

# **HOW TO APPLY FOR ASYLUM, WITHHOLDING OF REMOVAL, AND/OR PROTECTION UNDER ARTICLE 3 OF THE CONVENTION AGAINST TORTURE**

**WARNING:** This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet was originally prepared in 2002 by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit organization that provides free legal services to immigrants detained in Arizona. It was adapted in 2011 to provide more general information for immigrants detained across the country. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or the Department of Justice (DOJ)/Executive Office for Immigration Review (EOIR) but these agencies have reviewed its content

Immigration law, unfortunately, is not always clear, and the Florence Project's understanding of the law may not always be the same as DHS' or the DOJ's interpretation of the law. The Florence Project believes that the information is correct and helpful, but the fact that this booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' or the DOJ's interpretation of the law is the same as that expressed in the booklet.

We wrote this booklet in 2002 for two reasons. One is to help you find out if you may qualify for asylum and/or withholding of removal (also called "withholding") so you can avoid being sent back to your country if you have a fear of return. The second is to help you apply for any relief that you may be eligible for either by yourself if you cannot get a lawyer to represent you, or to help you help your lawyer if you have one.

## **Who is this booklet written for?**

This booklet is for people who are in the custody of DHS and who have been placed in removal proceedings. "Removal" is what used to be called "deportation." This booklet is not applicable to persons who are in deportation or exclusion proceedings. If you were placed in immigration proceedings after April 1, 1997, you are probably in "removal" proceedings. You can tell what type of proceedings you are in by the document you should have received from DHS that has the charges against you (or reasons you are removable from the U.S.). If the document is labeled "**Notice to Appear**" (Form I-862), you are in **removal** proceedings. If the document is labeled "**Order to Show Cause**" (Form I-221), you are in **deportation** proceedings. If the document is numbered at the bottom, "Form I-110" and "Form I-122," you are in **exclusion** proceedings.

**If you are in "deportation" or "exclusion" proceedings,**



**this booklet does not apply to you and you should consult  
with an attorney if possible.**

This booklet is written for people in removal proceedings **who may qualify for asylum or withholding of removal under the Immigration and Nationality Act (INA), or protection under Article 3 of the Convention Against Torture (CAT), as a way of avoiding removal from the United States.**

## How do I use this booklet?

Read the whole booklet in order to find out if you may qualify for asylum or withholding and what you need to do to complete the forms and prepare for your hearing. It is very important to understand that it is up to YOU to prepare your case and get evidence (proof), if there is any, to give to the judge. If you don't prepare for your hearing, you are more likely to lose than if you do prepare.

## NACARA, HRIFA and TPS

Before we discuss in detail the qualifications for these possible defenses to removal, we want to let you know about two laws Congress passed toward the end of 1997 and 1998 that may also provide possible defenses to removal for individuals who meet eligibility criteria. These two laws are: (1) the Nicaraguan Adjustment and Central American Relief Act of 1997, which is often referred to as “NACARA,” and (2) the Haitian Refugee Immigration Fairness Act of 1998, which is often referred to as “HRIFA.” **Please review the attached Appendix A for information about these two defenses.**

- **If you are from Guatemala, El Salvador, certain countries in Eastern Europe, Nicaragua, Cuba, or Haiti, there may be a way for you to avoid removal from the U.S.**

Under two laws called NACARA and HRIFA, certain people from the above countries could get lawful permanent resident status and stay in the United States. The requirements are different depending on what country you are from. If you fall into any of the categories mentioned in Appendix A, you should ask the Immigration Judge or DHS to determine whether you can stay in the United States legally under NACARA or HRIFA. If you are the spouse or child of someone who qualifies for relief under these laws, you might also qualify to stay in the United States and you should ask the judge or DHS.

Also, a third law we want to tell you about is called Temporary Protected Status. If you are from Haiti and have been granted Temporary Protected Status (TPS), or have lived in the U.S. since January 12, 2011, have not been convicted of an aggravated felony or two or more misdemeanors, , and applied for TPS by November 15, 2011, you may be able to remain in the U.S.

## INFORMATION ABOUT ASYLUM AND WITHHOLDING OF REMOVAL

This booklet now describes what asylum and withholding of removal mean, who is eligible, and how to prepare your case.

### What is asylum?

Under the laws of the United States, people who flee their countries because they fear **persecution** can apply for “asylum” as provided by section 208 of the INA. **Asylum** gives you protection as a refugee in the United States. **Persecution** can be harm or threats of harm to you or your family or to people similar to you. A person can also get asylum if he or she has suffered persecution in his or her country in the past and meets the definition of a “refugee” as defined in section 101(a)(42) of the INA. You can only be granted asylum if at least one of the reasons someone harmed or may harm you is because of your race, religion, nationality, political opinion (or a political opinion someone thinks you have), or the fact that you are part of some particular social group.

If you are granted asylum, you will be allowed to stay in the United States legally and to get a work permit. Your husband or wife and your unmarried children under age 21 who are in the U.S. can also get legal status

as asylees if you include them on your asylum application. If they are outside the U.S., you can file papers to allow them to come to the U.S. after you are granted asylum. If you are granted asylum, you may later apply to be a lawful permanent resident and, eventually, a U.S. citizen.

### **What is withholding of removal under INA section 241(b)(3)?**

**Withholding** of removal is a type of legal protection some people may be able to get instead of asylum and is defined at section 241(b)(3)(A) and (B) of the INA. For reasons we explain in more detail later – for example, either applying for asylum more than one year after entering the United States and you do not qualify for an exception or because of certain criminal convictions – some people are not “eligible” or “qualified” for asylum. Also, even if a particular criminal conviction or bad act does not prevent you from applying for asylum, the Immigration Judge may decide to deny your asylum application because of it. In such situations, “withholding” may be the only way to avoid removal.

Withholding is like asylum in that it keeps you from being sent back to your country, and it means you may live and work legally in the U.S. You apply for withholding the same way you apply for asylum, using the same application form. But there are important differences between both forms of relief from removal:

- It is harder to be granted withholding. You have to show more than that there is a good chance you will be persecuted on account of your race, religion, political opinion (or a political opinion someone thinks you have), or the fact that you are part of some particular social group if you go back to your country. You have to show that your life or freedom will be in danger, and you have to show that this is likely to happen (not just that it is possible).
- If an Immigration Judge finds you eligible for withholding of removal, he or she cannot deny your application in the exercise of discretion.
- If you are granted withholding of removal, it only means you cannot be sent back to the country where you face danger. If another country is willing to take you, the United States can send you there.
- If conditions change in your country so that DHS believes it is safe for you to go back, DHS could start a new case in immigration court to try to convince a judge that you should be sent back.
- Withholding does not get you permanent residence, does not allow you to immigrate your family, and does not lead to becoming a U.S. citizen.

