

## Lesson Plan Overview

<b>Course</b>	Asylum Officer Basic Training
<b>Lesson</b>	<i>Overview of the Asylum Process – History, Process, and Jurisdiction</i>
<b>Field Performance Objective</b>	Given a request for asylum to adjudicate, the asylum officer will properly determine jurisdiction and apply appropriate precedent decisions to adjudicate the request.
<b>Interim (Training) Performance Objectives</b>	<ol style="list-style-type: none"> <li>1. Identify the jurisdiction of asylum officers to adjudicate requests for asylum.</li> <li>2. Identify the jurisdiction of the Office of the Immigration Judge to adjudicate requests for asylum.</li> <li>3. Identify the procedures for adjudicating asylum claims.</li> </ol>
<b>Student Materials/References</b>	Participant Workbook, Affirmative Asylum Procedures Manual
<b>Background Reading</b>	<ol style="list-style-type: none"> <li>1. Beck, Susan. "Cast Away," <i>The American Lawyer</i> (October 1992), p. 54-59. (attached)</li> <li>2. Beyer, Gregg A. "Affirmative Asylum in the United States," <i>Georgetown Immigration Law Journal</i> (Vol. 6, No. 2, June 1992), p. 253-284. (attached)</li> <li>3. Beyer, Gregg A. "Establishing the United States Asylum Officer Corps: A First Report," <i>International Journal of Refugee Law</i> (Vol. 4, No. 4, July, 1992), 39 p. (attached)</li> <li>4. Beyer, Gregg A. "Reforming Affirmative Asylum Processing in the United States: Challenges and Opportunity" <i>The American University Journal of International Law and Policy</i> (Vol. 9, No. 4, November 1994), p. 43-78. (attached)</li> <li>5. Conover, Ted. "The United States of Asylum," <i>New York Times Magazine</i> (September 20, 1993), p. 56. (attached)</li> </ol>

6. Langlois, Joseph E., Acting Director, Asylum Division, Office of International Affairs. *Final Rule amending the asylum regulations in 8 C.F.R. 208*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 6 December 2000), 8 p., plus attachment.
7. Martin, David A. "Making Asylum Policy: The 1994 Reforms," *Washington Law Review* (Vol. 70, No. 3, July 1995), p. 725-755. (attached)
8. Martin, David. INS General Counsel. *Legal Opinion: Application of the Lautenberg Amendment to asylum applications under INA section 208*, Memorandum to John Cummings, Acting Assistant Commissioner, CORAP (Washington, DC: 6 October 1995), 3 p. (attached)

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Presentation**I. INTRODUCTION**

The purpose of this lesson is to introduce the student to the asylum process by providing an overview of the history of the establishment of the Asylum Officer Corps and the asylum process. This lesson provides an overview of the laws, regulations, and procedures pertaining to asylum and refugee status. The asylum process will be covered in greater detail in subsequent lessons.

In 1996, legislation was passed (the Antiterrorism and Effective Death Penalty Act of 1996 - "AEDPA," and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 - "IIRIRA"), which had a profound effect on the asylum program. The final rule implementing the asylum provisions of IIRIRA, as well as a June 1998 proposed rule on the exercise of discretion in cases involving past persecution, was published in the Federal Register on December 6, 2000 and became effective on January 5, 2001.

**II. HISTORY OF THE UNITED STATES ASYLUM OFFICER CORPS AND CURRENT PROCEDURES****A. United Nations Treaties**

In 1968, the United States acceded to the *1967 United Nations Protocol Relating to the Status of Refugees* (Protocol), which incorporates the *1951 United Nations Convention relating to the Status of Refugees* (Refugee Convention). According to the Refugee Convention, a refugee is any person who: "...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country..."

References**Instructor Note #1****OH #1, #2: Objectives**

65 FR 76121; *See*, Langlois, Joseph E., Acting Director, Asylum Division, Office of International Affairs. *Final Rule amending the asylum regulations in 8 C.F.R. 208*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 6 December 2000), 8 p., plus attachment.

**OH #3: Chronology of Laws**

For background on history of Asylum Program, *see* Gregg Beyer articles noted in "Background Reading" above.

