

8 U.S. Code § 1158 - Asylum

U.S. Code

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(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 1225\(b\) of this title](#).

(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 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 the [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 an application within the period specified in subparagraph (B).

(E) Applicability

Subparagraphs (A) and (B) shall not apply to an unaccompanied [alien](#) child (as defined in [section 279\(g\) of title 6](#)).

(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 1101\(a\)\(42\)\(A\) of this title](#).

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a [refugee](#), within the meaning of [section 1101\(a\)\(42\)\(A\) of this title](#). 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.

(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 1182\(a\)\(3\)\(B\)\(i\) of this title](#) or [section 1227\(a\)\(4\)\(B\) of this title](#) (relating to [terrorist activity](#)), unless, in the case only of an [alien](#) described in subclause (IV) of [section 1182\(a\)\(3\)\(B\)\(i\) of this title](#), 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
- (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).

(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

(A) In general

A spouse or child (as defined in [section 1101\(b\)\(1\)\(A\)](#), (B), (C), (D), or (E) of this title) 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 1159\(b\)\(3\) of this title](#), if the [alien](#) attained 21 years of age after such application was filed but while it was pending.

(C) Initial jurisdiction

An asylum officer (as defined in [section 1225\(b\)\(1\)\(E\) of this title](#)) shall have initial jurisdiction over any asylum application filed by an unaccompanied [alien](#) child (as defined in [section 279\(g\) of title 6](#)), regardless of whether filed in accordance with this section or [section 1225\(b\) of this title](#).

(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;
- (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 section¹¹¹ 1182(a) and 1227(a) of this title, and the [alien's](#) removal or return shall be directed by the [Attorney General](#) in accordance with sections [1229a](#) and [1231](#) of this title.

(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 1159\(b\) of this title](#). 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 1356\(m\) of this title](#).

(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 1229a of this title](#), 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 1229a of this title](#), 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 chapter.

(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 chapter, 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.

(e) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

The provisions of this section and [section 1159\(b\) of this title](#) shall apply to persons physically present in the Commonwealth of the Northern Mariana Islands or arriving in the Commonwealth (whether or not at a designated port of arrival and including persons who are brought to the Commonwealth after having been interdicted in international or [United States](#) waters) only on or after January 1, 2014.

(June 27, 1952, ch. 477, title II, ch. 1, § 208, as added [Pub. L. 96–212, title II, § 201\(b\)](#), Mar. 17, 1980, 94 Stat. 105; amended [Pub. L. 101–649, title V, § 515\(a\)\(1\)](#), Nov. 29, 1990, 104 Stat. 5053; [Pub. L. 103–322, title XIII, § 130005\(b\)](#), Sept. 13, 1994, 108 Stat. 2028; [Pub. L. 104–132, title IV, § 421\(a\)](#), Apr. 24, 1996, 110 Stat. 1270; [Pub. L. 104–208, div. C, title VI, § 604\(a\)](#), Sept. 30, 1996, 110 Stat. 3009–690; [Pub. L. 107–56, title IV, § 411\(b\)\(2\)](#), Oct. 26, 2001, 115 Stat. 348; [Pub. L. 107–208, § 4](#), Aug. 6, 2002, 116 Stat. 928; [Pub. L. 109–13, div. B, title I, § 101\(a\)](#), (b), May 11, 2005, 119 Stat. 302, 303; [Pub. L. 110–229, title VII, § 702\(j\)\(4\)](#), May 8, 2008, 122 Stat. 866; [Pub. L. 110–457, title II, § 235\(d\)\(7\)](#), Dec. 23, 2008, 122 Stat. 5080.)

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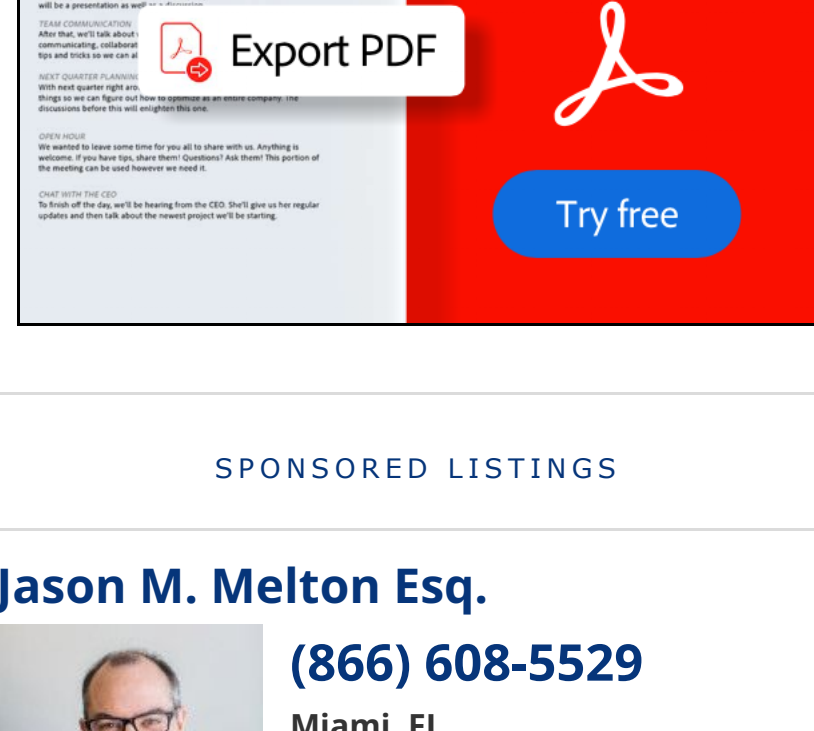
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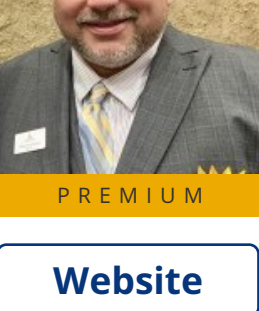


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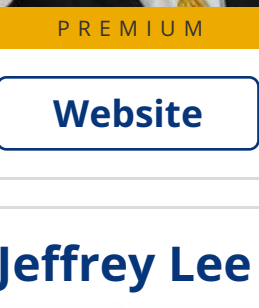
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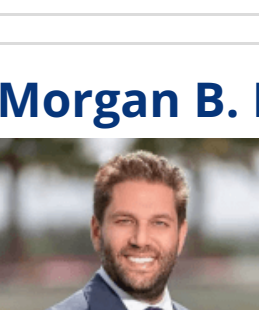
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