### **What protection is available under the Convention Against Torture?**

Some people are eligible for protection under the **Convention Against Torture (CAT)** if they show that it is more likely than not that they would be tortured by the government, or by people working for or with the consent of the government, if they were returned to a particular country. “Torture” is defined in Article 1 of the Convention Against Torture and at 8 Code of Federal Regulations (CFR) sections 208.18(a) and 1208.18(a). Withholding of removal under the CAT is very much like withholding of removal under section 241(b)(3) of the INA in that, if you are granted this form of protection, it only means you cannot be sent back to the country where you face torture. However, there is no requirement that the feared torture be related to a protected reason as required for asylum or withholding under INA section 241(b)(3). If another country is willing to take you, the United States can send you there. Also, if conditions change in your country so that DHS believes it is safe for you to go back, DHS could start a new case in immigration court to try to convince a judge that you should be sent back. Finally, withholding under the CAT does not get you permanent residence, does not allow you to immigrate your family, and does not lead to becoming a U.S. citizen.

If the Immigration Judge finds that you are more likely than not to be tortured in a country if you are removed, but also finds that you are not eligible for withholding of removal under the CAT because of certain criminal

convictions or other grounds for ineligibility, the judge may consider whether you are eligible for Deferral of Removal. Deferral of Removal under the Convention Against Torture is defined at 8 CFR sections 208.17(a) and 1208.17(a). Deferral of Removal does not give you any legal status in the United States and does not necessarily mean that you will be released from detention. Deferral of Removal may be terminated if after a review it is determined that it is no longer more likely than not that you would be tortured in the country to which your removal is deferred, or if you request that your deferral be terminated.

To apply for withholding of removal under the CAT you use the same application form that is used to apply for asylum or withholding of removal under INA section 241(b)(3).

To learn more about withholding of removal under the CAT read the information in these materials under the section entitled “Who Can Apply for Protection under the Convention Against Torture?”

### **How do I apply for asylum or withholding of removal?**

You have to fill out an application, Form I-589, Application for Asylum and for Withholding of Removal, in which you explain what happened to you in your country and why you are afraid to return. You also have to explain all of this in great detail at a hearing in which you speak to the judge and answer questions. The judge will decide if he or she thinks you are telling the truth. He or she will also decide if you were persecuted in your country or will be in danger of persecution if you are sent back. This same application is also used to apply for withholding of removal and for protection under the CAT.

### **Can I fight my asylum or withholding of removal case outside of detention?**

If you are in “removal proceedings” and are being detained by DHS, you may have the right to ask the Immigration Judge to lower your bond. A bond is money you pay to get out of custody and you get back after your case is finished, as long as you go to all your court hearings and interviews and leave the country if that is what the judge orders. If you have a very strong case and strong family or community ties in the United States, the judge may decide to let you out of custody without making you pay any money, based only on your promise to attend all your hearings. This is called being released “on your own recognizance.” However, if you have a certain type of criminal conviction, you may not be eligible at all for a bond or for release from detention. **To find out whether you are eligible for a bond and how to apply and prepare for a bond hearing, you should read another booklet called “All About Bonds.”**

If you are afraid to return to your country and you were detained by immigration at the airport or some other border, you may qualify for something called **parole**. If you are granted parole you will be able to leave detention and continue fighting your immigration case from outside.

In order to be eligible for parole, you must first pass what is called a Credible Fear or Reasonable Fear Interview. This is when you explain to immigration officials that you are afraid to return to your country and why you are afraid. If you pass this stage, you may then seek parole. Generally, to qualify for parole you must show the following:

1. That you are who you say you are (your identity)
2. That you are not a flight risk, and
3. That you are not a danger to the community

However, not everyone is eligible for parole even if you can show those things. Talk to your immigration officer if you have questions.

If you do get out of detention, you are still required to go back to court (or to the Immigration Court closest to where you live) to continue with your case. If you get out of detention but do not show up in court when you are supposed to, the judge will order you removed. Later on, we explain what to do if you get out of detention.

**What do I do if I cannot get out of detention and I can't stand being detained anymore? Can I ask for removal or voluntary departure and then come back to the United States?**

It is very difficult to be locked up for a long time, and it is normal to feel frustrated, sad, and depressed. A lot of people feel bad because they cannot work and provide for their families, or they feel like they are wasting their time. If you cannot pay your bond, you may be thinking about giving up your rights and accepting an order of removal from the United States, so that you will not have to spend any more time in detention.

If you are **not** afraid to return to your country, or if, after reading this booklet, you decide that you do not qualify for asylum or withholding, and if you do not qualify for some other type of defense, accepting removal or applying for “voluntary departure” might be the right thing to do.

**But if you are afraid to go back, giving up now may be a big mistake.** First, you should think about your life and the danger you will face if you return.

Second, if you are thinking about coming back to the United States in the future, accepting removal or voluntary departure may be a mistake. If you return to the United States illegally after an order of removal or voluntary departure, you will not have a work permit and you will always run the risk of being caught by DHS. If you are caught, you can be charged with the crime of returning illegally after an order of removal. This is a felony for which you can be put in prison. If you have a criminal history, in some cases, the law says you can go to prison for up to 20 years for coming back to the U.S. illegally!

Also, if you are caught returning to the United States and you then apply for asylum, the judge may decide that, because you did not apply for asylum or withholding the last time you were in the United States, you are not really afraid to return to your country.

Finally, accepting removal or even getting “voluntary departure” may make it difficult or even impossible for you to return to the United States legally, even if you have family here legally or some other way to immigrate. If you return illegally to the United States after an order of removal, DHS can put you into a proceeding called “Reinstatement of Removal” where your previous removal order will be “reinstated.” This means that DHS will remove you again, and you may not have the right to see an Immigration Judge before you are removed unless you express a fear of return to your country and pass a reasonable fear interview.

As you can see, there are many reasons why you should fight your case now if you have a case to fight. But if you are thinking about not applying to stay in the United States and you want to know more about how being removed from the United States can affect you in the future, you should read the booklet called, “**How to Apply for Voluntary Departure.**”

**If I apply for asylum or withholding of removal, will I be putting my family members in my country in danger?**

Some people are afraid that the information on their asylum application can get back to their country and be

used against family members who are still there. Unless you are well known in your country and you seek publicity about your case, this is not likely. A copy of your asylum and withholding of removal application does go to the U.S. Department of State, but the Department is not supposed to contact your government about you. There are regulations that cover the confidentiality of asylum claims. You can also tell the Immigration Judge about your concerns and ask that the immigration hearing be closed to the public and that the information you provide be kept confidential.