[1951 United Nations Convention relating to the Status of Refugees, Art. I.A\(2\)](#), United Nations Treaty Series No. 2545, Vol. 189, p. 137; [1967 United Nations Protocol Relating to the Status of Refugees, Art. I.2](#), United Nations Treaty Series No. 8791, Vol. 606, p. 267

## B. Passage of Refugee Act of 1980

1. The 1980 Act brought the U.S. into compliance with the obligations it assumed when it signed the Protocol on November 1, 1968. The statutory definition of refugee was derived from the Refugee Convention definition, and the Act made mandatory the withholding of deportation (*non-refoulement*) (now “withholding of removal,” as a result of the IIRIRA) to a country where an individual's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.
2. Prior to implementation of the 1980 Act, refugees under U.S. law were largely defined in political and geographical terms; unless there was a special act of Congress, they had to come from either communist countries or countries in the Middle East. The Congressional intent of the 1980 Act was to establish a politically and geographically neutral adjudication standard for both asylum status and refugee status -- a standard to be applied equally to all applicants regardless of country of origin.

In contrast to the international definition, U.S. law expanded the definition of “refugee” to include someone who has been persecuted in the past, as well as someone who has a well-founded fear of future persecution.

## C. 1980 Interim Regulations

Interim Regulations for implementing the 1980 Act were promulgated in June of 1980. INS District Directors were responsible for the adjudication of asylum applications filed by applicants who were not in deportation or exclusion proceedings before an immigration judge (affirmative applications). Immigration officers conducted asylum interviews, in addition to their other duties.

## D. Initial Review of Asylum Decisions

The Central Office Refugee, Asylum, and Parole Division (CORAP) was established as part of the Examinations Program to oversee the adjudication of asylum applications. When the Office of Foreign Operations (COFOR) was established in January, 1988, the three overseas districts and CORAP moved into COFOR’s jurisdiction.

The Asylum Policy and Review Unit (APRU) was set up in 1987 as a component within the Justice Department's Office of Legal Policy. APRU was tasked with the review of certain asylum

decisions (final denials) forwarded by District Directors and providing both general analyses of asylum issues as well as case specific comments to the Deputy Attorney General.

## E. 1990 Final Regulations

1. Final Regulations were published on July 27, 1990, and came into effect October 1, 1990, establishing the Asylum Corps.

**Instructor Note #2**

There shall be attached to the Office of Refugees, Asylum, and Parole such number of employees as the Commissioner, upon recommendation from the Assistant Commissioner, shall direct. These shall include a corps of professional Asylum Officers who are to receive special training in international relations and international law under the joint direction of the Assistant Commissioner, Office of Refugees, Asylum, and Parole and the Director of the Asylum Policy and Review Unit of the Office of Policy Development.

**Instructor Note #3**

8 C.F.R. § 208.1(b) (1990)

2. The Office of Foreign Operations was renamed in 1990, becoming the Office of International Affairs and Outreach. On June 11, 1992 the functions of APRU were assumed by the Quality Assurance Branch of the Asylum Division and the Resource Information Center (RIC) and soon after APRU was abolished. With the change of administration in January 1993, the “Outreach” was dropped from its title and the Office of International Affairs (IAO) was restructured. CORAP divided into three separate branches of Asylum, Refugee, and Parole.

Later, the Overseas Enforcement Branch and the Humanitarian Affairs Branch were added to the IAO.

Seven asylum offices opened in 1991, and an eighth, New York, opened in December 1994. The offices are currently located in Los Angeles (Anaheim), San Francisco, Newark (Lyndhurst), Houston, Miami, Chicago, Arlington, and Rosedale, New York. Initially, there were eighty-two asylum officers.

**Instructor Note #4**

3. The Resource Information Center (RIC), an in-house library and documentation center created pursuant to the 1990 regulations, opened in late 1991. Following the example of several refugee-receiving countries, primarily Canada, its mandate is to collect and disseminate to asylum officers

[8 C.F.R. § 208.1\(b\)](#)

information on country conditions needed to make quality asylum adjudications.

In particular, the information disseminated by the RIC includes reports regarding human rights conditions in refugee-producing countries. Additionally, the RIC provides updated versions of REFWORLD, a UNHCR computer database that contains country conditions and legal information relevant to asylum adjudication. The RIC conducts some original research, primarily synthesized papers written by outside experts, and also responds to inquiries made by asylum officers regarding particular claims or issues.

This is covered in greater detail in lesson, [Country Conditions Research and the Resource Information Center \(RIC\)](#).

## F. Reform

When the Asylum Corps was established, it was expected that the number of annual asylum applications filed would be approximately 70,000. However, in fiscal year (FY) 1992, asylum seekers filed approximately 103,000 applications. By FY 1993, the rate of receipt had jumped to 150,000. This rate continued into FY 1994. Due to a variety of factors, particularly a lack of resources and a diversion of available resources to the screening of Haitian asylum-seekers at Guantanamo Bay Cuba, the backlog of unadjudicated applications increased to overwhelming numbers.

