y Gen.*, 400 F.3d 157, 164 (3d Cir. 2005) (quoting *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000)). The threat or harm must come from the government of the home country or from someone the government cannot or will not control, potentially including gangs (*see Singh v. INS*, 94 F.3d 1353, 1359 (9th Cir. 1996)) or family members (*see Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996)).

Generally, a person must apply for asylum within one year of entering the United States (the “one-year bar”). Noncitizens can overcome the one-year filing deadline bar to asylum by showing changed circumstances or extraordinary circumstances. 8 C.F.R. § 208.4(a)(4), (5). Changed circumstances may include changed country conditions or a change in the applicant’s personal situation. Extraordinary circumstances may include serious illness, mental disability, legal disability, ineffective assistance of counsel, individuals who had lawful status but then lost that status at reasonable time before filing for asylum, death or serious illness/incapacity of the legal representative or an immediate family member, or improperly filed yet timely application followed by refiling within a reasonable time after the return of the original application by the U.S. Citizenship and Immigration Services (“USCIS”) branch of the Department of Homeland Security (“DHS”).

The applicant bears the burden of proof of showing that she meets the definition of a refugee under 8 U.S.C. § 1101(a)(42)(A) and must provide corroborative testimonial and/or documentary evidence, where available, to meet the burden of proof, which can include her own testimony. *See Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000); *Matter of Fefe*, 20 I&N Dec. 166, 118 (BIA 1989). The applicant must show both a subjective and objective fear of returning to her home country. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). Persecution must be “a reasonable possibility;” a ten percent chance of persecution may be enough to show a well-founded fear. *Cardoza-Fonseca*, 480 U.S. at 440. An applicant who has suffered past persecution is presumed to have a well-founded fear of future persecution (8 C.F.R. § 1208.13(b)(1)). The presumption can be rebutted by a preponderance of evidence showing that there has been a fundamental change of circumstances or that the applicant could safely relocate to another part of her home country. *See Singh v. INS*, 63 F.3d 1501, 1508-10 (9th Cir. 1995).

A grant of asylum permits the individual to remain lawfully in the United States, obtain a work permit, and eventually adjust to lawful permanent resident status and/or naturalize. An asylee may apply for lawful permanent resident status one year after being granted asylum so long as the asylee can show continuous residence within the United State for that period. *See* 8 U.S.C. § 1158.

Bars to asylum:

- One-year filing deadline, unless changed circumstances or extraordinary circumstances. 8 U.S.C. § 1158(a)(2)(B); 8 C.F.R. § 208.4. 208.34.

⁴ Past female genital mutilation (“FGM”) or a threat of future FGM has been held to be a form of persecution. *See Matter of Kasinga*, 21 I&N 357 (BIA 1996); *see also Mohammed v. Gonzales*, 400 F.3d 785, 800 (9th Cir. 2005).

- Particularly Serious Crimes (“PSC”) – For asylum purposes, any aggravated felony, as defined in 8 U.S.C. § 1101(a)(43), constitutes a PSC. 8 U.S.C. § 1158(b)(2)(A)(ii). Immigration Judges (“IJs”) also have the authority to designate non-aggravated felonies as PSCs. In determining whether a crime is particularly serious, an IJ will look at (1) the nature of the crime; (2) the circumstances surrounding the crime; (3) the length of the sentence imposed; and (4) whether the crime indicates dangerousness to the community. *See Matter of S-S-*, 22 I&N Dec. 3374 (BIA 1999); *Matter of Frentescu*, 19 I. & N. Dec. 244 (BIA 1982).⁵
- Serious nonpolitical criminal offenses committed before coming to the United States. 8 U.S.C. § 1158(b)(2)(A)(iii).
- Membership in a designated “terrorist” organization, commission of certain “terrorist acts,” or having provided “material support” to “terrorist” organizations. 8 U.S.C. § 1158(b)(2)(A)(v); *see Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006).
- Prior persecution of others. 8 U.S.C. § 1158(b)(2)(A)(i).
- Firm resettlement (*i.e.*, if the asylum seeker has been offered permanent resident or equivalent status in a third country), unless the status came with lesser rights than citizenship or the stay in the third country was brief and was part of an unbroken chain of flight, with certain exceptions. 8 U.S.C. § 1158(b)(2)(A)(vi); 8 C.F.R. § 208.15.
- Safe Third-Country Agreement: A multilateral or bilateral treaty with the U.S. whereby if the asylum seeker came to the United States via another country in which she can receive a full and fair procedure for determining eligibility for asylum, she can be returned to that country. 8 U.S.C. § 1158(a)(2)(A). So far only Canada has such an agreement with the United States.
- “Danger to the Security of the United States. 8 U.S.C. § 1158(b)(2)(A)(iv).

How to apply for asylum:

Asylum is a discretionary form of relief. Even if the applicant meets all of the eligibility requirements, the adjudicator can deny asylum if he finds that the applicant does not merit a favorable exercise of discretion. 8 C.F.R. § 208.20. Negative discretionary factors may include criminal convictions or entry into the United States by means of false documents. *See Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987) (holding that “[t]he use of fraudulent documents to escape the country of persecution itself is not a significant adverse factor while, at the other extreme, entry under the assumed identity of a United States passport, which was fraudulently obtained by the alien from the United States Government, is very serious fraud.”)

Tip – Screening Noncitizens Charged with Entering the U.S. Using False Documents for Fear of Return:

Often, individuals fleeing persecution have no option but to obtain false documents. Defenders working at or near the borders or ports of entry should screen clients facing prosecution for possession of false documents to see if the false documents were their only means of escaping persecution in a home country.

A noncitizen seeking asylum must complete a Form I-589

⁵ For an excellent summary of case law standards and determinations regarding what constitutes a “particularly serious crime”, see the Immigrant Defense Project’s “‘Particularly Serious Crime’ Bars on Asylum and Withholding of Removal”, available at http://immigrantdefenseproject.org/wp-content/uploads/2011/10/FINALAppendix-F_FINAL5thEd.pdf.

Application for Asylum and Withholding of Removal.⁶ The Form I-589 and Instructions to Form I-589 (“Instructions”) are available on the USCIS website at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=d9e9814836a14d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM1000045f3d6a1RCRD>. (A copy of the instructions and a completed sample Form may also be found in the Appendix.) The applicant also is advised to submit a memorandum of law summarizing the her case and illustrating why she qualifies for asylum, along with supporting documents, *e.g.*, country conditions reports, expert affidavits, etc., that corroborate her case.⁷

* *Affirmative asylum applications*

An “affirmative asylum application,” *i.e.*, one that is submitted within a year of the noncitizen’s entry to the United States, is adjudicated by the USCIS Asylum Office. The I-589 form should be submitted along with a supporting affidavit to the USCIS service center with jurisdiction over the applicant’s place of residence (*see* Appendix, Instructions to Form I-589). After the form is submitted, the applicant will receive a non-adversarial interview by an asylum officer. 8 C.F.R. § 208.9(a). At the conclusion of the interview, the applicant usually is given a date to “come back” to pick up the asylum officer’s decision. 8 C.F.R. § 208.21. If the asylum officer grants the application, then the individual becomes an asylee. 8 C.F.R. § 208.14(b).

If the asylum officer denies asylum for a removable noncitizen, the individual will be placed in removal proceedings before an IJ.⁸ 8 C.F.R. § 208.19. The IJ will review the asylum application *de novo*. 8 C.F.R. § 208.7(a)(1). Presentation of the asylum claim before the IJ takes place in an adversarial proceeding in which government counsel can cross-examine the applicant. The IJ may consider withholding of removal or CAT relief as alternatives to the asylum application.

* *Defensive asylum applications*

Federal defenders’ clients more likely will be in a position to file a defensive than an affirmative asylum application. If the noncitizen already is in removal proceedings – for example, if the noncitizen has been convicted of removable crime and received a Notice to Appear (“NTA”) or immigration charging document – then she may apply for asylum directly before the IJ by filing a Form I-589 with the IJ. This is known as a “defensive asylum application.” The IJ will adjudicate the asylum claim (and consider, in the alternative, withholding of removal or CAT relief) in adversarial

⁶ An asylum applicant may include a spouse and unmarried children under age 21 who are in the United States as derivatives of the application. If they are outside the United States, an asylee can apply to have a spouse and children come to the United States after she is granted asylum by filing a Form I-730.

⁷ The filing of an asylum application permits the noncitizen to seek employment authorization before USCIS 150 days after the asylum application was filed. 8 C.F.R. § 208.7(a)(1).

⁸ Alternatively, if the asylum applicant has lawful “nonimmigrant” status, *e.g.*, a valid visa, or Temporary Protected Status, the asylum officer will issue a Notice of Intent to Deny (“NOID”) identifying grounds for proposed denial. The applicant then will have an opportunity to overcome the NOID. If the applicant fails to overcome the NOID, the officer will issue a decision explaining the reasons for denial. 8 C.F.R. § 208.19. The denial however, will not result in the initiation of removal proceedings.

proceedings.⁹

If an IJ or the Board of Immigration Appeals (“BIA”) determines that an individual has filed a frivolous asylum application, “the alien shall be permanently ineligible for any benefits under the [Immigration and Nationality] Act.” 8 U.S.C. § 1108(d)(6). A frivolous application is one in which any material element is “deliberately fabricated.” 8 C.F.R. § 208.20. An individual who has been found to have filed a frivolous asylum application may still seek withholding of removal. 8 C.F.R. § 208.20.

B. Withholding of Removal

Withholding is similar to asylum in that it is a form of protection-based relief available to individuals who fear persecution based on one or more of the five protected grounds. See 8 U.S.C. § 1231(b)(3)(A), (B). The standard of proof of persecution for withholding -- “more likely than not” – is higher than asylum. But unlike asylum, which is discretionary, if the applicant for withholding meets the burden, the IJ is mandated to grant withholding relief.

Bars to withholding:

Unlike asylum, there is no one-year filing deadline for withholding. In addition, there are fewer criminal bars to withholding than asylum; an individual with an aggravated felony can apply for withholding of removal if the sentence received was less than five years and the IJ finds that the offense was not “particularly serious.” The following bars to withholding do exist:

- Particularly Serious Crimes (“PSC”) – For withholding purposes, an aggravated felony constitutes a PSC if the aggregate term of imprisonment was at least five years. 8 U.S.C. § 1231(b)(3). IJs also have the authority to designate non-aggravated felonies as PSCs based on (1) the nature of the crime; (2) the circumstances surrounding the crime; (3) the length of the sentence imposed; and (4) whether the crime indicates dangerousness to the community. See *Matter of S-S-*, 22 I&N Dec. 3374 (BIA 1999); *Matter of Frentescu*, 19 I. & N. Dec. 244 (BIA 1982).
- Serious nonpolitical criminal offenses committed before coming to the United States. 8 U.S.C. § 1158(b)(2)(A)(iii).
- Membership in a designated “terrorist” organization, commission of certain “terrorist acts,” or having provided “material support” to “terrorist” organizations. 8 U.S.C. § 1158(b)(2)(A)(v); see *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006)
- Prior persecution of others. 8 U.S.C. § 1158(b)(2)(A)(i).
- “Danger to the Security of the United States. 8 U.S.C. § 1158(b)(2)(A)(iv).

