



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Director
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

FACT SHEET

Contact: Office of Legislative and Public Affairs
(703)305-0289 Fax: (703) 605-0365
Internet: www.usdoj.gov/eoir

April 28, 2005

Immigration Court Process in the United States *Removal Proceedings, Bond Redeterminations, Asylum, Convention Against Torture*

This fact sheet is intended to assist the public's general understanding of the immigration court process in the United States. It is not a substitute for legal advice, nor does it constitute any legal opinion by the Department of Justice. It is not fully inclusive; does not address the many legal, regulatory, and court interpretations that may affect individual cases; and may be subject to change as new laws and regulations are implemented.

The Executive Office for Immigration Review (EOIR) is responsible for adjudicating immigration cases. Specifically, under delegated authority from the Attorney General, EOIR interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings. EOIR consists of three components: the Office of the Chief Immigration Judge, which is responsible for managing the numerous immigration courts located throughout the United States where immigration judges adjudicate individual cases; the Board of Immigration Appeals (BIA), which primarily conducts appellate reviews of immigration judge decisions; and the Office of the Chief Administrative Hearing Officer, which adjudicates immigration-related employment cases. EOIR is committed to providing fair, expeditious, and uniform application of the nation's immigration laws in all cases.

Immigration judge decisions are administratively final unless the case is appealed to the BIA. BIA decisions are binding unless modified or overruled by the Attorney General or a federal court.

Removal Proceedings

The most common type of proceeding before EOIR is the removal hearing. In these hearings, the agency that is responsible for enforcing federal immigration laws, the Department of Homeland Security (DHS), charges and must prove that an alien is in the United States unlawfully and should be removed. EOIR does not have jurisdiction over an alien's case unless DHS files charging documents with EOIR.

If DHS charges an alien with an immigration law violation, it serves the alien with a charging document, known as a Notice to Appear, ordering the individual to appear before an immigration judge. The Notice to Appear also is filed with the immigration court having jurisdiction over the alien, and advises the alien of the nature of the proceedings, the alleged immigration law violations, the privilege of being represented by an attorney at no expense to the government, and the consequences of failing to appear at scheduled hearings.

(more)

Immigration Court Process in the United States

Page 2

Generally, immigration court proceedings involve an initial “master calendar” hearing and, subsequently, an “individual” hearing. During the master calendar hearing, the immigration judge ensures that the alien understands the immigration violation charges and provides the alien information on available “pro bono” (free of charge) or low-cost legal representation resources in the area. During the individual hearing, the merits of the case are discussed before the immigration judge by the alien, or the alien’s legal representative, and the DHS attorney who is prosecuting the case. In most cases, the immigration judge issues an oral decision at the conclusion of the individual hearing.

Once a case is completed, if either the alien or DHS disagrees with the immigration judge’s decision, either party or both parties may appeal the decision to the BIA. Information concerning appellate practice before the BIA is available in BIA’s [Practice Manual](#) and the [Questions and Answers Regarding Proceedings Before the Board](#).

If the alien disagrees with the BIA’s ruling, the alien may file an appeal in the federal court system. If DHS disagrees with the BIA’s ruling, in rare instances, the case may be “certified” (referred) to the Attorney General for review.

An EOIR fact sheet, [Types of Immigration Court Proceedings And Removal Hearing Process](#), provides information about removal proceedings and other types of immigration court proceedings.

Bond Redeterminations

Another common proceeding is the bond redetermination hearing for aliens who are detained by DHS but have pending immigration hearings with EOIR. Eligible aliens can ask an immigration judge to reduce the amount of bond set by DHS, or to set a bond if DHS has determined that no bond should be set.

Relief from Removal

While almost all hearings deal with the issue of removal from the United States, the outcome of many hearings depends on the availability of relief from removal, if any. Immigration law provides relief from removal to aliens who meet specific eligibility criteria. In most removal proceedings, aliens concede that they are removable, but then apply for one or more forms of relief from removal. In such cases, aliens must prove that they are eligible for relief, such as asylum, adjustment of status, cancellation of removal, or other remedies provided by immigration law. Additional information about relief is available in an EOIR fact sheet, [Forms of Relief From Removal](#).

