

Asylum and Other Relief for Immigrant Victims of Violence and Persecution

The United States is the largest recipient of asylum claims among industrialized nations. Victims of persecution and torture who come to the United States may apply for asylum, withholding of removal, and protection under the UN Convention against Torture (CAT) in order to remain in the US legally and avoid removal to countries where they may be harmed.

In addition, US law provides several forms of immigration relief for immigrants in the US who have been victims of crime and human trafficking, and for unaccompanied children who have been abused, abandoned, or neglected by their parents.

Asylum

US law allows foreign citizens who have been persecuted in their country of origin, or who fear future persecution, to apply for protection in the US in the form of asylum.

An asylee is an individual who is outside of his or her country of nationality or last habitual residence and who, because of a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion,” is unable or unwilling to return to that country, and is unable or unwilling to avail him or herself of the protection of that country. In order to file an asylum claim, an asylee must be physically present in the US or at any port of entry (i.e. at the airport, land, or sea border).

The well-founded fear of persecution must be based on actions committed either by a government, or by persons a government is unable or unwilling to control. Examples of persecution include, but are not limited to:

- Threats to life;
- Confinement, detention, or imprisonment;
- Torture;
- Rape and sexual assault;
- Forced abortion or sterilization, and
- Female genital mutilation/cutting.

The persecution must be “on account of” at least one of the five protected grounds:

1. race,
2. religion,
3. nationality,
4. membership in a particular social group, or
5. political opinion.

These five protected grounds have been interpreted and defined in decision by immigration courts, the Board of Immigration Appeals, and federal courts.

While persecution on account of race, religion, nationality, or political opinion is often easy to identify, establishing the existence of a “particular social group” for asylum purposes requires more analysis. A “particular social group” may be defined as:

- Persons of similar background, habits, or social status;
- Persons who share a common, immutable characteristic;
- Persons closely affiliated with each other, who share some common impulse or interest; and
- Persons who possess some fundamental characteristic in common which serves to distinguish them in the eyes of the persecutor – or in the eyes of the outside world in general.

For example, LGBT asylum applicants who have been persecuted because of their sexual orientation or gender identity are considered to be members of a particular social group for asylum purposes.

Particular social group analysis is not static, and new social groups are frequently created. For example, victims of domestic violence have recently been recognized by immigration courts as being members of a particular social group.



Individuals who are granted asylum are able to remain in the US and are authorized to work, sponsor immediate relatives for derivative asylum, file for a green card after one year, and eventually apply for US Citizenship.

If asylum is denied, however, the immigration judge will order removal of the individual, who is then required to leave the US. Applicants who are denied asylum may appeal the decision to the Board of Immigration Appeals, then to a Circuit Court of Appeals, and finally to the US Supreme Court.

Related Forms of Relief

Withholding of Removal

If an asylum seeker is either statutorily ineligible for asylum or is denied asylum, he or she may still apply for a similar form of protection called *Withholding of Removal*. Withholding of removal prohibits the return of anyone to a country where his or her “life or freedom would be threatened.”

In order to win withholding of removal, an applicant must show that it is “more likely than not” that he or she would face persecution on account of one of the five protected grounds if forced to return to his or her country of origin.

If withholding is granted, the benefits that the individual receives are limited. While someone who has been granted asylum is able to petition for family members and apply for a green card, withholding only prevents the removal of the individual to his or her country of origin and allows the recipient to obtain employment authorization.

Furthermore, the US government can send a withholding recipient back to his or her country of origin in the future, if conditions in that country change such that the person would no longer face persecution.

Withholding of Removal under the UN Convention against Torture (CAT)

People seeking protection in the US who do not qualify for asylum or withholding of removal may still be eligible for protection under the UN Convention against Torture. The Convention prohibits the removal of an individual from one country to another country where he or she would likely be tortured. The fear of torture may be for any reason, regardless of whether it is on account of one of the five protected grounds, but the torture must be at the hands of or with the acquiescence of a government or government officials. As with withholding of removal, withholding under CAT only prevents the removal of the recipient to his or her country of origin, but does not result in derivative asylum for family members or a green card.