How to apply for withholding:

Withholding of removal must be sought before an IJ, not the USCIS Asylum Office. The same Form

⁹ Note that there is startling disparity in asylum grant rates among IJs and immigration courts across the country. See generally, Transactional Records Access Clearinghouse (“TRAC”) report on asylum grant rates, available at <http://trac.syr.edu/immigration/reports/240/>.

I-589 as asylum is used.

A grant of withholding of removal prevents DHS from effectuating an individual's deportation to the country in which the individual faces persecution. An IJ still issues an order of removal, but "withholds" it based on the likelihood of persecution that an individual faces. A grant of withholding of removal also permits the individual to live and work lawfully in the United States.¹⁰

A person granted withholding may never apply for lawful permanent resident status, naturalize, or apply to petition for their family members. ***It is not advisable for individuals with withholding of removal to leave the United States – since they technically are subject a removal order, they will not be allowed back into the country after a departure.*** In addition, they are subject to future removal to their home country should country conditions change, or to removal to a safe third country.

C. Relief Under the Convention Against Torture ("CAT")

An individual who can show that it is more likely than not that he will be subjected to torture by or at the acquiescence of the government of his home country may seek relief under the Convention Against Torture ("CAT"). "Torture" is defined at 8 C.F.R. §§ 208.18(a) and 1208.18(a). It is not necessary to establish that the torture be on account of one of the five protected grounds.

There are two types of CAT relief, distinguished primarily by the criminal bars to relief: withholding of removal under CAT, and deferral of removal under CAT.

Bars to CAT relief:

- Withholding of removal under CAT:
 - Particularly Serious Crimes ("PSC") – For withholding under CAT purposes, the same PSC bar applies as for withholding of removal (*see supra*).
- Deferral of removal under CAT:
 - No criminal bars to deferral of removal under CAT relief; even an individual with a prior aggravated felony, no matter the sentence imposed, may be granted CAT.

How to apply for CAT relief:

CAT relief is mandatory, meaning that an IJ must grant relief to an applicant who meets his burden. Like withholding of removal, CAT relief results in a removal order that is "deferred" such that the individual may remain lawfully in the United States. CAT relief does not permit future LPR status or naturalization, and leaves the individual subject to future removal should conditions in the home country change such that it would be safe for the individual to return.

¹⁰ An individual who has been granted withholding of removal must submit an application for an employment authorization document (EAD) to the USCIS annually for permission to work.

D. Refugee Waiver

An individual with asylum or refugee status who has been convicted of a crime of inadmissibility (see 8 U.S.C. § 1181(a)(2)) may try to adjust status to lawful permanent resident with a so-called “refugee waiver” of the criminal bar. See 8 U.S.C. § 1159(c). The waiver requires a favorable showing of public interest, family unity, and humanitarian concerns. *Id.* Drug trafficking offenses, terrorist activities, espionage, and persecution of others are bars to the refugee waiver. *Id.*

II. SPECIAL PROCEDURAL CONSIDERATIONS: CREDIBLE FEAR INTERVIEWS AND REASONABLE FEAR INTERVIEWS

A. Expedited Removal and Credible Fear Interviews

An individual who is arrested by the Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”) branches of DHS while attempting to enter the United States (at the border, or at an airport) without documents or with allegedly fraudulent documents is called an “**arriving alien**.” An arriving alien is subject to **expedited removal** proceedings. An individual who has **entered without inspection (“EWI’d”)** and is **apprehended within 100 miles** of the border also is subject to expedited removal.

Expedited removal is a type of summary removal process administered by a DHS officer through which arriving aliens or EWI individuals caught within 100 miles of the border are ordered removed without ever appearing before an IJ. However, there are two circumstances in which an individual subject to expedited removal may see an IJ.

First, an individual who can show that he has some legal status in the United States either will be allowed to enter the country or will be placed in removal proceedings before an IJ.

Second, an individual subject to expedited removal who expresses a fear of returning to his home country will receive a non-adversarial “**credible fear interview**” before a DHS Asylum Officer. The individual should receive a Form M-444 “Information about Credible Fear Interview” that explains his rights in the interview process. The noncitizen may receive legal counsel prior to the credible fear interview and may have counsel present with him at the interview. The interview primarily will be conducted between the officer and the noncitizen; however, counsel may make a statement at the close of the interview.

To establish credible fear of persecution, the individual must show “that there is a significant possibility...that the alien could establish eligibility for asylum.” 8 U.S.C. § 1235(b)(1)(B)(V). If the asylum officer finds a credible fear of harm in the home country, the officer will refer the case to the immigration court for a hearing before an IJ, where the noncitizen can file an application for asylum, withholding of removal, and/or CAT relief.

If the asylum officer makes a negative credible fear determination, the individual has a right to a review of the determination by an IJ within seven days of the determination. He will not be entitled to a full asylum hearing, but merely a short hearing in which the IJ questions the individual about his fear of persecution and considers any relevant documentation on country conditions. 8 U.S.C. §

1235(b)(1)(B)(iii)(III). The review takes place in person or, for many detained individuals, by telephone or video-teleconferencing. Counsel may be present. The IJ may affirm the asylum officer's determination and order the individual removed, in which case the individual will remain detained until he is removed. Alternatively, if the IJ finds that the individual does have a credible fear, the IJ will allow a full asylum hearing.

An arriving alien who passes a credible fear interview or for whom an IJ finds credible fear after an asylum officer's negative credible fear determination may seek to be paroled from detention. EWI individuals who were issued expedited orders but pass credible fear interviews may seek bond. See Section C, *infra* at 10.

B. Previously Removed Individuals Who Have a Fear of Return: Illegal Reentry Cases and Reasonable Fear Interviews

The INA provides that a noncitizen who reenters the United States without permission after previously being removed is subject to reinstatement of the original order, such that the noncitizen automatically is removed again under the original order.¹¹ 8 U.S.C. § 1231(a)(5). ***Federal defense attorneys representing noncitizens in illegal reentry cases are especially likely to come across reinstatement cases.***

The reinstatement order, like an expedited removal order, is issued by a DHS officer without a hearing before an IJ. The only procedural requirements for issuing a reinstatement order are that the immigration officer (1) obtain the prior order; (2) confirm that the individual is the same person who was previously removed; (3) confirm that the individual unlawfully reentered; and (4) provide written notice of the reinstatement to allow the individual an opportunity to respond. 8 C.F.R. § 241.8(a), (b).

If DHS determines that a noncitizen is subject to reinstatement, an immigration officer will issue a Form-871, Notice of Intent to Reinstate Prior Order. The officer will complete the top portion of the Form I-871, including listing factual allegations against the noncitizen. The noncitizen will be asked to sign the Form I-871. Alternatively, the noncitizen may contest the allegations in an oral or written statement to the DHS officer. 8 C.F.R. § 241.8(a)(3). If the noncitizen signs the form, the officer will complete the portion of the Form I-871 entitled "Decision, Order and Officer's Certification," which is the actual reinstatement order. The date of completion of the form is the effective date of the reinstatement.

¹¹ Individuals applying for adjustment of status who are covered by certain class action lawsuits, as well as certain Nicaraguans, Cubans, Salvadorans, Guatemalans, and Eastern Europeans eligible for a form of relief called NACARA, and Haitian applicants for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), are exempt from being subject to a reinstatement order. See Legal Immigration Family Equity Act (LIFE Act), 8 U.S.C. §§ 1104(g), 1505(a)(1), 1505(c), 1505(b)(1). In addition, any individual who applied for relief or took steps toward adjustment of status prior to 1997 may not be subject to reinstatement. See *Arevalo v. Ashcroft*, 344 F.3d 1 (1st Cir. 2003); *Faiz-Mohammed v. Ashcroft*, 395 F.3d 799 (7th Cir. 2005); *Sermiento-Cisneros v. Ashcroft*, 381 F.3d 1277 (11th Cir. 2004); *Valdez-Sachez v. Gonzales*, 485 F.3d 1084, 1089-90 (10th Cir. 2007); *Duran Gonzales v. DHS*, 508 F.3d 1227, 1242 n.14 (9th Cir. 2007).

If a noncitizen subject to reinstatement expresses a fear of returning to her home country and/or marks off a checkbox on the Form I-871 indicating that she has a fear of return, she will be granted a “**reasonable fear interview**” before a USCIS asylum officer. The reasonable fear process is similar to the credible fear process, but the burden of proof is higher for the reasonable fear determination. Counsel may be present for the interview and may make a statement and/or question the individual after the officer finishes asking questions.

To establish a reasonable fear of persecution, the individual must demonstrate “a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal.” 8 C.F.R. § 208.31(c). The bars to relief are not considered during the reasonable fear interview. *Id.* At the close of the interview, the individual will be asked to review and sign a transcript, which will be passed on to the IJ.

If the asylum officer determines that the individual has a reasonable fear of persecution, the individual will be placed in removal proceedings to seek withholding or CAT before an IJ instead of being automatically reinstated. 8 C.F.R. § 241.8(a), (e); 8 C.F.R. § 208.31.¹² If the asylum officer makes a negative reasonable fear determination, the individual has the right to a review of the determination by the IJ within 10 days of the determination. 8 C.F.R. § 208.31(g). If the IJ affirms the asylum officer’s decision, the noncitizen will remain detained and will be subject to reinstatement. The IJ’s decision is not appealable. If the IJ find that the noncitizen has a reasonable fear, the noncitizen will be placed in removal proceedings, where she can apply for withholding or CAT.

Tip – Fear of Return and Negotiating with the AUSA:

If your client fears returning to her home country, raise this point with the AUSA. Advocate with the AUSA that the individual be allowed to plead to an offense that will leave her eligible for asylum or withholding of removal.

Tip – Discovery in Illegal Reentry Cases:

Be sure to request a copy of the Form I-871 Notice of Intent to Reinstatement as part of discovery in an illegal reentry case. Contact an immigration attorney as soon as possible if your client has received a Form I-871 and has a fear of return.

C. Note on Bond and Parole Issues for Individuals Seeking Protection-Based Relief

Detained individuals who entered the United States lawfully and are seeking asylum or withholding of removal may request an immigration bond, provided that they are not bond-ineligible for other reasons (e.g., criminal grounds). See 8 U.S.C. § 1226(c). Individuals who entered the United States without inspection (“EWI”) – *i.e.*, individuals who are undocumented – also may request a bond so long as they do not meet any of the bond-ineligibility criteria set forth in § 1226(c). See *id.*

¹² Under current interpretation of the regulations, individuals who pass the reasonable fear interview are not eligible for asylum or other relief besides withholding of removal or relief under CAT. 8 C.F.R. § 208.31(g)(2).

