

Pro Bono Asylum Representation Manual: An Overview of Asylum Law & Procedure



The Advocates for Human Rights

330 Second Avenue South, Suite 800

Minneapolis, MN 55401 USA

Tel: (612) 341-3302

Fax: (612) 341-2971

Client Intake (612) 341-9845

www.theadvocatesforhumanrights.org

Affirmative Asylum Application Process

Submission Checklist

When filing the I-589, you should submit the original plus two copies of the following materials:

- **G-28, Notice of Entry of Appearance.** The G-28 must be signed by the client and attorney. It should also be printed on paper.
- **One Photo** of the applicant (and all dependents included in the application). Photos must be passport size and style, printed on matte or glossy photo quality paper, in color, and taken in front of a plain white or off-white background.¹
- **Form I-589**, Application for Asylum signed by the client and attorney.
- **Affidavit** of client.
- **Exhibit List** (with short summary of each exhibit) and **exhibits**. Exhibits must be two-hole punched, paginated, and include a table of contents. Exhibits should include:
 - Copy of passport, cover to cover, if available;
 - Copy of I-94 card, if legally admitted;
 - Personal documentation with translations and certificates of accuracy if necessary;
 - Affidavits of witnesses;
 - Affidavits of expert witnesses;
 - Country conditions documentation (highlighting relevant portions);
- ***Optional* Legal brief** addressing any complex or novel legal issues specifically, and addressing the applicant's eligibility for asylum.²

If there are additional family members included on the application who are residing in the United States, send additional copies of the first three pages of the I-589 for each family member. Please refer to the instructions on the Form I-589 for specific requirements, as the forms and instructions do change regularly.

Filing Address:

Send completed asylum application package to:

Department of Homeland Security
Citizenship and Immigration Service
Nebraska Service Center
PO Box 87589
Lincoln, NE 68501-7589

If using a commercial delivery service, including Federal Express, send to:

¹ For instructions about photo specifications, please see the following I-589 instructions and the Department of State's photographic standards for passport-style photos, adopted by USCIS in 2004:

<https://www.uscis.gov/sites/default/files/files/form/i-589instr.pdf>;

<https://travel.state.gov/content/passports/en/passports/photos/photos.html>.

² A legal brief is generally submitted only where the claim is based on a unique social group or where other unusual legal issues exist — not in every asylum case.

Department of Homeland Security
Citizenship and Immigration Service
Nebraska Service Center
850 S Street
Lincoln, NE 68508

Obtain proof of delivery from the Post Office or other delivery service and retain as proof of timely filing.

Receipts

The applicant and attorney of record will receive an Acknowledgement of Receipt from the Chicago Asylum Office after filing of the application. Allow several weeks for the receipt to be generated. If the Acknowledgement of Receipt is not received, contact the Chicago Asylum Office to confirm receipt and obtain a new Acknowledgement of Receipt. This receipt essentially serves as the applicant's proof that he or she has a pending asylum application and is therefore allowed to remain in the United States.

If the asylum application is still pending 150 days after the application was received, the applicant is eligible to file for a work permit. You can prepare and file **Form I-765**, Application for Employment Authorization (detailed in a later section) and the client should receive an Employment Authorization Document within 30 days. If the work permit is not received after 30 days, contact The Advocates staff to strategize to advocate for its issuance.

The Asylum Interview

Officers from the Chicago Asylum Office periodically travel to Minnesota to conduct asylum interviews. Interviews are held at the USCIS District Office at:

250 Marquette Avenue
Suite 710
Minneapolis, MN 55401

Notice of interview is generally sent to both the attorney and the client three weeks prior to the scheduled interview. **Continuances are not routinely granted for attorney conflicts**; if a volunteer attorney receives notice of interview and cannot attend, please notify The Advocates immediately to arrange for substitute counsel at the interview.

The Chicago Asylum Office's schedule of interviews in Minnesota varies, depending on the availability of officers to travel. In general, the Asylum Office conducts interviews for two to four weeks each year. Interview priorities change over time. You can get an estimate of the wait time by reviewing the [Affirmative Asylum Scheduling Bulletin](#). If your client has been waiting for an interview and wishes to be interviewed, you may contact the Chicago Asylum Office to request that the client be placed on the next interview schedule. Though formal expedite requests must be submitted by mail, you can submit case inquiries via e-mail at: Chicago.Asylum@uscis.dhs.gov. Attorneys should note that employment authorization

eligibility hinges on the length of time the asylum application has been pending: clients with cases pending more than 180 days are eligible to receive work authorization.