### **What do I do if I speak and understand English, but not perfectly?**

You have the right to understand all the questions you are asked during your hearing, and it is extremely important that you understand everything and not just part of it. It is also extremely important that you be able to speak to the judge and that the judge understand you well. For this reason, if you don't speak and understand English perfectly, you should tell the judge. The Court will get an interpreter who speaks your language.

 **If you don't speak and understand English perfectly, tell the judge.**

### **What are the requirements for receiving asylum or withholding of removal under INA section 241(b)(3)?**

In order to receive asylum or withholding of removal under INA section 241(b)(3), you have to show three things:

1. That you have good reasons to be afraid
2. Of being persecuted or losing your life or freedom
3. Because of your race, religion, nationality, political opinion, or membership in a particular social group.

We will now explain each of these requirements.

### **What do I have to show about why I am afraid?**

To receive asylum, you generally have to show that you are afraid of returning to your country and that you have good reasons for feeling this way. To receive withholding of removal under INA section 241(b)(3), you have to show not only that there is reason to think you may be persecuted if you go back, but that it is more likely than not that you will be persecuted. If you only show that maybe you will be persecuted, the judge cannot give you withholding.

If you were persecuted before, it is easier to show that you are likely to be persecuted again if you go back, but you must show the persecution was for one of the reasons we just mentioned. It is very important that you explain this in your application and that you tell the judge all about it, in a lot of detail, at your hearing.

### **What is “persecution?”**

To receive asylum, you have to show that you have suffered persecution in your country or that you are in danger of persecution if you return because you possess one or more of the five protected reasons, and that these protected reasons were or will be at least one central reason for the persecution. Different kinds of harm may amount to “persecution,” including things that may seem less serious if they happen just once but can add up to persecution if repeated over time. “Persecution” may include instances where you have been or are in danger of being threatened, hurt, beaten, kidnapped, detained, jailed, tortured, sexually abused, or killed, or that

your freedom has been or will be taken away or limited a great deal. Also, if you are unable to get a job, go to school, and if you face harassment by many people in your country, these things might all together add up to persecution.

**What does it mean to be persecuted because of my political opinion, membership in a particular social group, race, religion, or nationality?**



Not everyone who faces danger in his or her country qualifies for asylum or withholding. You can only succeed in your case if the person or people you are afraid of have persecuted you or want to persecute you for one of the following reasons:

**Your political opinion.** Many people suffer persecution because of their political opinions. It doesn't matter whether you support or oppose the government. Among those who have won asylum because they were persecuted for their political opinions are: students who took part in demonstrations or strikes against the government, union activists, members of political groups, and members of the government.

Sometimes, even if you have no political opinion, someone may mistreat you because he or she thinks that you have a certain political opinion. He or she may think this because of the town where you live, your family members, things you do, groups you participate in, people you spend time with, or other reasons. In this case, you may also qualify for asylum or withholding.

The law also says that if you were or are afraid to be forced to have an abortion or to be sterilized, or if you were or are afraid to be persecuted because you refused or will refuse to participate in a program of forced population control, you were persecuted or face persecution because of your political opinion.

**Your social group.** Many people suffer persecution because they are part of a certain "social group." A social group means people who share certain things about themselves that they cannot or should not have to change. For example, they can be members of the same family, clan or tribe, or ethnic group, or have a particular sexual orientation.

For example, suppose the government of a country wants to destroy an entire culture, and kills the members of a certain tribe. The members of the tribe are being persecuted because they belong to a "social group." Or suppose the guerrillas in a country kidnap members of a family called Martinez. If the guerillas are mistreating the members of the Martinez family because of their membership in the family, the Martinez family might be considered a social group.

Your persecution could also be because of your social group if you have been or may be harmed, threatened, or harassed because you are homosexual. For instance, if your country's government persecutes people because they are homosexual, and you are a homosexual and have been persecuted or fear persecution, you may qualify for asylum or withholding.

Women in some countries may be part of a social group if they are mistreated because they are women and especially if they oppose the mistreatment. For example, in some countries, there is a practice of cutting women in the genitals once they reach a certain age. If you are afraid to return to your country because you

fear this or some other serious mistreatment because you are a woman and you do not agree with that mistreatment, you may qualify for asylum or withholding.

**Your race.** Many people are mistreated because of their race. If you have been persecuted or are in danger because of your skin color, origin, or background, you may qualify for asylum or withholding.

**Your religion.** Many people are mistreated because of their religion. If you are not allowed to practice your religion, or if you are mistreated because of your religious beliefs, you may qualify for asylum or withholding.

**Your nationality.** Nationality can mean the country you originally came from or your country of citizenship. One example would be if you are a citizen of El Salvador but you live in Honduras, and you are persecuted because you are Salvadoran.

To qualify for asylum, you must establish that your race, religion, nationality, particular social group or political opinion was or will be at least one central reason for the persecution you fear or experienced.

### **Does the person or people I am afraid of have to be in the government?**

No. The person or people you fear can be the army, police, soldiers, elected officials, or death squads, but they can also be a group that the government cannot or is not willing to control, such as guerrillas or some other opposition group, the civil patrol, or any other group that the government cannot or is not willing to control.

### **What if I am threatened or mistreated for personal reasons?**

If someone persecutes you only for personal reasons, you do not qualify for asylum or withholding. For example, if you have debts and the people who loaned you the money are after you for that reason, that is not a basis for claiming asylum or withholding. Even if the person who loaned you the money is a soldier, the problem may be strictly personal, between the two of you.

However, if someone is after you for various reasons, not all of which are personal, you may qualify. For example, if the soldier who loaned you the money threatens to tell the military that you are a subversive, it may be that you will be persecuted for political reasons (because the government will think that you are an enemy of the state) and then you might indeed qualify for asylum or withholding.

### **What if I was persecuted in the past for one of these reasons, but will not be persecuted for one of these reasons if I go back to my country?**

There are two possible ways you might be granted asylum.

1. The Immigration Judge or DHS finds that you have suffered such horrible persecution that you should not have to return to your country. It is very important to tell the DHS or the Immigration Judge all of the details of what you suffered in the past!
2. You were persecuted in the past for one of the five reasons listed above and will be seriously harmed for some other reason if you were returned. Here is an example: you were persecuted in the past because of your religion. Things have improved in your country and now people of your religion are no longer persecuted. But, you are afraid to return to your country because you will be seriously harmed for some other reason. You might be able to obtain asylum.

Please note that you cannot obtain withholding of removal under INA section 241(b)(3) in either of these two ways. You could only possibly obtain asylum.