An arriving alien is not eligible for bond. See 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). However, an arriving alien who passes a credible fear interview may request to be released on parole.¹³ Asylum applicants seeking parole from detention must provide evidence to support a grant of parole, including: proof of identification or a credible explanation about why such documentation is not available; proof of a sponsor (an individual with lawful immigration status with whom the asylum-seeker can reside) or secured housing (a long-term shelter or faith-based home); proof that the asylum-seeker is not a flight risk or a danger to the community; and any other humanitarian factors. Certain criminal convictions will bar an asylum-seeker from being paroled. See ICE Parole Guidelines for Arriving Aliens Found to Have a Credible Fear of Persecution or Torture, available at <http://www.ice.gov/gcse-results.htm?q=parole&cx=008742725097888865614%3A-tv3i3imaqu&cof=FORID%3A9&ie=UTF-8>.

III. PROTECTION-BASED CLAIMS AND SENTENCING

Establishing a fear of return is not only something that may help a noncitizen obtain protective status in the United States; it also may serve as mitigation at sentencing in criminal cases. If your client expresses a fear of future harm and/or has been persecuted, tortured, discriminated against, or otherwise harmed in the past in his home country, consider compiling evidence of the harm, including country conditions information, to present at sentencing.

Some excellent sources of country conditions information include:

- Amnesty International: www.amnesty.org
- Amnesty International USA: www.amnestyusa.org
- Human Rights Watch: www.hrw.org
- United Nations High Commissioner for Refugees: www.unhcr.org/refworld
- U.S. Department of State: www.state.gov/g/drl/rls/hrrpt
- World Organization Against Torture: www.omct.org
- NIJC's LGBT Immigrant Rights Initiative, Asylum Documentation Project, <http://immigrantjustice.org/asylum-documentation-project>
- University of Hastings' Center for Gender and Refugee Studies: www.cgrs.uchastings.edu/country

Additional resources:

- NIJC, "Useful Documents for Attorneys Representing Asylum-Seekers," <http://immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>
- NIJC, "Useful Documents for Attorneys Representing LGBT and HIV-Positive Immigrants", <http://immigrantjustice.org/useful-documents-attorneys-representing-lgbt-and-hiv-positive-immigrants>

¹³ Note that "parole" has a different definition in the immigration than the criminal context, in that it is not a form of punishment in the immigration context.

IV. SCREENING CLIENTS FOR FEAR OF RETURN AND ADVISING NONCITIZEN DEFENDANTS WHO HAVE A FEAR OF RETURN

Defenders should screen all noncitizen clients for a fear of return. Individuals who have been tortured or persecuted are often traumatized and/or reticent to discuss their experiences; attorneys will need to build trust with their clients and may need to ask questions in different ways. For example, you may want to ask your client the following:

- Do you have a fear of being sent back to your home country?
- Have you or anyone in your family ever been persecuted or tortured in your home country?
- Has anyone in your home country ever hurt or discriminated against you or a member of your family because of your religion? Political views? Ethnicity? Gender? Sexual orientation?

If your client answers “yes” to any of the above or similar questions, be sure to **detailed** questions about who, when, where, why, and how the harm happened.

If you believe that your client fears persecution or torture in her home country, advise her to:

- Request a reasonable fear interview from DHS as soon as possible to avoid reinstatement, if she has a prior removal order.¹⁴ Tell your client that she will not need to submit an asylum application for the interview itself, but will need to explain in detail to the interviewer why she fears returning home.
- Ask a DHS officer and/or the IJ for an application for asylum, withholding, or CAT relief if she is likely to be placed in removal proceedings.
- Avoid signing any document that she does not understand (but in particular, a stipulated removal order or the notice of intent to reinstate).
- Contact an immigration attorney to discuss her protection-based claim. See Executive Office for Immigration Review, State-by-State Directory of Free Immigration Legal Services Providers, available at <http://www.justice.gov/eoir/probono/states.htm>.

¹⁴ A noncitizen may request a reasonable fear interview even after receiving a Form I-871 notice of intent to reinstate the prior removal order.

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I-589, Application for Asylum and for Withholding of Removal

Instructions

What Is the Purpose of This Form?

This form is used to apply for asylum in the United States and for withholding of removal (formerly called "withholding of deportation"). This application may also be used to apply for protection under the Convention Against Torture. You may file this application if you are physically present in the United States, and you are not a U.S. citizen.

NOTE: You **must** submit an application for asylum within 1 year of arriving in the United States, unless there are changed circumstances that materially affect your eligibility for asylum or extraordinary circumstances directly related to your failure to file within 1 year. (See **Part C, Additional Information about Your Application, in Section V on Part 1** of the instructions for further explanation.)

You may include in your application your spouse and unmarried children who are under 21 years of age and physically present in the United States. You **must** submit certain documents for your spouse and each child included as required by these instructions. Children 21 years of age or older and married children must file separate applications. If you are granted asylum and your spouse and/or any unmarried children under 21 years of age are outside the United States, you may file Form I-730, Refugee and Asylee Relative Petition, for them to gain similar benefits.

Instruction Sections: Filing Information and How Your Application Will Be Processed

The instructions are divided into two sections:

The first section has filing information. This section discusses basic eligibility criteria and guides you through filling out and filing the application.

The second section explains how your application will be processed. This section also describes potential interim benefits available while your application is pending.

Read these instructions carefully. The instructions will help you complete your application and understand how it will be processed. If you have questions about your eligibility, how to complete the form, or the asylum process, you may wish to consult an attorney or other qualified person to assist you. (See **Section IV, Right to Counsel, in Part I** of these instructions.)

WARNING: Applicants in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings, even if the application is later withdrawn.

Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act (INA). You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application.

If filing with U.S. Citizenship and Immigration Services (USCIS), unexcused failure to appear for an appointment or to provide biometrics (such as fingerprints) and other biographical information within the time allowed may delay eligibility for employment authorization and result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Applicants and eligible dependents in removal proceedings who fail without good cause to provide USCIS with their biometrics or their biographical information as required within the time allowed may have their applications found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 Code of Federal Regulations (CFR) sections 208.10, 1208.10, 208.20, 1003.47(d), and 1208.20.

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Part 1. Filing Instructions

I. Who May Apply and Filing Deadlines

You may apply for asylum irrespective of your immigration status and even if you are in the United States unlawfully.

You MUST file this application within 1 year after you arrived in the United States, unless you can show that there are changed circumstances that affect your eligibility for asylum or extraordinary circumstances that prevented you from filing within 1 year. (See Section IV, Right to Counsel, in Part I of these instructions.)

If you have previously been denied asylum by an immigration judge or the Board of Immigration Appeals, you must show that there are changed circumstances that affect your eligibility for asylum.

The determination of whether you are permitted to apply for asylum will be made once you have had an asylum interview with an asylum officer or a hearing before an immigration judge. Even if you are not eligible to apply for asylum for the reasons stated above, you may still be eligible to apply for withholding of removal under section 241(b)(3) of the INA or under the Convention Against Torture before the Immigration Court.

II. Basis of Eligibility

A. Asylum

In order to qualify for asylum, you must establish that you are a refugee who is unable or unwilling to return to his or her country of nationality, or last habitual residence in the case of a person having no nationality, 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. This means that you must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for your persecution or why you fear persecution. (See section 208 of the INA; 8 CFR sections 208 and 1208, et seq.)

If you are granted asylum, you and any eligible spouse or child included in your application will be permitted to remain and work in the United States and may eventually adjust to lawful permanent resident status. **If you are not granted asylum, the Department of Homeland Security (DHS) may use the information you provide in this application to establish that you are removable from the United States.**

B. Withholding of Removal

Your asylum application is also considered to be an application for withholding of removal under section 241(b)(3) of the INA, as amended. It may also be considered an application for withholding of removal under the Convention Against Torture if you checked the box at the top of **Page 1** of the form, or if the evidence you present indicates that you may be tortured in the country of removal. (See 8 CFR sections 208.13(c)(1) and 1208.13(c)(1)). If asylum is not granted, you may still be eligible for withholding of removal.

Regardless of the basis for the withholding application, you will not be eligible for withholding if you:

1. Assisted in Nazi persecution or engaged in genocide;
2. Have persecuted another person;
3. Have been convicted by a final judgment of a particularly serious crime and therefore represent a danger to the community of the United States;
4. Are considered for serious reasons to have committed a serious non-political crime outside the United States; or

-
5. Represent a danger to the security of the United States.
(see section 241(b)(3) of the INA; 8 CFR sections
208.16 and 1208.16.)

Withholding of Removal Under Section 241(b)(3) of the INA

In order to qualify for withholding of removal under section 241(b)(3) of the INA, you must establish that it is more likely than not that your life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal.

If you obtain an order withholding your removal, you cannot be removed to the country where your life or freedom would be threatened. This means that you may be removed to a third country where your life or freedom would not be threatened. Withholding of removal does not adhere derivatively to any spouse or child included in the application. They would have to apply for such protection on their own.

If you are granted withholding of removal, this would not give you the right to bring your relatives to the United States. It also would not give you the right to become a lawful permanent resident of the United States.

Withholding of Removal Under the Convention Against Torture

The Convention Against Torture refers to the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

To be granted withholding of removal to a country under the Convention Against Torture, you must show that it is more likely than not that you would be tortured in that country.

"Torture" is defined in Article 1 of the Convention Against Torture and at 8 CFR sections 208.18(a) and 1208.18(a). For an act to be considered torture, it must be an extreme form of cruel and inhuman treatment, it must cause severe physical or mental pain and suffering, and it must be specifically intended to cause severe pain and suffering.

Torture is an act inflicted for such purposes as obtaining from the victim or a third person information or a confession, punishing the victim for an act he or she or a third person has committed or is suspected of having committed, intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind.

Torture must be inflicted by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. The victim must be in the custody or physical control of the torturer. Torture does not include pain or suffering that arises only from, is inherent in, or is incidental to lawful sanctions, although such actions may not defeat the objective and purpose of the Convention Against Torture.

Form I-589, will be considered an application for withholding of removal under the Convention Against Torture if you tell the immigration judge that you would like to be considered for withholding of removal under the Convention Against Torture, or if it is determined that evidence indicates that you may be tortured in the country of removal.

To apply for withholding of removal under the Convention Against Torture, you must check the box at the top of **Page 1** of the application and fully complete Form I-589.

You must include a detailed explanation of why you fear torture in response to Part B, Question 4 of the application. In your response, you must write about any mistreatment you experienced or any threats made against you by a government or somebody connected to a government.