*See, Beyer, Gregg A. "Reforming Affirmative Asylum Processing in the United States: Challenges and Opportunity" The American University Journal of International Law and Policy (Vol . 9, No. 4, November 1994), p. 43-78.*

As the backlog grew, the asylum system became more vulnerable to fraud and abuse. Malafide applicants could file fraudulent claims and obtain work authorization while their requests remained pending in the backlog. At the same time, genuine refugees were deprived of expeditious adjudication of their requests, which were bogged down in the backlog.

In an attempt to speed up the asylum process, eliminate the backlog of pending cases, and discourage abuse of the asylum process, reform regulations were implemented January 4, 1995. Except for the provisions regarding work authorization, these revised regulations applied to cases not yet interviewed by January 4, 1995. Some of the main elements of reform are as follows:

1. Decoupled asylum request from automatic employment authorization

Prior to reform, asylum applicants could apply for employment authorization at the same time they applied for

**OH #4: Reform**

asylum. So long as the asylum request was not "frivolous," (manifestly unfounded or abusive) employment authorization was granted.

8 C.F.R. § 208.7 (1990)

The revised regulations decoupled employment authorization from asylum to the extent that asylum applicants no longer can apply for employment authorization at the same time they apply for asylum. Rather, the applicant must wait until granted asylum or 150 days after the Service receives a complete application before the applicant can apply for employment authorization. The Service then has 30 days to either grant or deny the request.

[8 C.F.R. § 208.7](#)

See, *Affirmative Asylum Procedures Manual*.

Employment authorization will be discussed further in the lesson on procedures.

## 2. Created referral process

Prior to reform, asylum officers issued final decisions on all applications for asylum and withholding of deportation. An applicant who was found ineligible was denied, and the applicant had the right to file an asylum application *de novo* with the Office of the Immigration Judge, if exclusion or deportation proceedings were initiated.

8 C.F.R. §§ 208.14(a); 208.18(b) (1990)

Pursuant to the 1995 revised regulations, and current regulations, requests filed by applicants who are deportable or removable and who are found ineligible for asylum must be referred directly to the Office of the Immigration Judge for adjudication in immigration proceedings.

[8 C.F.R. § 208.14\(b\)](#)

Note that a referral is not a final decision.

The immigration judge adjudicates the same asylum application that was filed with the Asylum Office. As a matter of discretion, the immigration judge may allow the applicant to supplement or amend the application.

Under the 1995 and current regulations, asylum officers continue to have the authority to grant asylum in the exercise of discretion to qualified applicants.

[8 C.F.R. § 208.14\(b\)](#)

## 3. Removed right to rebut in most cases

Prior to reform, asylum applicants who were found ineligible for asylum were sent written explanations and were provided an opportunity to rebut the preliminary decision before a final decision was made.

Note that the reform and current regulations do not apply to eligible class members of the ABC Settlement Agreement (*American Baptist Churches v. Thornburgh*,

760 F. Supp. 796(N.D. Cal. 1991)).

Asylum applicants no longer are provided an opportunity to rebut a preliminary negative decision, with the exception of individuals who are still in lawful, non-immigrant status and eligible class members of the *ABC* Settlement Agreement.

4. Decisions no longer mailed in most cases

Prior to reform, asylum decisions and any documents initiating deportation or exclusion proceedings were mailed to the applicant's last known address.

An asylum applicant now must return to the asylum office for personal service of a final decision or referral with accompanying documents initiating removal proceedings. An exception is made for asylum applicants who are not interviewed at an asylum office (i.e., applicants interviewed on circuit rides).

[8 C.F.R. § 208.17](#)

5. Removed authority to adjudicate requests for withholding of deportation in most cases

Prior to reform, asylum officers adjudicated requests for withholding of deportation (now withholding of removal) with each asylum request. Currently asylum officers adjudicate only requests for asylum despite the fact that the application for asylum is at the same time an application for withholding of removal. Applicants may present to an immigration judge a request for withholding of removal based on the original I-589 if referred by the asylum office.

8 C.F.R. § 208.16(1990)

8 C.F.R. § 208.16(a)

8 C.F.R. § 208.3(b)

**G. Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)**

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was signed into law on April 24, 1996. It creates a process by which the U.S. government can designate organizations as “foreign terrorist organizations.” Certain persons determined to have supported these organizations are ineligible for asylum and withholding of deportation or withholding of removal.

