

ASYLUM, WITHHOLDING OF REMOVAL, AND THE CONVENTION AGAINST TORTURE

Individuals afraid of being harmed in their home country due to their race, religion, nationality, political opinion, or membership in a particular social group may qualify for asylum, withholding of removal, or relief under the Convention Against Torture (CAT).

What is Asylum and Withholding of Removal?

- Asylum is a form of relief granted to people who have suffered past persecution or who have a well-founded fear of future persecution in their home. The persecution must be based on **race, religion, nationality, political opinion or membership in a particular social group**. If you are granted asylum, you will be eligible to receive a green card and permanent legal status in the United States after a year.
- Even if you do not qualify for asylum, you may still be eligible for withholding of removal. You must demonstrate that it is more likely than not that you will suffer future persecution if returned to your home country because of your race, religion, nationality, membership in a particular social group, or political opinion. The standard of proof for withholding of removal is higher than for asylum. You need to show that there is more than a 50 percent chance you will be persecuted. If you are granted withholding, you will not qualify for a green card but you will be allowed to remain and work lawfully in the United States for an indefinite period.

When do you apply?

- Generally, you must apply for asylum within one year of your last arrival in the United States.
- You may apply for asylum later than one year if you can demonstrate extraordinary circumstances directly related to your failure to apply within one year or that conditions in your country have changed for the worse since your arrival in the United States. It can be very difficult to qualify for one of these exceptions.
- If you are applying for asylum in immigration court and have a green card, you can generally apply more than one year after arriving in the U.S.
- There is no deadline to apply for withholding of removal. Even if you do not meet the asylum deadline exception, you may still qualify for withholding of removal.

Can you apply for Asylum and Withholding of Removal if you entered the US illegally?

- Yes, you may apply for asylum and withholding of removal even if you have no lawful immigration status and even if you entered the United States illegally.

Can you apply for Asylum and Withholding of Removal if you were convicted of a crime?

- People with what are called “particularly serious” crimes cannot get asylum or withholding. They may be eligible for relief under the Convention Against Torture, as explained below.
- The definition of “particularly serious” is different for asylum and withholding.
- Certain convictions make people ineligible for asylum but do not prevent them from getting withholding. There are other crimes that make you ineligible for both asylum and withholding.
- People who committed serious nonpolitical crimes outside the United States cannot get asylum.

Besides crimes, what else can prevent you from getting Asylum or Withholding of Removal?

You do not qualify for asylum or withholding of removal if it is determined that you:

- Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Pose a danger to the security of the United States;
- Firmly resettled in another country prior to arriving in the United States;
- You will also be barred from being granted asylum if you are inadmissible to the U.S. or removable for certain reasons.

Is your family included in your Asylum and Withholding of Removal application?

- If you are granted **asylum**, your spouse and/or any children who are under the age of 21 and unmarried, and included on your application will also be granted asylum status and will be allowed to remain in the United States.
- If your spouse and children are outside of the country when you are granted asylum, you may petition to bring your spouse and/or children to the United States ([USCIS Form I-730](#)).

- If you are granted withholding of removal, your dependent family members **will not** receive any status. In order for dependent family members to get immigration status, they must separately apply for withholding of removal or other status.

How do you apply for Asylum and Withholding of Removal?

- To apply for asylum and withholding, you will need to complete [Form I-589](#), *Application for Asylum and for Withholding of Removal*, and follow the instructions carefully.
- There is **no fee to apply** for Asylum and Withholding of Removal.

What if your previous application was denied?

- Generally, you cannot apply for asylum or withholding of removal if a previous application was denied by the Immigration Judge or the Board of Immigration Appeals.
- You may, however, have your case reopened, if you demonstrate that there are **changed circumstances** which materially affect your eligibility for asylum or withholding of removal.

Do you fear returning to your country because you will be tortured?

- If you fear torture in your country, you may qualify for another form of relief under the Convention Against Torture (CAT).
- You must prove that you are more likely than not to be tortured either directly by the **government** or with the **“acquiescence” of the government** if returned to your country of origin. “Acquiescence” generally means the government is aware of the torture does not try to stop it.
- Unlike asylum and withholding, to qualify under CAT, you do not have to show that the abuse you will suffer is “on account of” one of the five protected characteristics (race, religion, nationality, membership in a particular social group, or political opinion).
- The standard for CAT, however, can be difficult to meet because it can be hard to show the judge that you will likely suffer severe pain or suffering by government officials or with the government’s acquiescence.

How do you apply for relief under CAT?

- To apply for CAT relief, you will need to complete [Form I-589](#), *Application for Asylum and for Withholding of Removal*, and check off the box indicating that you are also applying for CAT.
- There is no fee to apply for CAT relief.
- There is no filing deadline for CAT relief.