### **What if I left because I do not want to participate in the war?**

First, it depends on why you do not want to participate. If you just don't want to do your military service or if you refused to join the army or the guerrillas because you want to stay with your family, and not because you are morally, religiously, or politically opposed to one side or the other, it is more difficult to obtain asylum. In other words, it is difficult to show that you will be persecuted because of your political opinion if you don't have a political opinion.

It also depends on why you would be persecuted. If your refusing to do your military service leads the government or guerrillas to believe that you support the other side, or if they mistreat you because they consider you their enemy, it can be said that the government or guerrillas will persecute you because of your political opinion (or because they think you have a certain political opinion). But if, for example, members of government will detain or jail you as a punishment for not participating in your military service, and not because they think you support the guerrillas, you do not have the basis for a political asylum claim, because it has nothing to do with your own political opinion.

One very common problem for people applying for asylum after refusing to participate in the war is that the judge may say that the harm they suffered is because the government wants to enforce the law, and not because it was persecuting people for their political opinions. You might be able to qualify for asylum, though, if you can show that you or other people in the same situation have been tortured, killed, or mistreated in a way not provided for by law, because that may show that you were or will be persecuted for political reasons and not just to enforce the law of your country.

### **Will I qualify for asylum or withholding if I came to improve my life and I am not in danger in my country?**

If you came to the United States only because of lack of work or poverty, you will not qualify. But, if you came to the U.S. because you were poor and also because you are in danger of being mistreated in your country because of your political opinion, social group, race, nationality, or religion, you might qualify.

### **What if I fear mistreatment but for some other reason?**

You cannot obtain asylum or withholding of removal under INA section 241(b)(3) unless you can show persecution because of one of the five reasons we explained. But if you are afraid of being tortured by an official in your country or if you can show your government would willingly allow you to be tortured, but you cannot prove that it is for one of the five reasons we explained, you may be able to get protection in the U.S. based on something called the “United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment” (or for short, “the Convention Against Torture”). Keep reading this booklet for our discussion of how to apply for protection under the Convention Against Torture.

## **WHO DOES NOT QUALIFY FOR ASYLUM OR WITHHOLDING OF REMOVAL?**

### **The law does not allow you to apply for asylum if:**

- 1) You were in the U.S. more than one year before filing the asylum application (there are exceptions to this

rule!).

- 2) You applied for asylum in an immigration court in the U.S. before and lost (there are exceptions to this rule also!).

**The law does not allow you to receive a grant of asylum if:**

- 1) You established strong enough ties to another country that you are considered to have “firmly resettled” there.
- 2) You have been convicted of an “aggravated felony” (explained later).
- 3) You have been convicted of a “particularly serious crime” and are a danger to the community (explained later).
- 4) You participated in the persecution of someone else because of his or her race, religion, nationality, membership in a particular social group, or political opinion.
- 5) You committed a serious crime outside the U.S. that was not a political crime.
- 6) You are considered a terrorist or a danger to the security of the United States.

**The law does not allow you to receive withholding of removal if:**

- 1) You have been convicted of a “particularly serious crime” and are a danger to the community (explained later).
- 2) You participated in the persecution of someone else because of his or her race, religion, nationality, membership in a particular social group, or political opinion.
- 3) You committed a serious crime outside the U.S. that was not a political crime.
- 4) You are considered a terrorist or a danger to the security of the United States.

If you have a conviction for an “aggravated felony,” you may or may not be eligible for withholding. If you have one or more aggravated felonies and the sentences for those aggravated felonies add up to five years, you are not eligible for withholding. If the sentences for your aggravated felony or felonies are less than five years, you might be eligible for withholding but only if you can prove the felony or felonies were not “particularly serious.” We will discuss later how to prepare this kind of case.

**What is the rule about applying for asylum within one year of arrival?**

Starting April 1, 1998, you cannot apply for asylum unless you can show that you have been in the U.S. for less than one year before filing the application. It is up to you to prove to the judge how long you have been here. There are some exceptions to this rule.

**The one-year deadline does not apply to you if you can show that since you came to the United States, one of these two things happened:**

- 1) There have been **important changes** – such as changes in your home country, in your life, or in the

U.S. asylum laws – which affect your asylum case. For example, if you were in the United States for 2 years and then a government came into power in your country that is persecuting people like you, you can show that you have a good excuse for not applying for asylum before (since you were not in danger before).

**OR**

2) There were “**extraordinary circumstances**” you had no control over (meaning you were in an unusual situation) that kept you from filing for asylum within a year of your entry into the U.S. Here are some examples:

- You were very sick
- You had a long period of mental or physical problems, including emotional or physical problems because of violence against you or persecution you suffered
- You were under age 18 and living without your parent or legal guardian
- You had a lawyer and your lawyer did not inform you that you had to file within a year of entry
- You did file your application within one year of arriving but it was sent back to you for some reason and you soon filed it again
- Your lawyer or someone in your family died or had a serious illness
- You have “temporary protected status” under a special law; a non-immigrant visa; are a lawful permanent resident; or in a status called “parole.”

No matter what it was that kept you from filing within one year of entering the U.S., you still have to show that you are filing for asylum within a “reasonable” amount of time. For example, if the change in governments in your country put you in danger 2 years ago and you knew about it, the judge is likely to find that you waited too long and cannot now apply.



**If you are filing your asylum application more than one year after arriving in the United States, be prepared to explain to the judge why you waited!**

Include with your asylum application any proof you can get to show why you waited. For example, if you were having physical or emotional problems, get a letter from your doctor or counselor, if you went to one.

**Remember if the judge decides that you missed the one year deadline and that you cannot apply for asylum, you can still apply for withholding of removal.**

**What is the rule if you were denied asylum in the U.S. before?**

If you applied for asylum in the U.S. at an Asylum Office but not with the Immigration Court, you can apply for asylum again. In that case, you may have had an interview with a person called an “Asylum Officer.” But if you applied for asylum and were denied by an Immigration Judge or a higher court called the Board of Immigration Appeals, you cannot apply for asylum now.

However, this rule does not apply if you can show that important changes happened since you lost your asylum case or there are “extraordinary circumstances,” such as those we just explained, that existed at the time of your case. **Also, remember that this rule does not keep you from being able to apply for withholding of removal.**

## What is the rule if you were “resettled” somewhere before coming to the U.S.?

You are not eligible for asylum if, after you left your country, you were “firmly resettled” in another country. This means that the other country offered you lawful permanent residence, citizenship, or some other type of permission to live there permanently. However, you are not “firmly resettled” if you can show:

- 1) You had to go through another country (or countries) to escape persecution before coming to the U.S. and that you stayed there only as long as you needed to arrange to keep traveling, and you did not form important ties to the country that allowed you to legally remain (such as by buying property or getting married). OR
- 2) You were kept from living a normal life there because there were restrictions on things like your right to work, own property, live in decent housing, travel, go to school, and to eventually become a citizen of that country.