Only immigration judges and the Board of Immigration Appeals may grant withholding of removal or deferral of removal under the Convention Against Torture. If you have applied for asylum, the immigration judge will first determine whether you are eligible for asylum under section 208 of the INA and for withholding of removal under section 241(b)(3) of the INA. If you are not eligible for either asylum under section 208 of the INA or withholding of removal under section 241(b)(3) of the INA, the immigration judge will determine whether the Convention Against Torture prohibits your removal to a country where you fear torture.

As implemented in U.S. law, Article 3 of the Convention Against Torture prohibits the United States from removing you to a country in which it is more likely than not that you would be subject to torture. The Convention Against Torture does not prohibit the United States from returning you to any other country where you would not be tortured. This means that you may be removed to a third country where you would not be tortured. Withholding of removal under the Convention Against Torture does not allow you to adjust to lawful permanent resident status or to petition to bring family members to come to, or remain in, the United States.

C. Deferral of Removal Under the Convention Against Torture

If it is more likely than not that you will be tortured in a country but you are ineligible for withholding of removal, your removal will be deferred under 8 CFR sections 208.17(a) and 1208.17(a). Deferral of removal does not confer any lawful or permanent immigration status in the United States and does not necessarily result in release from detention. Deferral of removal is effective only until it is terminated. Deferral of removal is subject to review and termination if it is determined that it is no longer more likely than not that you would be tortured in the country to which your removal is deferred or if you request that your deferral be terminated.

D. Legal Sources Relating to Eligibility

The documents listed below are some of the legal sources relating to asylum, withholding of removal under section 241(b)(3) of the INA, and withholding of removal or deferral of removal under the Convention Against Torture. These sources are provided for reference only. You do not need to refer to them in order to complete your application.

1. Section 101(a)(42) of the INA, 8 U.S.C. 1101(a)(42) (defining "refugee");
2. Section 208 of the INA, 8 U.S.C. 1158 (regarding eligibility for asylum);
3. Section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3) (regarding eligibility for withholding of removal);
4. Title 8 of the CFR sections 208 and 1208, et seq.;
5. Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as ratified by section 2242(b) or the Foreign Affairs Reform and Restructuring Act of 1998 and 8 CFR section 208, as amended by the Regulations Concerning the Convention Against Torture: Interim Rule, 64 FR 8478-8492 (February 19, 1999) (effective March 22, 1999); 64 FR 13881 (March 23, 1999);
6. The 1967 United Nations Protocol relating to the Status of Refugees;
7. The 1951 Convention relating to the Status of Refugees; and
8. The Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for determining Refugee Status (Geneva, 1992).

III. Confidentiality

The information collected will be used to make a determination on your application. It may also be provided to other government agencies (Federal, State, local, and/or foreign) for purposes of investigation or legal action on criminal and/or civil matters and for issues arising from the adjudication of benefits. However, no information indicating that you have applied for asylum will be provided to any government or country from which you claim a fear of persecution. Regulations at 8 CFR sections 208.6 and 1208.6 protect the confidentiality of asylum claims.

IV. Right to Counsel

Immigration law concerning asylum and withholding of removal or deferral or removal is complex. You have a right to provide your own legal representation at an asylum interview and during immigration proceedings before the Immigration Court at no cost to the U.S. Government.

If you need or would like help to complete this form and to prepare your written statements, assistance from pro bono (free) attorneys and/or voluntary agencies may be available. Voluntary agencies may help you for no fee or a reduced fee, and attorneys on the list referred to below may take your case for no fee. If you have not already received from USCIS or the Immigration Court a list of attorneys and accredited representatives, you may obtain a list by calling **1-800-870-3676** or visiting the U.S. Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) Web site at www.usdoj.gov/eoir/probono/states.htm.

Representatives of the United Nations High Commissioner for Refugees (UNHCR) may be able to assist you in identifying persons to help you complete the application. RefWorld, available on UNHCR's Web site, provides useful country conditions information through a variety sources. Contact information for the UNHCR is :

United Nations High Commissioner for Refugees
1775 K Street NW Ste 300
Washington, DC 20006
Telephone: 202-296-5191
Web site: www.unhcr.org

Calls from Detention Centers and Jails. Asylum-seekers in detention centers and jails may call UNHCR collect at **202-296-5191** or toll-free at **1-888-272-1913** on Monday, Wednesday, and Friday, 2 p.m. - 5 p.m. (Eastern Standard Time).

V. Completing the Form

Type or print all of your answers in black ink on Form I-589. Your answers must be completed in English. Forms completed in a language other than English will be returned to you. Provide the specific information requested about you and your family. **Answer all the questions asked.**

If any question does not apply to you or you do not know the information requested, answer "none," "not applicable," or "unknown."

Provide detailed information and answer the questions as completely as possible. Applications filed with missing information may be returned to you as incomplete. If you need more space, attach Form I-589 Supplement A or B (included in the application package) and/or additional sheet(s) indicating the question number(s) you are answering.

You are strongly urged to attach additional written statements and documents that support your claim. Your written statements should include events, dates, and details of your experiences that relate to your claim for asylum.

NOTE: Put your Alien Registration Number (A-Number) (if any), name (exactly as it appears in Part A.I. of the form), signature, and date on each supplemental sheet and on the cover page of any supporting documents.

You will be permitted to amend or supplement your application at the time of your asylum interview before an asylum officer and at your hearing in Immigration Court by providing additional information and explanations about your asylum claim.

Part A.I. Information About You

This part asks for basic information about you. Alien Registration Number (A-Number) refers to your USCIS file number. If you do not already have an A-Number, USCIS will assign one to you.

You must provide your residential street address (the address where you physically live) in the United States in Part A.I., Question 7, of the asylum application. You may also provide a mailing address, if different from the address where you reside, in Question 8. If someone else is collecting your mail for you at your mailing address, you may enter that person's name in the "In Care Of" field in your response to Question 8. If your mailing address is a post office box, include that address in Question 8 **and** include a residential address where you physically live in Question 7.

In Question 12, use the current name of the country. Do not use historical, ethnic, provincial, or other local names.

If you entered the country with inspection, Form I-94 number referred to in Question 18b is the number on Form I-94, Arrival-Departure Record, given to you when you entered the United States. In Question 18c, enter the date and status as it appears on Form I-94. If you did not receive Form I-94, write "None." If you entered without being inspected by an immigration officer, write "No Inspection" in Question 18c in the current status or status section.

Part A.II. Spouse and Children

You must list your spouse and all of your children in this application, regardless of their age, marital status, whether they are in the United States, or whether or not they are included in this application or filing a separate asylum application.

You may ask to have included in your asylum application your spouse and/or any children who are under 21 years of age and unmarried, if they are in the United States. Children who are married and/or children who are 21 years of age or older must file separately for asylum by submitting their own Form I-589.

If you apply for asylum while in proceedings before the Immigration Court, the immigration judge may not have authority to grant asylum to any spouse or child included in your application who is not also in proceedings.

When including family members in your asylum application, you **must** submit one additional copy of your completed asylum application and primary documentary evidence establishing your family relationship for each family member, as described below:

1. If you are including your spouse in your application, submit three copies of your marriage certificate and three copies of proof of termination of any prior marriages.
2. If you are including any unmarried children under 21 years of age in your application, submit three copies of each child's birth certificate.

If you do not have and are unable to obtain these documents, you must submit secondary evidence. Secondary evidence includes but is not limited to medical records, religious records, and school records. You may also submit an affidavit from at least one person for each event you are trying to prove. Affidavits may be provided by relatives or others. Persons providing affidavits need not be U.S. citizens or lawful permanent residents.

Affidavits must:

1. Fully describe the circumstances or event(s) in question and fully explain how the person acquired knowledge of the event(s);
2. Be sworn to or affirmed by persons who were alive at the time of the event(s) and have personal knowledge of the event(s) (date and place of birth, marriage, etc.) that you are trying to prove; and
3. Show the full name, address, and date and place of birth of each person giving the affidavit and indicate any relationship between you and the person giving the affidavit.

If you submit secondary evidence or affidavits, you must explain why primary evidence (e.g., birth or marriage certificate) is unavailable. You may explain the reasons primary evidence is unavailable using Form I-589 Supplement B or additional sheets of paper. Attach this explanation to your secondary evidence or affidavits.

If you have more than four children, complete the Supplement A Form for each additional child or attach additional pages and documentation providing the same information asked in Part A.II. of Form I-589.

Part A.III. Information About Your Background

Answer Questions 1 through 5, providing details as requested for each question. Your responses to the questions concerning the places you have lived, your education, and your employment history must be in reverse chronological order starting with your current residence, education, and employment and working back in time.

Part B. Information About Your Application

This part asks specific questions relevant to eligibility for asylum, for withholding of removal under section 241(b)(3) of the Act, or for withholding of removal under the Convention Against Torture. At Question 1, check the box(es) next to the reason(s) that you are completing this application. For all other questions, check "Yes" or "No" in the box provided.

If you answer "Yes" to any question, explain in detail using Form I-589 Supplement B or additional sheets of paper, as needed.

You must clearly describe any of your experiences, or those of family members or others who have had similar experiences that may show that you are a refugee.

If you have experienced harm that is difficult for you to write down and express, you must be aware that these experiences may be very important to the decision-making process regarding your request to remain in the United States. At your interview with an asylum officer or hearing with an immigration judge, you will need to be prepared to discuss the harm you have suffered. If you are having trouble remembering or talking about past events, we suggest that you talk to a lawyer, an accredited representative, or a health professional who may be able to help you explain your experiences and current situation.

Part C. Additional Information About Your Application

Check "Yes" or "No" in the box provided for each question. If you answer "Yes" to any question, explain in detail using Form I-589 Supplement B or additional sheets of paper, as needed.

If you answer "Yes" to Question 5, you must explain why you did not apply for asylum within the first year after you arrived in the United States. The Government will accept as an explanation certain changes in the conditions in your country, certain changes in your own circumstances, and certain other events that may have prevented you from applying earlier.

For example, some of the events the Government might consider as valid explanations include but are not limited to the following:

1. You have learned that human rights conditions in your country have worsened since you left;
2. Because of your health, you were not able to submit this application within 1 year after you arrived;
3. You previously submitted an application, but it was returned to you because it was not complete, and you submitted a complete application within a reasonable amount of time.

Federal regulations specify some of the other types of events that may also qualify as valid explanations for why you filed late. These regulations are found at 8 CFR, sections 208.4 and 1208.4. The list in the regulations is not all-inclusive, and the Government recognizes that there are many other circumstances that might be acceptable reasons for filing more than 1 year after arrival.

If you are unable to explain why you did not apply for asylum within the first year after you arrived in the United States or your explanation is not accepted by the Government, you may not be eligible to apply for asylum, but you could still be eligible for withholding of removal.