See, Department of State, Office of the Coordinator of Counterterrorism, [2001 Report on Foreign Terrorist Organizations](#) (Washington, DC: 5 Oct. 2001), 3p and [Patterns of Global Terrorism, Appendix B: Background Information on Terrorist Groups](#) (Washington, DC: April 2001), 20 p.

See, lesson, [Mandatory Bars to Asylum](#)

## H. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)

On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Some of the provisions of the act were immediately effective, while others become effective after that date. (The changes to section 208 are applicable only to applications filed on or after April 1, 1997.) The IIRIRA nullified certain provisions in AEDPA. It expanded Section 208 of the INA to codify a number of provisions that previously were regulatory and to incorporate new provisions. The most significant changes are listed below.

### 1. Expanded the refugee definition

IIRIRA expanded the refugee definition to classify resistance to a coercive population control program as a political opinion.

For any fiscal year, not more than a total of 1,000 persons who fall into this category may be admitted as refugees or granted asylum.

### 2. Created three new restrictions on applying for asylum (restriction on those who have been in the U.S. more than a year without filing, those who have been denied asylum in the past, and those who can be returned to a “safe” country). These restrictions apply only to those applicants who filed applications after April 1, 1997.

### 3. Requires identity check against all appropriate records or databases maintained by the Attorney General and by the Secretary of State for all applications filed after April 1, 1997 before asylum may be granted.

### 4. Adds penalty for the filing of a frivolous asylum application after April 1, 1997.

If the Attorney General determines that an alien has

### OH #5, #6: IIRIRA

A copy of Section 208 of both the old and new INA can be found at the end of this lesson. Students can compare the two versions.

[INA § 101\(a\)\(42\)](#)

[INA § 207\(a\)\(5\)](#)

Note: Individuals who are found to be refugees on account of another ground as well are not counted against the numeric cap.

[INA § 208\(a\)\(2\)](#)

See [section III.C below, “Restrictions on Filing”](#)

Note: Currently the United States does not have any agreements in effect with other countries that would allow the government to send an alien to a “safe” third country.

[INA § 208\(d\)\(5\)\(A\)\(i\)](#)

[INA § 208\(d\)\(6\)](#)

knowingly made a frivolous application for asylum and has received notice of the penalty for filing a frivolous application, the alien shall be permanently ineligible for any benefits under the INA.

5. Expands definition of aggravated felony. [INA § 101\(a\)\(43\)](#)
6. Establishes a process for expedited removal, which took effect on April 1, 1997. [INA § 235\(b\)\(1\)](#)

## I. Regulations Implementing U.S. Obligations under the Convention against Torture

On October 21, 1998, President Clinton signed legislation codifying U.S. responsibility under Article 3 of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (27 June 1987), subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution to ratify the Convention. The Department of Justice promulgated regulations pursuant to the statute implementing those obligations.

Article 3 of the Convention against Torture prohibits the return of any individual to a country where there are substantial grounds for believing that the person would be in danger of being subject to torture. This is similar to Article 33 of the Refugee Convention, which prohibits removal of a person to a country where the person's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

On February 19, 1999, the Department of Justice published an interim regulation, which became effective on March 22, 1999. The rule

1. allows individuals to seek withholding of removal or deferral of removal under the Convention against Torture, and
2. entitles individuals to withholding of removal if he or she establishes that it is more likely than not that he or she would be tortured in a country to which the person would be removed. A mandatory bar applies, but the person would be tortured, he or she is entitled to deferral of removal.

Section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 ([Pub. L. 105-277](#)) is the US domestic law implementing U.S. obligations under Article 3. However, the U.S. had been obligated to adhere to the principles of Article 3 since November 20, 1994.

[64 Fed. Reg. 8478](#) (February 19, 1999); 8 C.F.R. §§ 208.31, 208.30, 208.16 (1999); See, lesson, *Reasonable Fear of Persecution and Torture Determinations*

## J. Regulations Implementing IIRIRA

On December 6, 2000 a final rule was published in the Federal Register that implemented provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), governing asylum claims. Additionally, this final rule amended portions of the regulations governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country. Finally, the rule also identified factors that may be considered in the exercise of discretion in asylum cases in which the alien has established past persecution but may not have a well-founded fear of future persecution.