Persons entering the USCIS office are searched, and only those appearing for scheduled appointments will be admitted to the building. Bring a copy of the interview notice, and provide a copy to the interpreter and client if they are meeting you at the USCIS office. Indicate to the security guards that you are appearing for an asylum interview. You will be directed to check in at a reception area. An asylum officer will call your client when ready.

The attorney should prepare the applicant for the interview and accompany the client to the interview. Attorneys, however, have very limited roles in the non-adversarial setting of the interview. The Asylum Officer will take notes on a computer. The attorney is allowed to take notes but no computers are allowed. You will also be asked to turn off your cell phones before the interview begins. The Asylum Officer will question the client regarding the veracity of the contents of the application and his or her claim for asylum. At the end of the interview, the attorney will be allowed to present a short closing argument on behalf of his or her client.

If the client is not fluent in English, he or she must bring his or her own interpreter. The Asylum Office will not provide an interpreter. The applicant's attorney may not serve as the interpreter. In addition, it is strongly suggested that family members do not serve as interpreters during these interviews. It is critical that a competent interpreter accompany your client to the interview. While a professional interpreter is not necessary, it is imperative that you work with the interpreter and the client prior to the interview to ensure that the interpretation will be accurate. When the client begins the substantive portion of the interview, the officer will connect with a telephonic interpreter who will monitor the interpretation and only participates if errors are made by the client's interpreter.

The interview is relatively informal, taking place across a desk. After introductions, the applicant will be electronically fingerprinted and photographed. The client will take an oath, and then a form memorializing the oath will be presented to the client to sign. While the proceedings are non-adversarial, they are under oath and your client's credibility will be scrutinized. Discuss with your client prior to the interview the significance of the oath, including information about the crime of perjury and the possibility of termination of asylum should fraud be detected at a later time.

If family members are included in the application and present in the United States, they must also appear at the interview. The interview, however, will focus on the primary applicant, and the other family members may be asked to wait outside and only briefly be questioned.

The Asylum Officer usually makes efforts to put the applicant at ease and to assure the applicant that information obtained during the interview will not be shared with the applicant's government. The officer reviews the asylum application with the applicant to ensure that all the information is correct and accurate. If any information on the application requires changes or updates, the attorney should mention/bring attention to the changes before the Officer begins the review process. The Asylum Officer will mark all changes in red pen, and these will be reviewed

with the client and attorney at the close of the interview. If major changes are necessary, it is usually best to provide written corrections to ensure the record is complete.

Cautionary Note: Contact The Advocates or your consulting attorney should major changes be made to the substance of your client's claim. An adverse credibility finding may be entered if the client's testimony differs from their written claim or if the information on the form initially filed differs substantially from that offered in the written corrections without explanation.

Banat v. Holder, U.S. App. LEXIS 4817 (8th Cir. 2009) (The alien's due process rights were violated when the IJ made his adverse credibility determination relying on the State Department letter, which was unreliable because it did not provide sufficient information about how the investigation was conducted.)

Additional documentation may be presented at the time of the asylum interview. Bring two complete copies of the additional documentation, indexed, paginated, and with a table of contents, to the interview. The Asylum Officer may ask you to forward voluminous documentation by mail to Chicago following the interview.

The Asylum Officer will ask the client questions which most often will come directly from the client's affidavit regarding the client's experiences and the reasons he or she fears returning to his or her country. Sometimes the questions are open-ended, such as: "Why are you afraid to return to Kenya?" Other times, the questions are specific: "What happened to you on October 6, 2009?" Asylum interviews typically last between 1½ to 2½ hours. We advise you to conduct a mock interview with your client in preparation for the asylum interview. Make sure your client is able to briefly summarize the essential reasons he or she is seeking asylum and understands the most important information in the claim that needs to be covered.

The role of the attorney during the asylum interview is very limited. The attorney may interrupt the interview if he or she feels that the applicant did not understand the question or if a question is inappropriate. The attorney should ask to stop the interview and speak to a supervisor if the interviewing officer's behavior is inappropriate or offensive. At the end of the interview, the interviewing officer will ask the attorney to make a short closing statement on the applicant's behalf. During the closing statement, it is important that the attorney explain to the Asylum Officer why the client is eligible for asylum and which enumerated grounds are applicable to the client's claim. It is important for the attorney to direct the Asylum Officer to any document that is particularly supportive of the applicant's case or that merits particular attention. The regulations permit the Asylum Officer, in his or her discretion, to receive additional documentation after the interview, 8. C.F.R. §208.9; discuss this with the Asylum Officer at the close of the interview should you feel additional documentation of a particular issue is required. If your client has not accrued the 180 days necessary to be eligible for employment authorization, please note that requesting additional time for documentation will stop that time from accruing. The need for additional documentation should be balanced with the stopping of the clock.