Part D. Your Signature

You must sign your application in Part D and respond to the questions concerning any assistance you received to complete your application, providing the information requested. Sign after you have completed and reviewed the application.

If it is determined that you have knowingly made a frivolous application for asylum, you can be permanently ineligible for any benefits under the INA. (See section 208(d)(6) of the INA.)

According to regulations at 8 CFR sections 208.20 and 1208.20, an application is frivolous if any of its material elements is deliberately fabricated. (See Section IV, Right to Counsel, in Part 1 of these instructions if you have any questions.) Note that you may not avoid a frivolous finding simply because someone advised or told you to provide false information on your asylum application.

Part E. Signature of Person Preparing Form, If Other Than You

Any person, other than an immediate family member (your spouse, parent(s) or children), who helped prepare your application must sign the application in Part E and provide the information requested.

Penalty for Perjury

All statements in response to questions contained in this application are declared to be true and correct under penalty of perjury. You and anyone, other than an immediate family member, who assists you in preparing the application must sign the application under penalty of perjury. Your signature is evidence that you are aware of the contents of this application. Any person assisting you in preparing this form, other than an immediate family member, must include his or her name, address, and telephone number and sign the application where indicated in Part E.

Failure of the preparer to sign will result in the application being returned to you as an incomplete application.

If USCIS or EOIR later learns that you received assistance from someone other than an immediate family member and the person who assisted you **willfully** failed to sign the application, this may result in an adverse ruling against you.

Title 18, United States Code (U.S.C.), Section 1546(a), provides in part:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement shall be fined in accordance with this title or imprisoned not more than 10 years, or both.

If aggravating factors exist, the maximum term of imprisonment could reach 25 years.

If you knowingly provide false information on this application, you or the preparer of this application may be subject to criminal penalties under Title 18 of the U.S.C. and to civil penalties under section 274C of the INA, 8 U.S.C.324c.

Part F. To Be Completed at Asylum Interview, If Applicable

Do not sign your application in Part F before filing this form. You will be asked to sign your application in this space at the conclusion of the interview regarding your claim.

NOTE: You must, however, sign Part D of the application.

Part G. To Be Completed at Removal Hearing, If Applicable

Do not sign your application in Part G before filing this form. You will be asked to sign your application in this space at the hearing before the immigration judge.

NOTE: You must, however, sign Part D of the application.

You are again reminded that, if it is determined that you have knowingly made a frivolous application for asylum, you can be permanently ineligible for any benefits under the INA. (See section 208(d)(6) of the INA.)

According to regulations at 8 CFR sections 208.20 and 1208.20, an application is frivolous if any of its material elements is deliberately fabricated. Again, note that you may not avoid a frivolous finding simply because someone advised or told you to provide false information on your asylum application.

VI. Required Documents and Required Number of Copies That You Must Submit With Your Application

You must submit the following documents to apply for asylum and withholding of removal:

- 1. The completed, signed original and two copies of your completed application, Form I-589, and the original and two copies of any supplementary sheets and supplementary statements.** If you choose to submit additional supporting material, see **Section VII, Additional Evidence That You Should Submit, in Part 1** of these instructions. You **must** include three copies of each document. You should make and keep an additional copy of the completed application for your own records.
- 2. An additional copy of your completed application, Form I-589, with supplementary statements, for each family member listed in Part A.II. whom you want to have included in your application.**

- 3. Three copies of primary or secondary evidence of relationship, such as birth or school records of your children, marriage certificate, or proof of termination of marriage, for each family member listed in Part A.II. whom you want to have included in your application.**

NOTE: If you submit an affidavit, you must submit the original and two copies. (For affidavit requirements, see **Part A.II in Part 1, Section V**, of these instructions.)

- 4. One passport-style photograph of yourself and of each family member listed in Part A. II. who is included in your application.** The photos must have been taken no more than 30 days before you file your application. Using a pencil, print the person's complete name and A-Number (if any) on the back of his or her photo.
- 5. Three copies of all passports or other travel documents (cover to cover) in your possession and three copies of any U.S. immigration documents, such as a Form I-94, Arrival-Departure Record, for you and each family member included in your application, if you have such documents.**
- 6. If you have other identification documents (e.g., birth certificate, military or national identification card, driver's license, etc.), we recommend that you submit three copies with your application and bring the original(s) with you to the interview.**

Copies. *Documents filed with this application should be photocopies.* If you choose to send an original document, USCIS or the Immigration Court may keep that original document for its records.

Translations. Any document containing foreign language submitted to USCIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

VII. Additional Evidence That You Must Submit

You must submit reasonably available corroborative evidence showing **(1)** the general conditions in the country from which you are seeking asylum, and **(2)** the specific facts on which you are relying to support your claim.

If evidence supporting your claim is not reasonably available or you are not providing such corroboration at this time, you must explain why, using Form I-589 Supplement B or additional sheets of paper.

Supporting evidence may include but is not limited to newspaper articles, affidavits of witnesses or experts, medical and/or psychological records, doctors' statements, periodicals, journals, books, photographs, official documents, or personal statements or live testimony from witnesses or experts.

If you have difficulty discussing harm you have suffered in the past, you may wish to submit a health professional's report explaining this difficulty.

VIII. Fee

There is no fee for filing this application.

XI. Biometrics, Including Fingerprints and Photographs

Applicants for asylum are subject to a biometrics check of all appropriate records and other information databases maintained by the U.S. Attorney General and U.S. Secretary of State.

You and your eligible spouse or children over 14 years of age listed on your asylum application must provide biometrics. You and your spouse and children will be given instructions on how to complete this requirement. You will be notified in writing of the time and location of the Application Support Center where you must go to be fingerprinted and photographed.

If filing with USCIS, unexcused failure to appear for a scheduled appointment or to provide your required biometrics, including fingerprints and photograph, or to provide other biographical information within the time allowed, may delay eligibility for employment authorization and/or result in an asylum officer dismissing your asylum application or referring it to an immigration judge. For applicants before an immigration judge, such failure without good cause may constitute an abandonment of your asylum application and result in the denial of employment authorization. (See 8 CFR section 1003.47(d)).

At the time you file your Form I-589, you **must** submit photographs as specified in **Section VI, Required Documents and Required Number of Copies That You Must Submit With Your Application, in Part 1** of these instructions.

X. Organizing Your Application

Put your application together in the following order, forming one complete package (if possible, secure with binder clips and rubber bands so that material may be easily separated):

1. Your original Form I-589, with all questions completed, and the application signed by you in Part D and signed by any preparer in Part E; and
2. One passport-style photograph of you stapled to the form at Part D.

Behind your original Form I-589, attach in the following order:

1. One Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by you and the attorney or representative, if you are represented by an attorney or representative;
2. The originals of all supplementary sheets and supplementary statements submitted with your application;
3. One copy of any additional supporting documentation;
4. One copy of the evidence of your relationship to your spouse and unmarried children under 21 years of age to be included in your application, if any; and
5. Two copies of the items listed above in your original package, except your photograph.

If you are including family members in your application, attach one additional package for each family member. Arrange each family member's package as follows:

1. One copy of your completed, signed Form I-589 and supplementary sheets submitted with the original application. In Part A.II., staple in the upper right corner one passport-style photo of the family member to be included; and
2. One copy of Form G-28, if any.

For example, if you include your spouse and two children, you should submit your original package, plus two duplicates for you, plus one package for your spouse and one package for each child, for a total of six packages. Be sure each has the appropriate documentation.

NOTE: Any additional pages submitted should include your printed name (exactly as it appears in Part A.I. of the form), A-Number (if any), signature and date.

XI. Incomplete Asylum Applications

An asylum application that is incomplete will be returned to you by mail within 30 days of receipt of the application by USCIS. An application that has not been returned to you within 30 days of having been received by USCIS will be considered complete, and you will receive written acknowledgement of receipt from USCIS.

The filing of a complete application starts the 150-day period you must wait before you may apply for employment authorization. If your application is not complete and is returned to you, the 150-day period will not begin until you resubmit a complete application. (See Section V, Employment Authorization, Part 2 of these instructions for further information regarding eligibility for employment authorization.)

An application will be considered incomplete in each of the following cases:

1. The application does not include a response to each of the questions contained in Form I-589;
2. The application is unsigned;
3. The application is submitted without the required photograph;
4. The application is sent without the appropriate number of copies for any supporting materials submitted; or
5. You indicated in Part D that someone prepared the application other than yourself or an immediate family member and the preparer failed to complete Part E of the asylum application.

XII. Where to File?

Although USCIS will confirm in writing its receipt of your application, you may wish to send the completed forms by registered mail (return receipt requested) for your own records.

If you are in proceedings in Immigration Court:

If you are currently in proceedings in Immigration Court (that is, if you have been served with Form I-221, Order to Show Cause and Notice of Hearing; Form I-122, Notice to Applicant for Admission Detained for Hearing Before an Immigration Judge; Form I-862, Notice to Appear; or Form I-863, Notice of Referral to Immigration Judge), you are required to file your Form I-589 with the Immigration Court having jurisdiction over your case.

At the master calendar hearing, counsel for DHS will provide you with a form entitled *Instructions For Submitting Certain Applications In Immigration Court and For Providing Biometric and Biographical Information to U.S. Citizenship and Immigration Services* (Pre-Filing Instructions) that you must follow. The Pre-Filing Instructions may also be obtained at www.uscis.gov. The following paragraphs describe the Pre-Filing Instructions that you will have to follow.

In addition to filing your Form I-589 with the immigration judge and serving a copy on the appropriate Immigration and Customs Enforcement (ICE) Office of Chief Counsel, you must also complete the following requirements before the immigration judge can grant relief or protection in your case.

Send the following three items to the USCIS Nebraska Service Center:

1. A clear copy of the first three pages of your completed Form I-589 that you will be filing or have filed with the Immigration Court, which must include **your full name, current residential address, current mailing address, and A-Number**. Do not submit any documents other than the first three pages of the completed Form I-589;

2. A copy of Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court, if you are represented; and
3. A copy of the Pre-Filing Instructions provided by counsel for DHS that you received at your first master calendar hearing in immigration removal proceedings.

**USCIS Nebraska Service Center
Defensive Asylum Application with Immigration Court
P.O. Box 87589
Lincoln, NE 68501-7589**

Note: There is no filing fee required for Form I-589 applications.

After the three items are received at the USCIS Nebraska Service Center, **you will receive:**

1. A USCIS receipt notice indicating that USCIS received your Form I-589; and
2. An Application Support Center (ASC) notice for you and any eligible spouse and children included in your Form I-589 who are also in removal proceedings. Each ASC notice will indicate the individual's unique receipt number and will provide instructions for each person to appear for an appointment at a nearby ASC for collection of biometrics (such as your photograph, fingerprints, and signature). If you do not receive the ASC notice in 3 weeks, call **1-800-375-5283** (1-800-767-1833, TDD for the hearing impaired).