[65 FR 76121](#)

On December 7, 2000 the Service published a proposed rule in the Federal Register that would further change the regulations providing guidance on key issues of eligibility such as membership in a particular social group, and nexus. At the time of this writing this rule has not yet been finalized. See, [65 FR 76588](#) for more information

## III. OVERVIEW OF THE ASYLUM PROCESS

### A. Asylum vs. Overseas Refugee Program

Congress created two separate programs to provide protection to refugees -- one applies to individuals outside the United States (overseas refugee program) and the other to refugees within the United States or at a port of entry (asylum). Traditionally, most refugees assisted by the United States have been granted refugee status and resettled in the United States through the overseas refugee program. From 1980-1993, the United States granted asylum in 115,500 cases. During the same period, the United States resettled 1.648 million refugees granted refugee status through overseas programs.

**OH #7**

**Asylum vs. Overseas Refugee Program**

INA §§ [207](#), [208](#); Beyer, Reforming Affirmative Asylum Processing in the United States, *AU Journal of International Law & Policy*, pp. 43-44.

For detailed information of the asylum process see, *Affirmative Asylum Procedures Manual*. The process will be discussed further in the lesson on procedures.

Asylum and overseas refugee processing are closely related functions within the IAO, but there are distinctions. Because asylum officers may have the opportunity to participate in overseas refugee processing details, all should be aware of the distinctions between the two.

For more information regarding refugee processing, see the appendix to this lesson.

#### 1. Location of the applicant

- a. Laws governing asylum apply to asylum seekers physically present in the United States or seeking admission at a port of entry.

[INA § 208\(a\)](#); [8 C.F.R. § 208.2](#)

- b. Refugee status may be granted to refugees who are neither physically present in the United States nor seeking admission at a port of entry. Individuals seeking refugee status generally apply for admission to the United States by filing the appropriate application with the overseas INS officer in charge responsible for the area where the applicant is located. [INA § 207; 8 C.F.R. § 207.1](#)

## 2. Quotas

- a. There are no quotas limiting the number of individuals who may be granted asylum (with the exception of applicants whose claims are based on opposition to coercive population control programs). [INA § 207\(a\)\(5\)](#)
- b. The number of refugees to be admitted each year is determined by the President in consultation with Congress and varies each fiscal year. [INA § 207](#)

Annual admissions ceilings:  
 FY 1995 - 112,000  
 FY 1996 - 90,000  
 FY 1997 - 78,000  
 FY 1998 - 83,000  
 FY 1999 - 91,000  
 FY 2000 - 90,000  
 FY 2001 - 80,000

## 3. Eligibility

- a. To be eligible for asylum, the applicant must meet the definition of "refugee" as defined by statute. Additionally, asylum is a discretionary benefit. Therefore, even if the applicant meets the definition of refugee and is otherwise eligible for asylum, there are some circumstances in which the applicant may be denied asylum in the exercise of discretion. [INA § 208\(a\)](#)
- Note that there are mandatory bars both to a grant of asylum and to a grant of refugee status.
- b. To be admitted as a refugee, the applicant must meet the definition of "refugee" as defined by statute, must be included in a refugee group of special humanitarian concern as designated by the President, and must be sponsored by a responsible person or organization. Additionally, certain overseas refugee applications are governed by the Lautenberg Amendment, which created special evidentiary procedures for establishing eligibility for refugee status. [INA § 207; 8 C.F.R. § 207.2\(d\)](#)

Martin, David. INS General Counsel. [Legal Opinion: Application of the Lautenberg Amendment to asylum applications under INA section 208.](#)  
 Memorandum to John Cummings, Acting Assistant Commissioner, CORAP (Washington, DC):

6 October 1995), 3 p.

## 4. Adjustment of status

- a. Asylees may apply for adjustment of status to lawful permanent resident one year after asylum has been granted. There is a 10,000 person quota for the number of asylees who can adjust to permanent resident status each year.

[INA § 209\(a\)\(2\); 8 C.F.R. § 209.2](#)

- b. Individuals granted refugee status are required to apply for adjustment of status to lawful permanent resident one year after admission to the United States as a refugee. There is no quota for the number of individuals admitted as refugees who can adjust to permanent resident status each year.

[8 C.F.R. § 209.1\(a\)](#)

**B. Jurisdiction**

Regulations provide that an asylum seeker may apply for asylum any time while physically present in the United States or at a port of entry, *regardless of the individual's immigration status*.

**OH #8: Jurisdiction**

[INA § 208\(a\)](#)

## 1. Affirmative applications

An asylum officer has jurisdiction to adjudicate or refer a request for asylum if the applicant is not in immigration proceedings before the Office of the Immigration Judge.

