

# Chapter 2: Asylees

## Definition

The U.S. Citizenship and Immigration Services (USCIS) may grant asylum status only to someone who is physically present in the United States or at a port of entry. Asylum status is granted under Section 208 of the Immigration and Nationality Act (INA), pursuant to the Refugee Act of 1980. Asylees meet the refugee definition, that is, they have demonstrated unwillingness or inability to return to their country of origin because of a history of persecution and/or well-founded fear of persecution due to their race, nationality, religion, political opinion, or membership in a social group. To claim asylum a person must already be in the United States or at a U.S. port of entry and undergo an interview with the USCIS or an immigration judge.

The spouse and minor unmarried children of asylees also receive asylum status if they are in the United States and included in the asylum application. If family members are outside the United States, the asylee may apply for them to follow later to the United States (see the section below on VISAS 92). In certain cases where the spouse and children of an asylee are in the United States and not included in the asylum application, the asylee may file a petition (Form I-730) to have them also given asylum status.

On very rare occasions, individuals may present an I-94 specifically annotated "Paroled as an asylee" under Section 212(d)(5) of the INA. All asylees are eligible for refugee program benefits regardless of nationality.

### **Who is an asylee? An asylee is . . .**

- ◆ a person already in the United States (or applying to enter the U.S.) who demonstrates that he or she meets the definition of a refugee.

## Explanation of Status/DHS Codes

All asylees are eligible for refugee program benefits, and in a June 2000 policy change, the date asylum is granted is used to calculate the benefit period for assistance. See [ORR State Letter #00-15](#), entitled "Asylee Eligibility for Refugee Resettlement Program Benefits." This letter provides additional assistance to program service providers who must determine and document asylee eligibility.

Cuban or Haitian nationals who have been granted asylum were previously eligible for refugee program benefits as asylum applicants and other entrant categories; they are **not**, therefore, eligible for an additional period of refugee benefits.



Note: Persons of Cuban or Haitian nationality applying for asylum are eligible for refugee services as Cuban or Haitian entrants (see page 3-2); however, asylum applicants of other nationalities are ineligible.

Asylees are eligible to apply for an adjustment of status to legal permanent residents (LPR) after one year. Permanent residents who were formerly asylees do **not** lose eligibility for refugee benefits upon adjustment to LPR status. The REAL ID Act of 2005 removed the 10,000-person cap on asylum adjustments in each fiscal year. The date of permanent residence for asylees is one year prior to the date their adjustment to permanent residence is approved, but use the date asylum was granted to determine refugee program eligibility.

USCIS may notify asylum applicants that their asylum application has been recommended for approval pending administrative checks. This is **not** a final grant of asylum and individuals with these letters are **ineligible** for refugee program benefits until USCIS or an Immigration Judge has issued a final order granting asylum.

Persons whose asylum claim has been recognized on the grounds of coercive population control were formerly known as “conditional asylees” until one of the 1,000 numbers reserved annually for these cases was available. The limit on asylees recognized on this ground was also removed under the REAL ID Act of 2005, and they become eligible for refugee services on the date they are granted asylum.

 **Note:** Except as indicated in the previous note regarding Cuban and Haitian asylum applicants, asylum applicants recommended for approval are **ineligible** for ORR-funded programs until after receiving a final order granting asylum.

For a brief explanation of the DHS codes and annotations detailed below, refer to the chart on page 2-3.

Asylees may demonstrate eligibility by showing a letter from an USCIS asylum office approving asylum status, an order of an immigration judge or the Board of Immigration Appeals (BIA) granting asylum as noted below, a Form I-94 arrival/departure card with a stamp indicating status under Section 208 of the INA (sometimes annotated with AS1, AS2, or AS3 codes), or a Permanent Resident Card (Form I-551) with codes AS6, AS7, or AS8. Asylees usually have no automated I-94 record as they are already in the United States when their status is approved. Asylees may also show Form I-766 (Employment Authorization Card) with a code of A05 as photo identification and evidence of status. Family members not included in the asylum application may show an USCIS Notice of Approval of the asylee's I-730 petition as evidence of eligibility; the date of "entry" is the date of USCIS approval of the petition. The family may also have a Form I-94 arrival/departure record issued by the DHS showing their status and their "entry" date.

An order of an immigration judge granting asylum is sufficient documentation of eligibility if the order shows that DHS has waived its right of appeal. If DHS reserves its right to appeal, however, applicants are **not** yet eligible as asylees. Providers must check with the **EOIR's telephonic case status line (800-898-7180)** after 30 days to confirm whether or not DHS has chosen to appeal. If DHS chooses not to appeal, the eligibility date for refugee services is 30 days after the immigration judge's decision date.

Should DHS appeal the judge's decision, the applicant is **not** an asylee and is **ineligible** for refugee program services. These applicants must present a later decision of the immigration judge or the decision of the Board of Immigration Appeals in order to show eligibility. Eligibility is then calculated from the date of the immigration judge's or BIA's decision.

## VISAS 92

An asylee's spouse and unmarried minor children outside the United States may apply to join the asylee in the United States. These relatives will arrive in the United States, each with documentation as a VISAS 92 (V-92), including an electronic I-94 record at [www.cbp.gov/i94](http://www.cbp.gov/i94). If they receive a paper Form I-94 arrival/departure card, the card and their passport should be stamped by DHS with the inscription that the individual is being admitted under Section 208 of the INA. These family members are eligible for refugee program benefits from the date of their entry into the United States. Their date of eligibility is not based on the date their asylee relative was granted status.

### Immigration Status Codes for Asylees

CODE	STATUS	NATIONALITY	DOCUMENT
A05	(a)(5) My application for asylum has been granted.	All	I-766*
AS1	Approved primary asylee		I-94
AS2	Spouse of asylee		
AS3	Child of asylee		
AS6	AS1 adjustment to LPR		
AS7	AS2 adjustment to LPR		
AS8	AS3 adjustment to LPR		I-551*
GA6	Iraqi asylee (processed in Guam) adjusted to LPR		
GA7	Spouse of GA6 adjusted to LPR		
GA8	Child of GA6 adjusted to LPR		
INA 208	I have been admitted to the United States as an asylee.	All	I-94
V-92 (VISAS 92)	Spouse or child "following to join" asylee in the United States		

**Note:** Need to verify date asylum granted to determine eligibility.

\*These documents do not show the date of eligibility for asylees.