## What is an aggravated felony conviction and what if I have one?

You do not qualify for asylum if you have been convicted of an aggravated felony, but you may be able to apply for withholding if your sentence was less than five years.

Below are some of the most common aggravated felonies. For the complete list, see volume 8, section 1101(a)(43) of the United States Code, or section 101(a)(43) of the Immigration and Nationality Act.

### CRIMES THAT ARE AGGRAVATED FELONIES:

- rape
- sexual abuse of a minor
- murder
- firearms offenses, including possession of prohibited firearms
- felony alien smuggling (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- fraud or income tax evasion, if the victim lost over \$10,000
- money laundering (of over \$10,000)

Certain drug crimes or trafficking in firearms, explosive devices or drugs.

Drug trafficking includes:

- transportation, distribution, importation;
- sale and possession for sale;
- **certain cocaine possession offenses** (depending on what circuit court of appeals jurisdiction your case is in);
- **certain simple drug possession offenses**

Certain crimes for which you received a sentence of one year or more, (whether you served time or not) including any of these:

- theft (including receipt of stolen property)
- burglary
- a crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
- document fraud (including possessing, using, or making false papers) – unless it was a first offense and you did it only to help your husband, wife, child, or parent
- obstruction of justice, perjury, bribing a witness
- commercial bribery, counterfeiting, forgery, trafficking in vehicles with altered identification
- certain gambling offenses, for which a term of imprisonment of one year or longer *may* be imposed;
- failure to appear if you were convicted of (1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or (2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes listed above.

Also, please keep in mind that just because DHS charges you with a certain type of crime does not mean that your crime is that kind of crime. There are different legal arguments a lawyer or someone like you can make. These arguments are complicated and we advise you to get help from a lawyer or legal agency if you can.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction.

It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. DHS may oppose a change to your conviction or sentence if the change is made only to avoid being removed from the United States. To find out more about this, you will need to talk to an experienced immigration lawyer.

### **What if I have an aggravated felony conviction but my sentence was less than 5 years?**

In that case, you may not be eligible for asylum, but you may be eligible for withholding of removal. The judge has to decide whether your crime is “particularly serious,” and if he or she decides it is, you will not be eligible for withholding of removal. We explain soon what facts the judge uses to make this decision, but it is important to understand that, most of the time, an aggravated felony is considered a “particularly serious crime.” Only if you can show that there is something special about your crime that makes it less serious will the judge consider you for withholding of removal.

### **If I have a crime that is not an aggravated felony, can I receive asylum or withholding of removal?**

Maybe, but not if the judge decides that your crime is a “particularly serious crime.” There is no list to look at and see whether your crime is “particularly serious” or not. Each case is different, and the judge will consider 4 things in order to decide whether your crime was particularly serious. These 4 things are:

- 1) The nature of the crime (what type of crime it was and what happened);
- 2) The sentence you received (whether it was a heavy or light sentence);
- 3) Whether it was a crime against a person or a crime against property; and
- 4) Whether the circumstances of the crime make you a danger to society.

If you used a weapon, if you received a long sentence, or if you hurt someone or put someone in danger when you committed the crime, it is more likely that the judge will decide you committed a particularly serious crime and you will not be eligible for either asylum or withholding of removal.

**If there is evidence that will help the judge understand why you committed the crime or why the crime was less serious than it may appear, you should give it to the judge and DHS.** For example, if you were suffering from emotional problems when you committed the crime and you have seen a doctor or counselor for this problem, you should get a letter from that person to give to the judge explaining your condition. If there are papers about the crime that will tend to show that you are not dangerous, such as a letter from your criminal lawyer or from someone who was there when you committed your crime, give them to the judge and DHS. But get and file these papers as soon as you can, because the judge might make this decision early on in your case before hearing about the reasons you are afraid to return to your country.

If you lose your case because the judge decided your crime was a particularly serious one, and if you disagree with this decision and want to appeal, you can say in your appeal that the judge made a mistake in deciding that your crime was particularly serious, and you can explain why. We discuss appeals toward the end of this booklet.

### **What if I am denied asylum or withholding of removal because of my crime or crimes, but I have good reason to fear torture by my government?**

As we said before, if you are afraid that your government or a government official will torture you, you may be able to avoid being removed by applying for withholding of removal protection under Article 3 of the United Nations Convention Against Torture (CAT). This may be true even if you have a serious criminal conviction. We discuss this form of protection in more detail below.

### **What is the rule for someone who has persecuted someone else?**

If you participated in the persecution of someone because of that person's political opinion, particular social group, race, nationality, or religion you do not qualify for asylum or withholding of removal. This is true even if you were acting under orders of your superior. However, fighting in battles against other soldiers or guerrillas is not persecution.

### **Can the judge deny me asylum or withholding of removal for other crimes or acts?**

If you have criminal convictions, as we mentioned before, you are not eligible to receive asylum or withholding of removal if the judge decides: 1) that your crimes are “particularly serious;” 2) that you participated in the persecution of others because of one of the five protected grounds; 3) that you committed a serious crime outside of the U.S. that was not a political crime; or 4) that you are considered a terrorist or a danger to the security of the United States. Additionally, if you participated in genocide, torture, or extra-judicial killings,

you are also not eligible for withholding. Because asylum is a discretionary form of relief, if the judge decides your crimes are not “particularly serious,” he or she can still take your crimes into account when deciding whether you deserve asylum. The judge can also consider other negative things about you, like if you used false papers to get into the country or to work. But the judge also has to take into account other things, such as the danger you would face in your country if removed, your health, your age, and your family ties in the United States.

Remember, withholding is harder to obtain than asylum because you must show that it is more likely than not that your life or freedom would be threatened if returned to your country. On the other hand, with some exceptions, if are able to show that it is more likely than not that your life or liberty would be threatened because of your race, religion, nationality, political opinion or particular social group, the judge **must** grant your application even if you have negative factors. The exceptions to this rule are:

- If you committed a “particularly serious crime”;
- If you participated in the persecution of others because of one of the five protected grounds;
- If you committed a serious crime outside of the U.S. that was not a political crime;
- if you are considered a terrorist or a danger to the security of the United States; and
- if you participated in genocide, torture or extra judicial killings,

If you fall into any of those categories, the judge will not grant you withholding of removal.