[8 C.F.R. § 208.2](#)

An applicant is in the jurisdiction of the Immigration Court when he or she has been served with

[8 C.F.R. § 208.2\(b\)](#)

- a. a Form I-221 Order to Show Cause,
- b. a Form I-122 Notice to the Applicant for Admission Detained for a Hearing before an Immigration Judge,
- c. or a I-862 Notice to Appear,

and the charging document has been filed with the Immigration Court.

The Immigration Court also has jurisdiction over any asylum applications filed prior to April 1, 1997 by alien crewmembers who have remained in the United States longer than authorized, applicants for admission under the Visa Waiver Pilot Program (VWPP), and aliens who have

[8 C.F.R. § 208.2\(b\)](#)

been admitted to the United States under the VWPP.

## 2. Defensive applications

Immigration judges have *exclusive* jurisdiction over asylum applications after a charging document has both been served on the applicant and filed with the Office of the Immigration Judge.

[8 C.F.R. § 208.2](#)

This means that if charging documents are filed with the Office of the Immigration Judge at any time, even after an individual has affirmatively applied for asylum (and may have been interviewed), the Asylum Office loses jurisdiction.

This also means that, even if the applicant has been personally served with charging documents, the Asylum Office retains jurisdiction until those charging documents are actually filed with the Office of the Immigration Judge.

## 3. Determining jurisdiction

When reviewing a file prior to the asylum interview, the asylum officer should check for any documents indicating that the applicant has been placed in deportation, exclusion, or removal proceedings.

If it appears that an applicant may have had previous contact with the INS, the asylum officer should ask the asylum applicant appropriate questions to determine whether the applicant has been placed in proceedings and the outcome of those proceedings. If the asylum officer determines that proceedings against the applicant were terminated, the application for asylum is properly in the jurisdiction of the Office of International Affairs and can be interviewed by the asylum officer. If it is determined that proceedings were administratively closed, all matters relating to the alien are in the jurisdiction of the Immigration Court and the alien cannot be interviewed by the asylum officer.

If after an approval of an asylum it is discovered that the applicant was not properly in the jurisdiction of the Office of International Affairs, the offer of asylum is rescinded.

## C. Restrictions on Filing

Only an asylum officer, immigration judge, or the Board of Immigration Appeals (BIA) can make a determination on whether a restriction to filing applies.

[8 C.F.R. § 208.4\(a\)\(1\)](#)

These restrictions are discussed in lesson, [Mandatory Bars to Asylum and Discretion](#).

### 1. One-year filing deadline

Asylum applications must be filed within one year after the alien's arrival in the U.S., unless the applicant can demonstrate "changed circumstances" that materially affect eligibility for asylum or "extraordinary circumstances" for failing to apply for asylum within one year.

[INA §§ 208\(a\)\(2\)\(B\) and \(D\)](#); [8 C.F.R. §§ 208.4\(a\)\(2\), \(4\), and \(5\)](#)

The one-year deadline is calculated from the date of the alien's last arrival in the U.S. or April 1, 1997, whichever is later.

Only an asylum officer, immigration judge, or the Board of Immigration Appeals can make a determination on whether an application meets the one-year deadline.

### 2. Prior denial

Prior denial of an asylum application makes an alien ineligible to apply for asylum, unless the applicant demonstrates "changed circumstances" that materially affect eligibility for asylum.

[INA §§ 208\(a\)\(2\)\(C\) and \(D\)](#); [8 C.F.R. §§ 208.4\(a\)\(3\) and \(4\)](#)

This denial must have been made by an immigration judge or the BIA.

### 3. Safe third country

An asylum applicant who may be returned to a "safe third country," other than the country of nationality (or last habitual residence, if the applicant is stateless) is ineligible to apply for asylum.

[INA § 208\(a\)\(2\)\(A\)](#)

A "safe" country is one that has entered into a bilateral or multilateral agreement with the United States so that an applicant will not be returned to a country where his or her life or freedom would be threatened on account of one of the five grounds and where the applicant will have access to a full and fair procedure for determining a claim to asylum

or equivalent temporary protection. To date, the United States has no such agreement with any country. If the U.S. were to enter into such an agreement, the government would notify the public.

#### D. Who May Be Included in the Asylum Application

##### 1. Principal applicant

Any alien physically present in the United States or who arrives in the United States, irrespective of immigration status

**OH #9: Filing Process**

[INA § 208\(a\)](#)

##### 2. Dependents

The applicant's spouse and children who are physically present in the United States; child must be under 21 years of age and unmarried

[8 C.F.R. §§ 208.3\(a\); 208.19\(a\)](#)

Spouse and child are defined in section [INA §§ 101\(a\)\(35\)](#) and [101\(b\)\(1\)](#).

