

- (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.
- (5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.
- (6) An analysis of the impact of the participation of the United States in the resettlement of such refugee on the foreign policy interests of the United States.
- (7) Such additional information as may be appropriate or requested by such members.

To the extent possible, information described in this subsection shall be provided at least two weeks in advance of discussions in person by designated representatives of the President with such members.

**(f) Training.—**

- (1) The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 208.
- (2) Such training shall include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

(June 27, 1952, ch. 477, title II, ch. 1, Sec. 207, as added P.L. 96-212 (3/17/80); amended by P.L. 100-525 (10/24/88); P.L. 101-649 (IMMACT90) (11/29/90); P.L. 102-232 (MTINA) (12/12/91, *effective* 4/1/92); P.L. 104-208 (IIRAIRA) (9/30/96), div. C, title VI, §601 [adding (a)(5)]; P.L. 105-292 (10/27/98), §602 [adding (f)]; P.L. 107-208 (CSPA) (8/6/02), §5 [adding (c)(2)(B)]; P.L. 109-13 (REAL ID) (5/11/05), title I, §101(g) [removing (a)(5)].

**Sec. 208 Asylum**<sup>43</sup>  
**[8 U.S.C. 1158]**

**(a) Authority to apply for asylum.—**

(1) *In general.*—Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 235(b).

(2) *Exceptions.*—

(A) *Safe third country.*—Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would

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<sup>43</sup> Added by §604(a) of IIRAIRA, effective for “applications for asylum filed on or after the first day of the first month beginning more than 180 days after the date of the enactment of [IIRAIRA].”

Section 309 of the Enhanced Border Security and Visa Entry Reform Act of 2002, P.L. 107-173 (signed 5/14/02) requires the Attorney General, by 180 days after enactment, to ensure that aliens granted asylum under INA §208 immediately be issued an employment authorization document.

have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) *Time limit.*—Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of alien’s arrival in the United States.

(C) *Previous asylum applications.*—Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) *Changed circumstances.*—An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing the application within the period specified in subparagraph (B).

(3) *Limitation on judicial review.*—No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

**(b) Conditions for granting asylum.—**

**(1) In general.—**

(A) *Eligibility.*—The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).<sup>44</sup>

(B) *Burden of proof.*—<sup>45</sup>

(i) *In general.*—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant 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 persecuting the applicant.

(ii) *Sustaining burden.*—The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

<sup>44</sup> The amendments to INA §208(b)(1)(A) made by §§101(a)(1) and (2) of REAL ID Act, P.L. 109-13 (5/11/05), take effect as if enacted on 3/1/03.

<sup>45</sup> The amendment made by §101(a)(3) of REAL ID Act, P.L. 109-13, takes effect on the date of enactment (5/11/05) and shall apply to applications for asylum, withholding, or other relief from removal made on or after such date.

(iii) Credibility determination.—Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) *Exceptions.*—

(A) *In general.*—Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien 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;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 212(a)(3)(B)(i), the Attorney General determines, in the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or<sup>46</sup>

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) *Special rules.*—

(i) Conviction of aggravated felony.—For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses.—The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

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<sup>46</sup> The amendment to INA §208(b)(2)(A)(v) made by §101(b) of REAL ID Act, P.L. 109-13, takes effect on the date of enactment (5/11/05) and shall apply to applications for asylum, withholding, or other relief from removal made on or after such date.

(C) *Additional limitations.*—The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) *No judicial review.*—There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) *Treatment of spouse and children.*—<sup>47</sup>

(A) *In general.*—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) *Continued classification of certain aliens as children.*—An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending.

(c) *Asylum status.*—

(1) *In general.*—In the case of an alien granted asylum under subsection (b), the Attorney General—

(A) shall not remove or return the alien to the alien’s country of nationality or, in the case of a person having no nationality, the country of the alien’s last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) *Termination of asylum.*—Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that—

(A) the alien no longer meets the conditions described in subsection (b)(1) owing to a fundamental change in circumstances;

(B) the alien meets a condition described in subsection (b)(2);

(C) the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

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<sup>47</sup> INA §208(b)(3), as revised by §4 of P.L. 107-208 (CSPA) (8/6/02), takes effect, pursuant to CSPA §8, on 8/6/02 and applies to any alien who is a derivative beneficiary or any other beneficiary of “(1) a petition for classification under [INA §204] approved before such date but only if a final determination has not been made on the beneficiary’s application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition; (2) a petition for classification under [INA §204] pending on or after such date; or (3) an application pending before the Department of Justice or the Department of State on or after such date.”

(D) the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) **Removal when asylum is terminated.**—An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or deportability under section 212(a) and 237(a), and the alien's removal or return shall be directed by the Attorney General in accordance with sections 240 and 241.

**(d) Asylum procedure.**—

(1) **Applications.**—The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a). The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) **Employment.**—An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) **Fees.**—The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 209(b). Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 286(m).

(4) **Notice of privilege of counsel and consequences of frivolous application.**—At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) **Consideration of asylum applications.**—

(A) **Procedures.**—The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv) any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 240, whichever is later; and

(v) in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 240, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) *Additional regulatory conditions.*—The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this Act.

(6) *Frivolous applications.*—If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

(7) *No private right of action.*—Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(June 27, 1952, ch. 477, title II, ch. 1, Sec. 208, as added P.L. 96-212 (3/17/80); amended by P.L. 101-649 (IMMACT90) (11/29/90); P.L. 103-322 (VAWA) (9/13/94); P.L. 104-132 (AEDPA) (4/24/96), title IV, §421; P.L. 104-208 (HIRAIRA) (9/30/96), div. C, title VI, §604; P.L. 107-56 (PATRIOT Act) (10/26/01), title IV, §411(b) [revising (b)(2)(A)(v)]; P.L. 107-208 (CSPA) (8/6/02), §4; P.L. 109-13 (REAL ID) (5/11/05), div. B, title I, §101 [revising (b)(1)(A), (b)(2)(A)(v); adding (b)(1)(B)].)

## **Sec. 209 Adjustment of Status of Refugees** **[8 U.S.C. 1159]**

### **(a) Criteria and procedures applicable for admission as immigrant; effect of adjustment**

(1) Any alien who has been admitted to the United States under section 207—

(A) whose admission has not been terminated by the Secretary of Homeland Security or the Attorney General pursuant to such regulations as the Secretary of Homeland Security or the Attorney General may prescribe,

(B) who has been physically present in the United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240, and 241.

(2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation speci-