## **WHO CAN APPLY FOR PROTECTION UNDER THE CONVENTION AGAINST TORTURE?**

### **What are the requirements for being granted protection under the Convention Against Torture (CAT)?**

To be granted protection under CAT you must show that it is more likely than not that you will be tortured by a government official, or by someone acting with the consent of the government, if you are returned to your home country. Again, you do not have to prove that you will be tortured for a particular reason. You just must show that you will be tortured.

There are no exceptions to the above rule. Unlike asylum and withholding of removal under INA section 241(b)(3), it does not matter if you have criminal convictions, if you have persecuted someone in the past, if you possess any protected characteristics, or if you are considered a danger to U.S. security. If you meet the above requirement, you are eligible to apply for CAT protection. This is not true for asylum or withholding of removal under INA section 241(b)(3) as we discuss later in this booklet. If you fear torture but are not eligible for asylum or withholding, apply for CAT protection. If you are eligible for all three forms of relief/protection, we suggest that you apply for all three.

### **What is torture?**

Torture when someone, on purpose, acts to cause you severe pain or suffering. The pain or suffering could be physical or mental. You must be in the person’s physical control at the time you suffer the torture. In other words, you must be unable to get away from the torturer. Torture can include different types of harm such as physical beatings, rape, electric shock, the administration of mind-altering substances, and threats of such harm to you or another person.

## **What does it mean that someone act with the consent of the government?**

It means that a government official allows someone else to torture you. The government official does not necessarily have to be present when the torture occurs. It means that the government knows about the torture and does nothing to stop it, even though the government has a duty to stop the torture.

## **What are the benefits of CAT protection?**

If you are granted protection from removal under CAT, you will not be removed to the country where you fear torture. You will either be granted what is called “withholding of removal” or “deferral of removal.”

“Withholding of removal” in CAT cases is very similar to withholding of removal under INA section 241(b)(3) discussed above. It has the same benefits. For example, you will be eligible for release from DHS custody and for work authorization. You will not be able to become a lawful permanent resident nor will you be able to bring your spouse or children to the United States. This form of protection has the same bars. In other words, **you can obtain withholding of removal under the CAT only if:**

- 1) You have not been convicted of a “**particularly serious crime**” (explained later);
- 2) You have not participated in the **persecution of others** because of any protected characteristics;
- 3) You have not committed a **serious crime outside the U.S.** that was not a political crime; and
- 4) You are not considered a **terrorist** or a **danger to the security of the United States.**

If you did commit any of the above offenses or you are considered a terrorist or danger to the security of the United States, you cannot be granted withholding of removal under CAT. However, you can get “deferral of removal” under CAT.

Deferral of removal is not as good as withholding of removal. If you are granted deferral of removal, you will get an order of removal, it will just be deferred. This means that DHS won’t be able to remove you now, but if circumstances in your home country change sometime in the future, DHS may be able to return you at that time. Also, DHS may try to keep you in its custody even if you obtain deferral of removal under CAT. DHS will only let you out of detention if you can prove that you are not a danger to the community. To find out more about requesting release from DHS detention, **please read “How to Ask for Release from DHS Custody.”**

If you are granted deferral of removal under CAT, DHS could terminate your protection at a later date if it comes up with any evidence that you would not be tortured. DHS can only do this before an Immigration Judge. You also have the right to terminate your own deferral of removal status.

For these reasons, asylum and withholding are better protection than deferral of removal. But, again, if you are eligible for all of these forms of relief/protection, we suggest applying for all of them. Note: You cannot apply for deferral of removal; the Immigration Judge determines your eligibility for this form of protection if you do not qualify for withholding of removal under CAT.

Please note that even if you can prove you will be tortured, DHS has the right to send you back to your country if the government there promises it will not torture you. According to DHS, these types of cases will be rare.

## **How do I apply for protection under CAT?**

If this is your first time to apply for CAT protection, you apply just like you apply for asylum and withholding of removal. You submit an application to the Immigration Judge.

### **What application do I use to apply for CAT protection?**

You use the Form I-589, Application for Asylum and for Withholding of Removal, the same application used to apply for asylum or withholding of removal. See our discussion later regarding how to fill out the form. Pay particular attention to Question 4 in Part B of the application. The question asks about whether you fear torture. Answer with as much detail as possible. Include in the application detailed descriptions of any torture you suffered in the past.

### **How can I prove I will be tortured?**

Later in this booklet we discuss how to prove an asylum or withholding of removal claim. Read this discussion for ideas on how to prove you will be tortured. The proof is very similar. For example, it is helpful if you can get letters from others who are aware of the political situation in your country and/or your problems there; newspaper articles about what is going on politically in your country, or human rights documents that show people in your situation in your country are tortured.

For more information about how to prove a CAT claim, write to:

World Organization for Human Rights USA, 2029 P Street, NW, Suite 202 Washington, DC 20036  
([info@humanrightsusa.org](mailto:info@humanrightsusa.org)) tel: 202-296-5702; fax: 202-296-5704

The World Organization for Human Rights is an organization committed to helping victims of torture. If you write to the organization, be as specific as possible about the facts of your case and why you fear torture in your home country.

## **HOW DO I APPLY FOR ASYLUM, WITHHOLDING OF REMOVAL, ORCAT PROTECTION?**

Basically, your case has two parts.

### **The first part of the case:**

At the beginning of your case, in one of your first hearings also known as a Master Calendar Hearing, the judge will ask you if each of the charges against you is true. Ask the judge to tell you all of the charges. Listen carefully to the questions and **do not agree to facts that are not exactly true**. For example, if the judge asks you if you entered the country without inspection (illegally) on January 1, 1997, but you actually entered in 1998, do not say that the charge is true. If you do not know the exact date you entered, tell this to the judge. This is important because later, when you apply for asylum or withholding of removal, the dates that you give have to be consistent with everything you said earlier, or the judge may think that you are lying or making things up. If you answer the judge's questions and admit to certain facts, make sure that each fact is exactly correct.



**When answering the judge's questions about the charges against you, agree to facts only if they are exactly true. If you believe certain facts are not exactly true, tell the judge.**

### **The second part of the case:**

Normally, it is not hard for the government to show that the charges against you are true. After that, the judge should ask you some questions to see if you qualify for a way to stay in the United States. The judge should also ask you if you are afraid to go back to your country. If you want to apply for asylum, withholding of removal, or CAT protection, explain this to the judge. The judge may ask you some questions about why you fear returning to your country. If the judge decides you may qualify for any of those forms of protection, he or she will give you a date to turn in an application. In some cases, the judge may set another court date to decide whether you qualify to apply for asylum or withholding of removal. You will also be given instructions by the judge and the DHS trial attorney will give you written instructions that you will need to follow to file your application with the Court. The DHS written instructions are entitled *Instructions For Submitting Certain Applications In Immigration Court and For Providing Biometric and Biographical Information to U.S. Citizenship and Immigration Services*.