#### E. What to File

##### 1. Completed form I-589 (Application for Asylum and for Withholding of Deportation), with any additional supporting material, in triplicate (original plus two copies)

Documents that are not in English must be accompanied by a certified translation into English.

**Instructor Note #5**

##### 2. An additional copy of the principal applicant's I-589 for each dependent included as a derivative

##### 3. One passport-style photographs of the principal applicant and each dependent

#### F. Where to File

In most cases, affirmative asylum applications must be filed by mail with the appropriate Service Center. Certain applications, however, may be filed with the Asylum Office, the Immigration Judge, the Board of Immigration Appeals, or the District Director.

[8 C.F.R. § 208.4\(b\)](#)

**Instructor Note #6**

#### G. Post-filing Procedure

The following procedures are followed for most cases; different procedures are followed for certain cases such as *ABC* cases and cases in which expeditious processing is required.

**OH #10, #11: Post Filing Process**

1. Service Center sends file to Asylum Office. The Service Center also sends applications to the Department of State. [8 C.F.R. § 208.11\(a\)](#)
2. Service Center schedules applicants between 14 and 79 years of age for fingerprinting at an Application Support Center.
3. Asylum Office schedules interview.
4. Asylum officer interviews applicant.
5. Asylum officer writes assessment and prepares either
  - a. a recommended approval; or
  - b. a referral letter or rejection notice with charging documents, unless the applicant is in lawful status.Preparation of the I-94 and charging documents may be completed by support staff, depending on office procedures and circumstances.
6. If the decision is negative and the applicant is in lawful status, then the asylum officer drafts a Notice of Intent to Deny (NOID) and provides the applicant an opportunity to rebut.
7. The supervisor reviews the assessment accompanied by the decision letter; the referral letter or rejection notice with charging documents; or the NOID. The supervisor then signs the documents or, if necessary, returns them to the asylum officer for corrections.
8. When the assessment and all accompanying paperwork are completed to the supervisor's satisfaction, the file is turned over to the clerical section for additional processing.
9. If the determination is to refer, then a hearing date is scheduled with the appropriate Office of the Immigration Judge.
10. If a NOID was sent to the applicant, the asylum officer reviews any rebuttal received within the prescribed time, then makes a final decision, which is mailed to the applicant's last known address.
11. In most cases, the applicant returns to the Asylum Office to pick up the final decision to grant or the referral. If the [8 C.F.R. § 208.17](#)

determination is to refer, the applicant is also served with documents initiating removal proceedings.

#### IV. SUMMARY

##### A. Purpose of the Refugee Act of 1980

OH #12: Summary A

The purpose of the Refugee Act of 1980 was to ensure politically and geographically neutral asylum and refugee adjudications and to bring the United States into compliance with its obligations under international law. Recent legislation (the AEDPA and the IIRIRA) have made additional, significant changes to asylum law.

##### B. Evolution of Current Asylum Law

OH #13: Summary B

Regulations implemented in 1990 established the creation of a corps of professional asylum officers who must receive special training in international human rights law, conditions in countries of origin, and other relevant national and international refugee law. Regulations were amended in 1995 (Asylum Reform) in order to speed up the process, decrease the backlog, and discourage abusive filings. In 1997, regulations were amended to implement changes to the INA as a result of the AEDPA and the IIRIRA. In 1999 interim regulations were implemented that allowed individuals to seek protection from refoulement under the Convention Against Torture.

##### C. Jurisdiction

OH #14: Summary C

Asylum officers adjudicate or refer requests for asylum filed by individuals who 1) are present in the United States and 2) have not been placed in deportation, exclusion, or removal proceedings.

Immigration judges have exclusive jurisdiction over asylum applications filed by applicants who have been served with charging documents after charging documents have been filed with the Office of the Immigration Judge.

##### D. Asylum Process

OH #15: Summary D

The asylum adjudication process in most cases includes 1) an interview of the applicant; 2) a written assessment of the claim (or Notice of Intent to Deny, if appropriate); 3) a final decision, referral letter, or rejection notice and, if appropriate, charging documents initiating removal proceedings.

**APPENDIX****OVERVIEW OF REFUGEE PROCESSING**

Section 207 of the INA gives the Attorney General the statutory authority to admit, in his or her discretion, any refugee who is not firmly resettled in a third country, who is determined to be of special humanitarian concern, and who is admissible as an immigrant. This authority has been delegated to the INS.