NOTE: If you also mail applications for other forms of relief that you are applying for while in removal proceedings, as specified by the Pre-Filing Instructions (see side B) provided by counsel for DHS at your master calendar hearing, you will receive two notices with different receipt numbers. You must wait for and take both scheduling notices to your ASC appointment.

You (and your eligible spouse and children) must then:

1. **Attend** the biometrics appointment at the ASC and obtain a **biometrics confirmation** document before leaving the ASC; and
2. **Retain** your **ASC biometrics confirmation** as proof that your biometrics were taken and bring it to your future Immigration Court hearings.

NOTE: If the instructions above should change for submitting copies of the first three pages of your asylum application to the USCIS Nebraska Service Center for purposes of receiving the receipt notice and ASC scheduling appointment, you will be provided the changed instructions, either at the master calendar hearing or at another point in the Immigration Court proceedings. Follow the instructions you are provided, or else you may not receive the ASC biometrics scheduling notice in a timely manner.

1. After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen under 8 CFR part 3, with the Immigration Court having jurisdiction over the prior proceeding, any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings; or
2. In proceedings under 8 CFR 208.2(c) and 1208.2(c) and after Form I-863, Notice of Referral to Immigration Judge, has been served on you and filed with the Immigration Court, an immigration judge will have exclusive jurisdiction over your case.

If you are in proceedings before the Board of Immigration Appeals:

You may file your Form I-589 with the Board of Immigration Appeals in conjunction with a motion to remand or reopen under 8 CFR 1003.2 and 1003.8. You may file an initial Form I-589 with the Board of Immigration Appeals only if the Board of Immigration Appeals has jurisdiction over your case. Any such motion must reasonably explain the failure to request asylum and/or withholding of removal prior to the completion of the proceedings.

If you are not in proceedings in Immigration Court or before the Board of Immigration Appeals:

Mail your completed Form I-589 and any other additional information to the USCIS Service Center as indicated below.

If you previously applied for and were denied asylum by USCIS or if you were previously included in a spouse's or parent's pending application but you are no longer eligible to be included as a dependent, mail your completed I-589 to the Asylum Office having jurisdiction over your place of residence. (See www.uscis.gov/asylum for information on Asylum Office jurisdiction.) Include a letter with your application stating that you previously applied for asylum and were denied or that you are now filing independently for asylum. Reference in the letter the application on which you were a dependent.

If you live in:	Mail your application to:
Alabama, Arkansas, Colorado, District of Columbia, Florida, Georgia, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, Oklahoma, Western Pennsylvania* (in the jurisdiction of the Pittsburgh Sub-office), Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, West Virginia, or Wyoming	USCIS Texas Service Center Attn: Asylum P.O. Box 851892 Mesquite, TX 75185-1892

If you live in:	Mail your application to:
Alaska, Northern California*, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Northern Nevada* (in the jurisdiction of the Reno Sub-office), North Dakota, Oregon, Ohio, South Dakota, Washington, or Wisconsin	USCIS Nebraska Service Center P.O. Box 87589 Lincoln, NE 68501-7589
Arizona, Southern California*, Guam, Hawaii, or Northern Nevada* (in the jurisdiction of the Las Vegas Sub-office),	USCIS California Service Center P.O. Box 10881 Laguna Niguel, CA 92607-0881
Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Eastern Pennsylvania* (in the jurisdiction of the Pittsburgh Sub-office), Rhode Island, or Vermont	USCIS Vermont Service Center Attn: Asylum 75 Lower Welden Street St. Albans, VT 05479-0589

***NOTE:** Applicants living in California, Nevada, and Pennsylvania should call the USCIS National Customer Service Center or their local Asylum Office if they are unsure where to mail their applications.

National Customer Service Center: 1-800-375-5283

TDD for the Hearing Impaired: 1-800-767-1833

California and Nevada Residents

Los Angeles Asylum Office: 714-808-8000

San Francisco Asylum Office: 415-293-1234

Pennsylvania Residents

Arlington Asylum Office: 703-235-4100

Newark Asylum Office: 201-531-0555

Information concerning asylum offices and where to file asylum applications is also available on the USCIS Web site at www.uscis.gov.

You may file your completed Form I-589 directly with the Asylum Office having jurisdiction over your case only if:

1. You have received the express consent of the Asylum Office Director or the Director of the Asylum Division to do so; or
2. You were previously included in a spouse's or parent's pending application but you are no longer eligible to be included as a derivative applicant. In such cases, you must include a cover letter referencing the previous application and explaining that you are now independently filing for asylum.

The following categories of individuals are not entitled to an asylum interview at a USCIS Asylum Office:

1. Certain alien crewmembers;
2. Certain stowaways;
3. Visa Waiver Program applicants for admission;
4. Visa Waiver Program overstays and status violators;
5. Certain aliens ordered removed under section 235(c) of the INA on security-related grounds; and
6. Certain nonimmigrants admitted under section 101(a)(15)(S) of the INA (e.g., witnesses and informants).

Individuals subject to these special categories who file asylum applications with USCIS Service Centers will be served with Form I-863, Notice of Referral to Immigration Judge, when they appear at the USCIS Asylum Office and will be referred to Immigration Court for an asylum-only hearing.

If you fall into one of the above categories and you have not yet been served with Form I-863, you may file your completed Form I-589 with USCIS Service Center having jurisdiction over your application. The Asylum Office Director may elect to serve you with Form I-863, in which case the Asylum Office Director will forward your asylum application to the appropriate Immigration Court.

If you are an alien crewmember in custody and you have been given Form I-589 as well as information about the privilege of being represented by counsel and the consequences of knowingly filing a frivolous asylum application, you have 10 days within which to submit your completed Form I-589 to the Immigration and Customs Enforcement (ICE) Field Office Director having jurisdiction over the port of entry at which your vessel arrived. The Field Office Director may extend the 10-day filing period for good cause. Once you file your application, the Field Office Director will serve you with Form I-863 and immediately forward your application to the appropriate Immigration Court.

Part 2. Information Regarding Post-Filing Requirements

I. Notification Requirements When Your Address Changes

If you change your address, you must inform USCIS in writing within 10 days of moving.

While your asylum application is pending with the Asylum Office, you must notify the Asylum Office on Form AR-11, Alien's Change of Address Card, or by a signed and dated letter notifying USCIS within 10 days after you change your address.

The address that you provide on the application, or the last change of address notification that you submitted, will be used by USCIS for mailing. Any notices mailed to that address will constitute adequate service, except that personal service may be required for the following: Form I-122, Notice to Alien Detained for Hearing by an Immigration Judge; Form I-221, Order to Show Cause; Form I-862, Notice to Appear; Form I-863, Notice of Referral to Immigration Judge; and Form I-860, Notice and Order of Expedited Removal.

If you are already in proceedings in Immigration Court, you must notify the Immigration Court on EOIR Form 33, Alien's Change of Address Card, of any changes of address within 5 days of the change in address. You must send the notification to the Immigration Court having jurisdiction over your case. You must also notify USCIS on Form AR-11, Alien's Change of Address Card, or by a signed and dated letter within 10 days after you change your address.

II. Asylum Interview Process

If you are not in proceedings in Immigration Court, you will be notified by the USCIS Asylum Office of the time, date, and place (address) of a scheduled interview.

USCIS suggests that you bring a copy of your Form I-589 with you when you have your asylum interview. An asylum officer will interview you under oath and make a determination concerning your claim. In most cases, you will not be notified of the decision in your case until a date after your interview.

You have the right to legal representation at your interview, at no cost to the U.S. Government. (See **Section IV, Right to Counsel.**) You also may bring witnesses with you to the interview to testify on your behalf.

If you are unable to proceed with the asylum interview in fluent English, you must provide, at no expense to USCIS, a competent interpreter fluent in both English and a language that you speak fluently.

Your interpreter must be at least 18 years of age. The following persons cannot serve as your interpreter: your attorney or representative of record, a witness testifying on your behalf at the interview, or a representative or employee of your country. Quality interpretation may be crucial to your claim. Such assistance must be obtained at your expense prior to the interview.

Failure without good cause to bring a competent interpreter to your interview may be considered an unexcused failure to appear for the interview. Any unexcused failure to appear for an interview may prevent you from receiving employment authorization, and your asylum application may be dismissed or referred directly to the Immigration Court.

If you are hearing-impaired and require the services of a sign language interpreter in your language, one will be provided for you. Contact the Asylum Office with jurisdiction over your case as soon as you receive a notice for your asylum interview to notify the office that you will need a sign language interpreter in your language so that accommodations can be made in advance.

If available, you must bring some form of identification to your interview, including any passport(s), other travel or identification documents, or Form I-94, Arrival-Departure Record. You may bring to the interview any additional available items documenting your claim that you have not already submitted with your application. All documents must be submitted in triplicate.

If members of your family are included in your application for asylum, they must also appear for the interview and bring any identity or travel documents they have in their possession.

III. Status While Your Application Is Pending

While your case is pending, you will be permitted to remain in the United States. After your asylum interview, if you have not been granted asylum and appear to be removable under section 237 of the INA, 8 U.S.C. 1227, or inadmissible under section 212 of the INA, 8 U.S.C. 1182, your application will be referred to the Immigration Court by the Asylum Office.

IV. Travel Outside the United States

If you leave the United States without first obtaining advance parole from USCIS using Form I-131, Application for a Travel Document, we will presume that you have abandoned your application. If you obtain advance parole and return to the country of claimed persecution, we will presume that you abandoned your application, unless you can show that there were compelling reasons for your return.

NOTE: The application process for advance parole varies depending on your personal circumstances. Use InfoPass on the USCIS Web site to check with your local USCIS District Office for application instructions. Additional information on obtaining advance parole is available from the USCIS Web site at www.uscis.gov.

V. Employment Authorization While Your Application Is Pending

You will be granted permission to work if your asylum application is granted.

Simply filing an application for asylum does not entitle you to employment authorization. You may request permission to work if your asylum application is pending and 150 days have lapsed since your application was accepted by USCIS or the

Immigration Court. (See 8 CFR sections 208.7(a)(1) and 1208.7(a)(1).) Any delay in the processing of your asylum application that you request or cause will not be counted as part of the 150-day period.

If your asylum application has not been denied within 180 days from the date of filing a complete asylum application, you may be granted permission to work by filing Form I-765, Application for Employment Authorization, with USCIS. Follow the instructions on that application and submit it with a copy of evidence as specified in the instructions that you have a pending asylum application.

Each family member whom you have asked to be included in your application and who also wants permission to work must submit a separate Form I-765.

You may obtain copies of Form I-765 by calling the USCIS forms line at 1-800-870-3676 or from the USCIS Web site at www.uscis.gov.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this application, and the associated evidence, is collected pursuant to Sections 208 and 241(b)(3) of the Immigration and Nationality Act, as amended.