Outcome of the Interview

The Asylum Office will mail a written notice of decision to the client and the attorney. There is no specific time frame in which the application must be adjudicated. There are a number of possible outcomes:

- **Recommended Approval** means the case is approved on its merits, but the background checks (fingerprints, name checks) have not yet cleared. The case is approved pending the favorable outcome of those checks. A client with recommended approval is NOT an asylee, but can apply for a work permit if he or she does not yet have one.
- **Approval** means asylum has been granted. The letter stating the case is approved includes specific instructions regarding family reunification, permanent residence, the I-94 card, social security and certain grant programs available. Review this with your client to ensure he or she understands the benefits. The Advocates is also available to meet with you and your client after asylum is granted to review the benefits and responsibilities.
- **Referral Notice** means the Asylum Office has referred the case to the Immigration Judge, initiating removal proceedings. Cases are referred if the Asylum Office does not approve the application and the applicant is not in valid immigration status.
- **Denial** means the application has been denied but because the applicant is in a valid immigration status they are not subject to removal proceedings and therefore cannot be referred. Denied applicants retain their other valid immigration status. The case is concluded at this point.

Removal Proceedings

Removal proceedings are initiated by the filing with the Immigration Court of Form I-862, Notice to Appear (NTA), charging the client with removability from the United States. The client is the respondent in the case. The DHS bears the burden of establishing removability from the United States. In asylum cases, this usually involves establishing that the individual is not a citizen or national of the United States; is a citizen or national of another country, and that he or she is in the United States in violation of at least one provision of the Immigration and Nationality Act. Remaining in the United States beyond the authorized period of stay is the most typical violation. Once removability has been established, the alien must state any claim for relief from removal, such as a claim for asylum.

Removal proceedings must be closely monitored. A missed court date will result in an *in absentia* order of removal. Make sure that your client's correct address (as well as your own) is on file with both USCIS and the Immigration Court. Monitor case status by calling the EOIR information line at 1-800-898-7180 with your client's A-Number (Alien Registration Number).

Removal proceedings begin with the **Master Calendar** hearing. The Master Calendar hearing is similar to a criminal arraignment at which pleadings are taken and other preliminary matters or status checks are conducted. At the Master Calendar hearing, a date is set for the Individual hearing when the merits of the case are adjudicated. Individual hearings are generally scheduled for 3–4 hours, during which testimony is taken, evidence presented, and a decision rendered by the Immigration Judge.

Attorneys representing clients in removal proceedings should refer to the [The Immigration Court Practice Manual](#) for comprehensive information on procedures before the immigration court.

Referred Applications

As stated above, applications not approved by the Asylum Office are **referred** to the Immigration Judge when the applicant is no longer in lawful immigration status. Referral of the application transfers jurisdiction from the Department of Homeland Security to the Immigration Court, a component of the Department of Justice's Executive Office for Immigration Review (EOIR). Applicants referred from the Asylum Office are in removal proceedings.

The Immigration Court receives from the Asylum Office a complete copy of the I-589, Application for Asylum, plus attachments. Unfortunately the Asylum Office does not always forward all attachments you submitted. It is important to check with the Judge to see how many pages are contained in the referred application he or she received from the Asylum Office and what documents are included if it appears to be incomplete. *A new asylum application need not be filed with the Immigration Court.* Updates of, or corrections to, the previously filed application may be made, and additional documentation may be submitted to the Court. The asylum application, however, remains "pending" and processing time for purposes of employment authorization continues to accrue after the case is referred to the Immigration Court.³

Upon referral to the Immigration Court, a Notice of Hearing will be sent to the client (now referred to as the "respondent"). Attorneys are advised to immediately file **Form EOIR-28**, Notice of Entry of Appearance, after which court correspondence will be directed to the attorney. The attorney will not be recognized until Form EOIR-28 is filed with the court and served upon the DHS Office of Chief Counsel. Form EOIR-28 must be submitted electronically through the [EOIR portal](#). Attorneys must have completed the [eRegistry process](#) and have an EOIR ID number in order to file the EOIR-28.

³ The Immigration Judge may refer to the "clock." This tracks the number of days the I-589 has been pending and determines eligibility for work authorization. The "clock" can be stopped if the respondent delays proceedings by requesting a continuance. It is important to avoid the "clock" being stopped in a case if work permission is important to the client. You can check the number of days on the "clock" by calling the EOIR phone system at 1-800-898-7180 and selecting option 2 (after entering and verifying name and "A" number).