## 1. Application process

- a. Each applicant must submit a Form I-590 (Registration for Classification as Refugee). Applicants 14 years of age and older must also submit a Form G-325C (Biographical Information), and a Form G-646 (Sworn Statement of Refugee Applying for Entry into the United States).

- b. Voluntary agencies usually assist in prescreening applicants, preparing forms, and presenting cases to the INS for adjudication.

These voluntary agencies or “Joint Voluntary Agencies” (JVA) are usually under contract to the Department of State. The role of the JVA varies in locations where the U.S. operates in-country programs.

- c. The applicant is interviewed by an INS officer, in a nonadversarial setting, under oath. As in asylum, the burden of proof for establishing a claim to refugee status rests with the applicant.
- d. Applicants found eligible for refugee status must be medically cleared and must receive a sponsorship assurance prior to traveling to the United States. A sponsorship assurance ensures that a refugee will receive resettlement assistance during the first 30 days after his or her arrival.
- e. The spouse and unmarried minor children of a refugee shall be entitled to the same status if accompanying or following to join the refugee, provided they are admissible to the United States as immigrants, and are not otherwise ineligible under INA Section

The following agencies are among those which have been under such contract to the Department of State: International Catholic Migration Commission (ICMC); International Rescue Committee (IRC); Hebrew Immigrant Aid Society (HIAS); Church World Service (CWS); and Immigration and Refugee Services of America (IRSA).

JVAs usually assist U.S. approved refugee applicants in completing post-interview processing requirements.

[INA § 207\(c\)\(2\)](#)

101(a)(42). There is no requirement that they establish a refugee claim.

2. Ineligibility for consideration for the U.S. refugee program [8 C.F.R. § 207.1\(d\)](#)

Individuals who are not eligible to apply for the U.S. refugee program include:

- a. individuals who qualify as the immediate relative of a U.S. citizen or as a special immigrant, and [See INA § 101\(a\)\(27\) for definition of special immigrant.](#)
- b. individuals who do not fall within designated nationalities and processing priorities

3. Ineligibility for approval [INA §207\(c\)\(1\)](#)

- a. firm resettlement in a third country

Aliens who are firmly resettled in a third country may not be granted refugee status under INA §207.

A refugee is considered to be ‘firmly resettled if he or she has been “offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his/her flight from persecution.”

[8 C.F.R. § 207.1\(b\)](#). See also [8 C.F.R. § 207.1\(c\)](#); [INA § 207\(c\)\(1\)](#)

- b. inadmissibility grounds

Refugees must be admissible as immigrants to be granted refugee status under INA §207. However, not all inadmissibility grounds found in INA Section 212(a) (Classes of Aliens Ineligible for Visas or Admission) apply to refugees. The following grounds do not apply to refugees:

[INA § 207\(c\)\(1\)](#)

- 212(a)(4) (public charge);
- 212(a)(5) (labor certification); and
- 212(a)(7)(A) (documentation requirements).

Refugees may file for a waiver of an inadmissibility ground on Form I-602. Waivers may be granted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The Attorney General may waive all other exclusion grounds except for:

- 212(a)(2)(C) (drug trafficking);

- 212(a)(3)(A) (national security);
- 212(a)(3)(B) (terrorist activity);
- 212(a)(3)(C) (adverse foreign policy consequences); and
- 212(a)(3)(E) (participants in Nazi persecution or genocide).

#### 4. Refugee Admission to the U.S.

- a. At the port of entry, the refugee's I-94 is endorsed with the following: "Admitted as a Refugee pursuant to Section 207 of the Act for an indefinite period of time. If you depart the U.S. you will need prior permission to return. Employment authorized."

Refugees are authorized employment incident to their status and do not need to apply for an Employment Authorization Document (EAD). Their I-94 is accepted as a document which establishes employment authorization.

- b. From the port of entry, the refugee's travel packet is forwarded to the Files Control Office (FCO) with jurisdiction over the refugee's place of residence.

Refugee admissions codes in CIS: Principal Applicant - RE1; Spouse - RE2; Child - RE3.

A refugee (or asylee) who wishes to temporarily travel abroad must be in possession of a valid Refugee Travel Document (INS Form I-571) to return to the U.S. Applicants need to complete INS Form I-131 (Application for Travel Document) for this purpose.

[8 C.F.R. §§ 223.2\(b\)\(2\)](#)

Form I-131 is filed with the Lincoln, Nebraska Service Center.