After you turn in the application form all filled out, the court will send it to the United States Department of State in Washington, DC. The Department of State will read the application and may write a letter with its opinion of the case or send the court information about your country. (It declines to comment in many cases.) You and the DHS lawyer will be given a copy of what the Department of State sends to the court.

After that, you will have what is called an individual or “Merits” hearing. This is the final hearing in your case when the judge listens to your story and asks you and your witnesses, if any, questions about your application and anything else you turn in for the judge to look at.

## **TO APPLY FOR ASYLUM, WITHHOLDING OF REMOVAL, OR CAT PROTECTION, WHAT FORMS DO I FILL OUT AND HOW?**

 **To apply for asylum or withholding, you need to fill out, copy and file a form called an “I-589.”**

The form you need is called a “Form I-589” or an “Application for Asylum and for Withholding of Removal.” Fill out the form using a typewriter or pen. Ask DHS or the Immigration Judge for the form.

**Do not use pencil. Also, you must either fill out the form in English or get someone to help you fill it out in English.**

The form has a page at the end that says at the top, “Supplement B Form.” This page is for you to use in case you run out of room on the main part of the form. It is important to answer the questions completely and in detail, so we recommend making a few copies of the “Supplement B Form” before you write on it. Or, you can make one yourself. Just take a blank piece of paper and write your name, your “A number” (alien number), and the date at the top. **You should also sign each piece of paper you attach to your application.**

At the front of the form is a long explanation of how to fill it out. It says that, **in addition to the I-589 application form, you need to provide DHS with your biometrics (digital photograph and fingerprints) and have a photograph taken.** If you are in custody, you must ask DHS to help you with this. If you get out of custody before you file your application or if you are including family members in your application, you

still must have photographs and fingerprints taken, so we will talk about this more later. You must comply with the DHS biometrics and fingerprint requirements otherwise the Immigration Judge may find that you have abandoned your application unless you have a good reason for any failure to comply.

**Make (or ask an officer to make) four copies of everything you turn in to the Court. Give the originals and 2 copies to the Immigration Judge. Give ICE 1 copy of everything you give the judge. The other copy is for you to keep. Note: Except for the I-589 application form, you should keep your original documents and you should give copies of these documents to the judge and ICE. If you give original documents such as your birth certificate or passports to the government, you may not be able to get these original documents back.**

Bring your own copies of all your documents whenever you go to Court, in case something you gave or sent the Court was lost or misplaced, or in case you are asked questions about them. Also, **when you file your Form I-589, Application for Asylum and for Withholding of Removal, ask the judge or the judge's assistant to stamp your copy!** You will need this in case you get out of detention and want to apply for a work permit.

### **Application for Asylum and for Withholding of Removal (Form I-589)**

We will review the questions in the form you may need help with. Also, you should read the instructions that come with the form. They also explain how to answer certain questions. We explain how to fill out the most updated form at the time that we created this guide, which was created as of 12/14/06 (The date the form was created is printed on the lower right-hand corner of the form.) If the Immigration Court or immigration office where your case is being heard is using a later form, then the numbers and sections we describe may be different on your form. You should use this explanation as a guide only.

On the bottom of the first page of the application section, there are two boxes that say "FOR EOIR USE ONLY" and "FOR USCIS USE ONLY." You are not supposed to write anything in these boxes. Other than that, and other than Parts E and F, at the end, **you have to answer every question.** If the question does not apply to you, write "N/A," which means "not applicable" in that box. If you are applying for "withholding of removal under the Convention Against Torture," you should remember to check the box at the top of the first page of the application section that is printed before the start of Part A. I.

#### **Part A. I: "Information About You"**

One question asks what other names you have used. Be honest! Many people use a false name when DHS arrests them. If you did that, you can explain why later in the form. Also, if you got married and changed your name, or if you have ever used a different form of your name, write the name you have used.

One question asks your mailing address in the United States. If you are in custody, you can put the detention center's address.

One question asks if you are married. (It says, "Marital Status.") Many people have been "accompanied" by someone for many years but were never legally or officially married. In some places, you are considered to be legally married if you live together as husband and wife for a certain amount of time. This kind of marriage is called a "common law" marriage. You may not know what the law is where you and your husband or wife lived, but if you have been "accompanied" or you have been in a long term committed relationship and you

think you may be considered “married,” you can check the box that says “married” and write in “common law” -- especially if you want your application to help your husband or wife get legal status in the U.S. (If you want to immigrate your partner through your asylum claim and you are not married, you need to get married before the judge makes his or her decision in your case.). Or, if you are or were “accompanied” or in a committed relationship but not married, you can check “Single.”

One question asks your “Race, Ethnic or Tribal Group.” This question may be important in your case, especially if you have been mistreated because you are a member of a certain tribe or ethnic group.

One question asks whether you are now in Immigration Court proceedings. You are, so you should check that box.

One question asks you to list each entry into the U.S. beginning with your most recent entry. It also asks you what kind of “status” or “visa” you had each time you entered the U.S. If you entered illegally, write “**No inspection**,” and where it asks for your “I-94 number,” put “**None**.” An I-94 is a paper you should normally get if you enter legally.

There are some questions about passports and travel documents. If you never got a travel document from any country, put “**N/A**” for each of your answers.

### **Part A. II: “Information about Your Spouse and Children”**

The questions in this section have to do with your husband or wife and children. You need to answer the questions for all of your children, but there is only room for answers regarding four children on the form. If you have more than four, you can either fill out a form called “Supplement A” at the end of the application or you can use a blank sheet of paper. This is important because if you are granted asylum but did not list one of your children, you may have problems getting permission for that child to come to the United States.

If you use a blank sheet of paper, make sure you write your name, A number, signature, date, and “**Continuation of I-589, part A. II.**” Then, number the questions just like on Part A.II. of the form, and answer them all.

There are other things you need to file if you are including your husband or wife and/or any children in the U.S. in your application (including photos, biometrics (fingerprints), extra copies of your I-589 application, and proof of how you are related to these people). Read the instructions that come with the application form and those provided to you by the DHS trial attorney and follow them carefully.

### **Part A. III: “Information about Your Background”**

There are questions about where you lived before coming to the U.S., where you lived the past five years, where and when you went to school, and what jobs you have had during the last five years. In answering each one, start on the first line with your situation now. In other words, **start with the most recent and end with five years ago** (with education, end with your first school). Also, there may be dates, addresses, and other things you do not remember. Write “**approximate**” for dates you are not quite sure of, and write “**I do not remember**” for things you forgot (such as a street address). There are also questions about your parents and brothers and sisters. If you need extra room, you can use additional paper (see above).