Asylum

Asylum protection provides relief from removal to those individuals who are unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

(more)

Immigration Court Process in the United States

Page 3

When an individual seeks asylum during a removal proceeding, the immigration judge hears the applicant's claim and also hears any concerns about the validity of the claim raised by the government, which is represented by a DHS attorney. The immigration judge then makes a determination of eligibility. If the applicant is not found eligible for asylum, the immigration judge determines whether the applicant is eligible for any other forms of relief from removal and, if not, orders the individual removed from the United States.

Within 30 days of receiving a denial decision from an immigration judge, the applicant may appeal to the BIA. If the BIA affirms the immigration judge's denial decision, the applicant may file an appeal with the federal court system.

Additional information about asylum is available in an EOIR fact sheet, [Asylum Protection in the United States](#).

Expedited Removal

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandates that aliens who arrive at a U.S. port of entry without travel documents or present fraudulent documents must be detained and placed in expedited removal.

The expedited removal process allows an immigration inspector to remove from the United States certain classes of aliens who are inadmissible. However, no aliens can be expeditiously removed from the United States until they are read a sworn statement and acknowledge that they understand it, and are questioned whether they have a concern or fear of being returned to their home country.

Aliens who express a fear of persecution during the expedited removal process receive a "credible fear" interview with an asylum officer from the U.S. Citizenship and Immigration Services in DHS.

Aliens who are not found to have a credible fear of persecution by an asylum officer may request that an immigration judge review the asylum officer's negative determination prior to their removal from the country. This review must be concluded within 24 hours whenever possible, but in no case later than 7 days after the initial determination by the asylum officer. The review is limited solely to whether the aliens have a credible fear of persecution.

Those persons found to have a credible fear are referred to EOIR for removal proceedings in which they may apply for asylum before an immigration judge.

Convention Against Torture Protection

Convention Against Torture (CAT) protection relates to the obligations of the United States under Article 3 of the United Nations Convention Against Torture—an international treaty provision designed to protect persons from being returned to countries where they face torture. Under Article 3, the United States agrees not to "expel, return, or extradite" a person to another country where he or she would be tortured.

(more)

CAT provides two separate types of protection: “withholding of removal” and “deferral of removal.” Both provisions ensure that a person is not returned to face torture, but they do allow the government to remove the person to a third country where he or she would not be tortured.

Withholding of removal prohibits an alien's return to a specific country. Withholding of removal can be terminated only if the case is re-opened and the DHS establishes that the alien is not likely to be tortured in that country.

Deferral of removal is a more temporary form of protection. Deferral of removal is granted to aliens who likely would face torture but who are ineligible for withholding of removal—for example, certain criminals and persecutors. Deferral of removal is more easily and quickly terminated if the individual no longer is likely to be tortured in the country of removal. It also allows an individual who is subject to detention to be detained.

CAT protection is not the same as asylum. The major differences are:

- Individuals granted asylum can file for permanent resident status after 1 year and an asylee’s immediate family members may be granted the same status. CAT protection does not grant either permanent resident status or the ability to bring family members to the United States.
- Persons who claim asylum must establish a “well-founded” fear of persecution, based on one of five grounds: race, religion, nationality, membership in a social group, or political opinion. CAT does not require that the torture be feared on account of those five grounds, but applicants are required to establish that it is “*more likely than not*” that they would be tortured if removed to a specific country.
- Not all types of harm that qualify as persecution necessarily constitute torture.
- For those who meet the respective standards, a grant of asylum is discretionary while CAT protection is mandatory.
- Persons with serious criminal or terrorist backgrounds, as well as persecutors, cannot be granted asylum. Under CAT, such persons will not be returned to torture, although they may be subject to detention where appropriate.

CAT claims generally are determined by EOIR immigration judges during regular immigration removal proceedings. Immigration judge decisions regarding CAT may be appealed to the BIA.

– EOIR –