PURPOSE: The primary purpose for providing the requested information on this form is to determine eligibility for asylum in the United States, and for withholding of removal. The information may also be used to apply for deferral of removal under the Convention Against Torture.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision or result in the denial of your benefit request.

ROUTINE USES: The information you provide on this benefit application may be shared with other federal, state, local, and foreign government agencies and authorized organizations in accordance with approved routine uses, as described in the associated published system of records notices [**DHS-USCIS-010 - Asylum Information and Pre-Screening**, which can be found at www.dhs.gov/privacy]. The information may also be made available, as appropriate for law enforcement purposes or in the interest of national security.

USCIS Forms and Information

You can get USCIS forms and immigration-related information on the USCIS Web site at www.uscis.gov. You may order USCIS forms by calling the toll-free number at **1-800-870-3676**. You may also obtain forms and information by telephoning the USCIS National Customer Service Center at **1-800-375-5283** (1-800-767-1833, TDD for the hearing impaired).

Additional information concerning asylum and withholding of removal is available on the USCIS Web site at www.uscis.gov/asylum and the EOIR Web site at www.usdoj.gov/eoir.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with Form I-589, we will deny your Form I-589 and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

For specific information, see see **Part E in Part 1, Section V**, of these instructions.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 12 minutes per response, including the time for reviewing instructions, and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy & Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2020. OMB No. 1516-0067. **Do not mail your completed Form I-589 to this address.**

Supplements to Form I-589

Form I-589, Supplement A - For use to complete Part A.II.

Form I-589, Supplement B - For use to complete Parts B and C and to provide additional information for any other part of the application.

I-589, Application for Asylum and for Withholding of Removal

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any)
n/a (affirmative asylum applicants generally don't have one; defensive applicants do)

2. U.S. Social Security Number (if any)
n/a

3. Complete Last Name
CLIENT

4. First Name
Client

5. Middle Name
Client

6. What other names have you used (include maiden name and aliases)?
n/a

7. Residence in the U.S. (where you physically reside)

Telephone Number
(123) 445-6789

Street Number and Name
123 4 Street

Apt. Number
5

City
Chicago

State
IL

Zip Code
60604

8. Mailing Address in the U.S. (if different than the address in No. 7)
n/a (do not put attorney's address here)

Telephone Number
()

In Care Of (if applicable):

Street Number and Name

Apt. Number

City

State

Zip Code

9. Gender: Male Female

10. Marital Status: Single Married Divorced Widowed

11. Date of Birth (mm/dd/yyyy)
1/11/1990

12. City and Country of Birth
San Pedro Sula, Honduras

13. Present Nationality (Citizenship)
Honduran

14. Nationality at Birth
Honduran

15. Race, Ethnic, or Tribal Group
Hispanic

16. Religion
Evangelical Christian

17. Check the box, a through c, that applies: a. I have never been in Immigration Court proceedings.
b. I am now in Immigration Court proceedings. c. I am not now in Immigration Court proceedings, but I have been in the past.

18. Complete 18 a through c.
a. When did you last leave your country? (mmm/dd/yyyy) 1-11-2011 b. What is your current I-94 Number, if any? n/a

c. List each entry into the U.S. beginning with your most recent entry.
(List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)

Date 2/1/2011 Place near Brownsville, TX Status EW1 Date Status Expires: n/a

Date _____ Place _____ Status _____

Date _____ Place _____ Status _____

19. What country issued your last passport or travel document?
n/a

20. Passport # n/a

Travel Document # n/a

21. Expiration Date (mm/dd/yyyy)
n/a

22. What is your native language (include dialect, if applicable)?
Spanish

23. Are you fluent in English?
 Yes No

24. What other languages do you speak fluently?
none

For EOIR use only.

Action: Interview Date: _____

For USCIS use only. Decision: Approval Date: _____

Asylum Officer ID#: _____ Denial Date: _____

Referral Date: _____



Part A. II. Information About Your Spouse and Children

Your spouse I am not married. (Skip to **Your Children** below.)

1. Alien Registration Number (A-Number) <i>(if any)</i>		2. Passport/ID Card No. <i>(if any)</i>		3. Date of Birth <i>(mm/dd/yyyy)</i>		4. U.S. Social Security No. <i>(if any)</i>	
5. Complete Last Name			6. First Name		7. Middle Name		8. Maiden Name
9. Date of Marriage <i>(mm/dd/yyyy)</i>			10. Place of Marriage			11. City and Country of Birth	
12. Nationality <i>(Citizenship)</i>			13. Race, Ethnic, or Tribal Group			14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
15. Is this person in the U.S.? <input type="checkbox"/> Yes <i>(Complete Blocks 16 to 24.)</i> <input type="checkbox"/> No <i>(Specify location):</i> _____							
16. Place of last entry into the U.S.		17. Date of last entry into the U.S. <i>(mm/dd/yyyy)</i>		18. I-94 No. <i>(if any)</i>		19. Status when last admitted <i>(Visa type, if any)</i>	
20. What is your spouse's current status?		21. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i>		22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No		23. If previously in the U.S., date of previous arrival <i>(mm/dd/yyyy)</i>	
24. If in the U.S., is your spouse to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input type="checkbox"/> No							

Your Children. List **all** of your children, regardless of age, location, or marital status.

I do not have any children. *(Skip to Part A. III., Information about your background.)*

I have children. Total number of children: 1

(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)

1. Alien Registration Number (A-Number) <i>(if any)</i> n/a		2. Passport/ID Card No. <i>(if any)</i> n/a		3. Marital Status <i>(Married, Single, Divorced, Widowed)</i> Single		4. U.S. Social Security No. <i>(if any)</i> n/a	
5. Complete Last Name Daughter			6. First Name Daughter		7. Middle Name Daughter		8. Date of Birth <i>(mm/dd/yyyy)</i> 1/1/2010
9. City and Country of Birth San Pedro Sula, Honduras			10. Nationality <i>(Citizenship)</i> Honduran		11. Race, Ethnic, or Tribal Group Hispanic		12. Gender <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
13. Is this child in the U.S. ? <input type="checkbox"/> Yes <i>(Complete Blocks 14 to 21.)</i> <input checked="" type="checkbox"/> No <i>(Specify location.)</i> San Pedro Sula, Honduras							
14. Place of last entry in the U.S. n/a		15. Date of last entry in the U.S. <i>(mm/dd/yyyy)</i> n/a		16. I-94 No. <i>(if any)</i> n/a		17. Status when last admitted <i>(Visa type, if any)</i> n/a	
18. What is your child's current status? n/a		19. What is the expiration date of his/her authorized stay, if any? <i>(mm/dd/yyyy)</i> n/a		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
21. If in the U.S., is this child to be included in this application? <i>(Check the appropriate box.)</i> <input type="checkbox"/> Yes <i>(Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)</i> <input checked="" type="checkbox"/> No							



Part A. II. Information About Your Spouse and Children (Continued)

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			

21. If in the U.S., is this child to be included in this application? (Check the appropriate box.)
 Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)
 No

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			

21. If in the U.S., is this child to be included in this application? (Check the appropriate box.)
 Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)
 No

1. Alien Registration Number (A-Number) (if any)		2. Passport/ID Card No. (if any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (if any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic, or Tribal Group		12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location.)							
14. Place of last entry into the U.S.		15. Date of last entry into the U.S. (mm/dd/yyyy)		16. I-94 No. (if any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No			

21. If in the U.S., is this child to be included in this application? (Check the appropriate box.)
 Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)
 No



Part A. III. Information About Your Background

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
Address Address	City	State	Mexico	1/2011	2/2011
Address Address	City	State	Honduras	1/1990	1/2011

2. Provide the following information about your residences during the past 5 years. List your present address first.
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
Address Address	City	State	Honduras	1/1990	1/2011

3. Provide the following information about your education, beginning with the most recent.
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
School	Primary/Elementary	Address	Date	Date

4. Provide the following information about your employment during the past 5 years. List your present employment first.
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)
San Pedro Sula, Honduras	Shoe shiner	Date	Date

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Mother Mother	San Pedro Sula, Honduras	<input type="checkbox"/> Deceased San Pedro Sula, Honduras
Father Father Father	Unknown	<input checked="" type="checkbox"/> Deceased
Sibling Sister Sister	San Pedro Sula, Honduras	<input type="checkbox"/> Deceased Chicago, Illinois
Sibling Brother Brother	San Pedro Sula, Honduras	<input type="checkbox"/> Deceased San Pedro Sula, Honduras
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased



Part B. Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Political opinion |
| <input type="checkbox"/> Religion | <input checked="" type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input checked="" type="checkbox"/> Torture Convention |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

No Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

For the past few years, Mara Salvatrucha (MS-13) repeatedly threatened my brother and I and tried to kill us because we refused to join them. Please see affidavit for more information.

- B. Do you fear harm or mistreatment if you return to your home country?

No Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

I am afraid that MS-13 will beat, torture, and kill me if I return to Honduras because I refused to join them and I fled to the United States against their orders. Please see affidavit for more information.



Part B. Information About Your Application (Continued)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

No Yes

If "Yes," explain the circumstances and reasons for the action.

In 2000, the police arrested me in Honduras because they thought that I was a gang member. Please see affidavit for more information.

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

No Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I belong to the Evangelical Christian church in San Pedro Sula. I also belong to this church in the United States. Please see affidavit for more information.

B. Do you or your family members continue to participate in any way in these organizations or groups?

No Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

I belong to the Evangelical Christian church in the United States. Please see affidavit for more information.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

No Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

I am afraid that MS-13 will torture and kill me if I return to Honduras because I refused to join them and fled to the United States against their orders. Please see affidavit for more information.



Part C. Additional Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

No Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

n/a

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States? No Yes

B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

No Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

After leaving Honduras, I traveled through Mexico before entering the United States. I did not apply for asylum in Mexico and did not have any lawful status there. Please see affidavit for more information.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

No Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.

n/a



Part C. Additional Information About Your Application (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?

No Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

n/a

5. Are you filing this application more than 1 year after your last arrival in the United States?

No Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

n/a

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

No Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

n/a



Part D. Your Signature

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name.	Write your name in your native alphabet.
---------------------------	--

Did your spouse, parent, or child(ren) assist you in completing this application? No Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
Did someone other than your spouse, parent, or child(ren) prepare this application? <input type="checkbox"/> No <input type="checkbox"/> Yes (If "Yes," complete Part E.)			
Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? <input type="checkbox"/> No <input type="checkbox"/> Yes			

Signature of Applicant (The person in Part A.I.)