Alternative Forms of Relief

US immigration law provides several additional avenues of relief for immigrants who have been victims of crimes and merit protection in the US.

U-Visa

The Victims of Trafficking and Violence Protection Act of 2000 created special visa categories, including the U-Visa. The U-Visa offers protection to victims of certain crimes committed in the US, such as domestic violence, sexual assault, human trafficking, female genital mutilation, and kidnapping.

An applicant must demonstrate that he or she has suffered substantial mental or physical trauma as a result of the crime, and must obtain certification from a law enforcement official that he or she has been, is being, or is likely to be helpful to an investigation or prosecution.

For example, a domestic violence victim whose testimony is vital to the abuser’s arrest and conviction and who has suffered severe mental or physical abuse as a result of the domestic violence will likely be eligible for a U-Visa.

Family members of U-Visa holders may also be eligible for a U-Visa. A U-Visa entitles the recipient to remain in the US for a maximum of four years, unless longer presence is necessary for investigation or prosecution. After three years, a U-Visa holder who has physically remained in the US may apply for a green card, and eventually for US citizenship.

T- Visa

Another special visa category created by the Victims of Trafficking and Violence Protection Act is the T-Visa. Similar to the U-Visa, the T-Visa is designed to protect victims of severe forms of human trafficking by allowing them to remain in the US for a maximum of four years while they assist law enforcement officials in the investigation or prosecution of the trafficking perpetrators.

The individual applying must also show that he or she would suffer “extreme



hardship involving unusual and severe harm upon removal.” Thousands of human trafficking victims are brought into the US every year, and many who escape are detained by Department of Homeland Security because they are here without legal permission.

However, because trafficking victims are usually brought to the US under false pretenses or against their will, and because they have suffered at the hands of their perpetrators and may face even further hardship upon removal, the T-Visa was established as a form of protection.

In return, victims must assist in the investigation and prosecution of their perpetrators by testifying or providing information to law enforcement.

Family members of T-Visa recipients may also be eligible for T-Visas, and after three years a T-Visa holder who has physically remained in the US may apply for a green card, and eventually for US citizenship.

VAWA

The Violence Against Women Act of 2000 established greater legal safeguards for immigrant victims of domestic violence. Abused spouses, former spouses, and children of US citizens or green card holders may apply for protection under VAWA. The applicant must prove that he or she:

- Currently resides in the US;
- Currently resides or once resided with the abuser;
- Was subjected to battery or extreme cruelty during the relationship;
- Has good moral character; and
- Entered into the marriage in good faith, if the application is based on abuse by a spouse.

Additionally, an individual who is in removal proceedings may file a “cancellation of removal” claim under VAWA. To prevail on this form of relief, the applicant must additionally prove that he or she has resided continuously in the US for three years, and that his or her children would face extreme hardship if the applicant were removed. Relief granted under VAWA allows the recipient to apply for a green card, and eventually for US citizenship.

Special Immigrant Juvenile Status (SIJS)

SIJS applies to unmarried immigrants under the age of 21 who have been abused, neglected, or abandoned by their parents.

In order to obtain SIJS, a state court must first issue a holding regarding the child stating that he or she has been abused, neglected, or abandoned, and that reunification with the parents and removal to the child’s country of origin are not viable options.

The child then files an application for an SIJS Visa with US Citizenship and Immigration Services (USCIS). If the application is granted, the child may apply for a green card and eventually US citizenship.

Often, children who are eligible for SIJS are those who crossed illegally into the US on their own, coming from abusive or neglectful family homes. If reunification or removal are neither possible nor in the child’s best interest, seeking SIJS may be the best option for the child.

For more information on Asylum and other relief, and on Physicians for Human Rights’ Asylum Program, please contact Mike Corradini, Asylum Associate, mcorradini@phrusa.org, 202.728.5335.

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