[_____]
Sign your name so it all appears within the brackets

_____ Date (mm/dd/yyyy)

Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer	
		Attorney	
Daytime Telephone Number (123) 345-6789		Address of Preparer: Street Number and Name Address Address	
Apt. No.	City Chicago	State IL	Zip Code 60604



Part F. To Be Completed at Asylum Interview, if Applicable

NOTE: You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are all true or not all true to the best of my knowledge and that correction(s) numbered ____ to ____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

Signature of Applicant

Date (mm/dd/yyyy)

Write Your Name in Your Native Alphabet

Signature of Asylum Officer

Part G. To Be Completed at Removal Hearing, if Applicable

NOTE: You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are all true or not all true to the best of my knowledge and that correction(s) numbered ____ to ____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

Signature of Applicant

Date (mm/dd/yyyy)

Write Your Name in Your Native Alphabet

Signature of Immigration Judge



Supplement A, Form I-589

A-Number (If available)	Date
Applicant's Name	Applicant's Signature

List All of Your Children, Regardless of Age or Marital Status
 (NOTE: Use this form and attach additional pages and documentation as needed, if you have more than four children)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S.? <input type="checkbox"/> Yes (Complete blocks 14 to 21.) <input type="checkbox"/> No (Specify location.) _____			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (if any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) <input type="checkbox"/> No			



Additional Information About Your Claim to Asylum

A-Number (if available)

Date

Applicant's Name

Applicant's Signature

NOTE: Use this as a continuation page for any additional information requested. Copy and complete as needed.

Part _____

Question _____

Large empty rectangular box for providing additional information.



Notice of Intent/Decision to Reinstate Prior Order

File No. [redacted]
Event No: [redacted]
Date: [redacted]

FIN #

Name: [redacted]

In accordance with section 241(a)(5) of the Immigration and Nationality Act (Act) and 8 CFR 241.8, you are hereby notified that the Secretary of Homeland Security intends to reinstate the order of Removal entered against you. This intent is based on the following determinations:

1. You are an alien subject to a prior order of deportation / exclusion / removal entered on [redacted] at [redacted] (Date) (Location)

2. You have been identified as an alien who:

- [x] was removed on [redacted] pursuant to an order of deportation / exclusion / removal.
[] departed voluntarily on [redacted] pursuant to an order of deportation / exclusion / removal on or after the date on which such order took effect (i.e., who self-deported).

3. You illegally reentered the United States on or about [redacted] / / at or near Unknown (Date) (Location)

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You do not have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination, and the existence of a right to make a written or oral statement contesting this determination, were communicated to the alien in the Spanish English language.

KARL TIMMONS (Printed or typed name of official)

[Signature of Karl Timmons] (Signature of officer)

Deportation Officer (Title of officer)

Acknowledgment and Response

I [x] do [] do not wish to make a statement contesting this determination. [redacted] (Date) [redacted] (Signature of Alien)

Decision, Order, and Officer's Certification

Having reviewed all available evidence, the administrative file and any statements made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act.

[redacted] (Date) [redacted] (Location)
JEFFREY ARTMAN (Printed or typed name of official)

[Signature of Jeffrey Artman] (Signature of authorized deciding official)
SDDO (Title)

THE IMPACT OF A CRIMINAL HISTORY

* * *

As explained in NIJC's Basic Procedural Manual for Asylum Representation, certain criminal convictions – specifically aggravated felonies and crimes determined to be “particularly serious” – can bar individuals from protection-based relief, such as asylum and withholding of removal. Although NIJC screens all clients for criminal issues, *pro bono* attorneys should be sure to examine the client's immigration court file regarding the client's criminal history and verify all information with the client. *Pro bono* attorneys should also note that the types of crimes that constitute aggravated felonies and “particularly serious crimes” are constantly changing and are subject to many legal challenges. Moreover, whether a conviction will bar an individual from relief may depend significantly on the statute under which the individual was convicted and the particular facts of her case. Therefore, even if a client has been convicted of a crime that may appear to be an aggravated felony or a particularly serious crime, it is important that the *pro bono* attorney contact NIJC to discuss strategy for challenging that determination in court.

Below is a brief and non-exhaustive overview of aggravated felonies and “particularly serious crimes.” *Pro bono* attorneys should be sure to conduct their own legal research and speak with NIJC about their client's specific convictions.

Aggravated Felonies

Under INA § 208(b)(2)(A)(ii), an individual is barred from asylum if she has been “convicted of a particularly serious crime.” For asylum purposes, an aggravated felony is a *per se* particularly serious crime. INA § 101(a)(43) contains a list of crimes that Congress has determined to be “aggravated felonies.” In addition to this list, case law has established a number of other offenses to be aggravated felonies as well. These include

- Certain offenses relating to firearms, such as trafficking in firearms or possessing explosive devices
- Felony alien smuggling (unless the smuggling involved a spouse, child, or parent)
- Fraud or income tax evasion, if the victim lost more than \$10,000
- Money laundering over \$10,000
- Rape
- Sexual abuse of a minor
- Drug trafficking, including transportation, distribution, importation, and sale and possession for sale

Case law has also established that the following offenses constitute aggravated felonies if the individual received a sentence of imprisonment of one year or more (whether or not the time was actually served):

- Theft (including receipt of stolen property)
- Burglary
- A crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
- Document fraud (including possessing, using, or making false papers, unless it was the first time and was only to help a spouse, child, or parent)

- Obstruction of justice, perjury, and bribing a witness
- Commercial bribery, counterfeiting, forgery, and trafficking in stolen vehicles with altered identification numbers

Particularly Serious Crime Bar for Withholding of Removal

Although all aggravated felonies constitute particularly serious crimes for asylum purposes, not all aggravated felonies constitute particularly serious crimes for purposes of withholding of removal. Under INA § 241(b)(3)(B), a conviction of an aggravated felony (or felonies) for which the individual has been sentenced to an aggregate term of imprisonment of at least five years constitutes a *per se* particularly serious crime.¹¹ For other criminal offenses, the court must balance four factors to conduct a case-by-case analysis as to whether the conviction was for a particularly serious crime. See *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). Under the *Frentescu* analysis, the court should consider the following factors; (1) the nature of the conviction; (2) the circumstances and underlying facts of the conviction; (3) the type of sentence imposed; and (4) whether the type and circumstances of the crime indicate that the individual is a danger to the community.

Convictions under statutes that involve the intentional use of significant force are likely to constitute particularly serious crimes. See *Matter of N-A-M*, 24 I&N Dec. 336 (BIA 2007); *Matter of L-S-J*, 21 I&N Dec. 973 (BIA 1997); *Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986); *Matter of Garcia-Garrocho*, 19 I&N Dec. 423 (BIA 1986).

Convictions for drug trafficking-related offenses are presumed to be particularly serious crimes. *Matter of Y-L-*, 23 I&N Dec. 270 (BIA 2002). However, in *Matter of Y-L*, the Board outlined six factors that, when all present, would help rebut the presumption that a conviction for a drug trafficking offense constitutes a particularly serious crime: (1) a very small quantity of a controlled substance; (2) a very modest amount paid for the drugs in the offending transaction; (3) merely peripheral involvement by the individual in the criminal activity; (4) the absence of any violence or threat of violence, implicit or otherwise associated with the offense; (5) the absence of any organized crime or terrorist organization involvement, direct or indirect, in relation to the offending activity; and (6) the absence of any adverse or harmful effect of the activity or transaction on juveniles. 23 I&N Dec. at 276-77. Therefore, *pro bono* attorneys with clients who have drug trafficking-related convictions should contact NIJC to strategize whether any argument can be made to overcome the presumption that the client was convicted of a particularly serious crime.

If a client has been convicted of a crime that may constitute a “particularly serious crime,” there are numerous strategic considerations regarding how and when to address the issue. *Pro bono* attorneys should contact NIJC to strategize about whether to affirmatively brief the issue in the client’s pre-hearing filing. In some cases, NIJC may recommend that attorneys not argue the issue affirmatively in the client’s pre-hearing brief because the ICE trial attorney may not otherwise raise it in the case.

¹¹ The language in this provision regarding an applicant’s aggregate term of imprisonment has been the subject of litigation. See *Delgado v. Holder*, 648 F.3d 1095, 1097 (9th Cir. 2011) (en banc). *Pro bono* attorneys should take the position that separate offenses resulting in separate sentences cannot be aggregated to reach a total of five years’ imprisonment to find a particularly serious crime. If a client’s case involves this fact pattern, the attorney should be sure to strategize with NIJC about how to present this issue.

BARS TO ELIGIBILITY FOR ASYLUM, WITHHOLDING AND CAT

* * *

<i>Pro bono</i> attorneys who identify any of these conditions in their cases should contact NIJC.	Bars Asylum?	Bars Withholding/Withholding under CAT?	Bars Deferral under CAT?
One-Year Filing Deadline Bar: See explanatory section below. INA §208(a)(2)(B); 8 C.F.R. §§ 208.4, 208.34.	Yes	No	No
Persecutor Bar: Individuals who have persecutor another on account of one of the protected grounds. INA § 208(b)(2)(A)(i).	Yes	Yes	No
Terrorism Bar: See the explanatory section below. INA § 208(b)(2)(A)(v).	Yes	Yes	No
Particularly Serious Crime (PSC) Bar: Individuals convicted of a “particularly serious crime. For asylum purposes, any aggravated felony (as defined under immigration law, <i>see</i> INA § 101(a)(43)) constitutes a PSC. For withholding/withholding under CAT purposes, an aggravated felony constitutes a PSC if the aggregate term of imprisonment sentenced was at least five years. Immigration judges also have the authority to define non-aggravated felony crimes as PSCs. <i>See</i> NIJC’s Detention Supplement for more information regarding the impact of a criminal history on applications for asylum and withholding of removal. INA §§ 208(b)(2)(A)(ii), 208(b)(2)(B), 241(b)(3)(B)(ii).	Yes	Yes	No
Serious Non-Political Crime Outside the U.S. Bar INA § 208(b)(2)(A)(iii).	Yes	Yes	No
“Danger to the Security of the United States” Bar INA § 208(b)(2)(A)(iv).	Yes	Yes	No
Firm Resettlement Bar: Individuals who are <i>firmly resettled</i> within the meaning of 8 C.F.R. §208.15. INA §208(b)(2)(A)(vi); <i>Matter of D-X- & Y-Z-</i> , 25 I&N Dec. 664 (BIA 2012); <i>Matter of A-G-G-</i> , 25 I&N Dec. 486 (BIA 2011).	Yes	No	No
Previous Asylum Denial Bar: Individuals who <i>previously filed for asylum</i> and were denied. INA §208(a)(2)(C)	Yes	No	No
Safe Third Country Bar: Individuals who <i>may be removed pursuant to a bilateral or multilateral agreement to a safe third country</i> , unless the Attorney General finds it in the national interest to grant asylum. INA §208(a)(2)(A). At present, the United States only has a safe third country agreement with Canada.	Yes	No	No