## Part B: “Information about Your Application”

Part B is the most important part of the application. You should take a lot of time -- even days -- to answer it. This is where you have to convince the judge that you have been persecuted or will be persecuted or tortured if you return to your country. Explain in great detail the important experiences that show why you had to leave or why you fear returning to your country. Be sure to give all the information asked for in the questions. You can either write out your answers to the questions in Part B on the application or you can write a declaration that answers all of the questions in Part B. You can use “Supplement B” for the declaration or use blank sheets of paper.

Remember that, whether you use the forms or blank sheets of paper, you have to put your name, A number, the date, and your signature on each page. Also, write “**Declaration**” at the top.

If you do a separate Declaration, when you answer each of the questions in Part B on the application form, you can answer in a few sentences and then write “**Please see Declaration.**” This way, you will have answered all these questions in one declaration.

### The Declaration

Your declaration should be like a book or movie that tells the story of your life. Like a book or movie, it starts at the beginning, with when and where you were born. After that, the story continues in a logical order, passing from one important event in your life to the next, showing experiences that you had and describing important people in your life. Continue to the present.

Like in a movie, there are parts of the story that go by quickly, when you cannot see much detail, and other parts where the camera slows down and shows a lot of details. The camera shows important details so that we can see just what you saw and felt. The action goes in slow motion.

Your declaration should be like that. You need to talk about your whole life, but you also have to choose the most important events and describe them in great detail. The judge, who is going to read your story, doesn't know anything about you, and probably has never been to your country and knows little or nothing about it. Your job is to make him or her understand. When you describe an important event in your life -- for example, a time when you were threatened, detained, tortured, or hurt, or that someone made you feel afraid -- make the judge feel, see, smell, and hear what you felt, saw, smelled, and heard.

For example, suppose you lived in a small village in the mountains, in an area where there is a lot of fighting. One night, a group of men came. They went into the houses and ordered all the people to come out. They mistreated people and told all the men they would have to join their group or that they would come back and kill them.

Before describing this event in your declaration, you should talk about your village and what started this whole problem to begin with. Who is involved in the fighting? What is it about? How did it affect your village before this event? How did it affect you? Did it affect your relatives? Your neighbors? Which family members, and how?

When you speak about the event, you should describe it in great detail. When did it occur? At what time? What were you doing when these men came? How were the men dressed? How many were they? Had you seen them before? When and where? Were they armed with guns or other weapons? What type of arms or weapons did

they have? Who were they? Soldiers? Guerrillas? How do you know? What did they look like? What did the men do when they arrived? Exactly what did they say? How did they mistreat people? Did they threaten you? What threats did they make? Did they touch or speak to you, your relatives, or your neighbors? How? Describe everything you saw, everything that happened, and everything you felt. How much time passed during this incident? What happened afterwards? How did it affect you and others in the village? If the men came back again, describe what happened with just as much detail.

When you write your declaration, it is important to remember what asylum and withholding of removal under INA section 241(b)(3) are about. Their purpose is to protect those who have been or are in danger of being persecuted because of their political opinion, race, nationality, religion, or social group. Therefore, it is very important to explain who the persecutor is and why he or she wanted to mistreat you. This is how you can show that they acted or will act against you for one of the five reasons we talked about before.

For example, if armed men dressed as soldiers beat you, it is more likely that it has to do with something political. If you don't mention that the men were uniformed or don't explain how you know they were soldiers, the judge may think that it was a beating committed by ordinary criminals, and had nothing to do with politics or persecution.

You should also mention everything that you said or did that drew or may draw the attention of the people you are afraid of. For example, if you participated in some group that is considered to be against the government, it is important to explain in detail the activities in which you participated. It is also important to explain that the government considers this group to be against the government, and how you know this. In addition, you should include facts that show that someone in the government is aware that you participated in this group, or that it is likely that they will find out. Without these facts, the judge may decide that the persecution you are afraid of is not for one of the five reasons, and you will lose your case.

You should also include any groups you belonged to, even if you were not an active member, if the government or someone else may want to harm you because of your being in this group.

### *Common problems*

#### **> A long time has passed between the act of persecution and the time you left the country <**

Suppose the event which made you leave your country happened a year before you left. If you stayed in your country for a year after the event, the judge may think you were not really afraid to stay in your country and could return without having any problems. You have to explain what you were doing during that year. For example, if you left your house and hid during this time, getting together money for your trip, that would help to show the judge you were really in danger.

#### **> Returning to your country <**

If you went back to your country after having a problem that caused you to leave your country, the judge may think that you can live in your country without any problem. You have to explain what you did when you returned and explain in detail any problem(s) you had during that time. There is also a question in the form that asks about this.

#### **> Family members or others still living in your country<**

If you say that you are in danger of persecution because of your social group, and your family members are members of the same group but have not left the country, the judge will suspect that you will not have problems

either if you return. The same goes if you participated in a political group and your fellow members of the group stayed in the country. So, if they have, in fact, had problems, you should include this information in your declaration. Or, if your situation is different from theirs, you need to explain why you were in greater danger than those who stayed in your country.

#### **> Lack of detail <**

In court, facts are very important. If you say that something important happened but you cannot remember when it was, how long it lasted, or other details, the judge may think that you made it up. The more details you put in your declaration and include when you speak at your hearing, the more chance you have that the judge will believe you. If you cannot remember clearly, tell the judge that it is difficult for you to remember certain things, and give approximate dates.

Many people do not want to talk about events that caused them emotional harm. If you saw the death of a loved one, or if you were tortured or raped, it is normal not to want to talk about what happened. However, it is extremely important to do so in order to be successful in your case. You need to say everything that happened and everything you saw. Never exaggerate. You only need to be precise and tell the truth.

#### **> Inconsistencies in the facts you provide <**

The judge and DHS may review your form and your declaration in order to see if everything you say is true. Many people make innocent mistakes that hurt them. For example, if in your application form you say you did fieldwork in Honduras until September of 1997, but in court, you say you entered the United States in August of 1997 (and have not gone back to Honduras), the judge may think you are lying, because these facts are not consistent (in other words, they cannot both be true). You could not have been in Honduras in September 1997 and in the United States at the same time. In addition, if you say in your declaration that in October, 4 men in a blue truck came to your house, but in your hearing you say that it happened in December and there were 5 men in a gray truck, the judge may think that you are lying.

If you cannot remember clearly, say so, and explain why it is hard to remember. (For example, it was a long time ago, or you were too afraid to notice certain things, or you couldn't see or hear clearly what happened.)

Although it is important to include many details in the forms and in your declaration, it is more important **not** to state facts you are not absolutely sure about. If you do not remember if something happened in June or in July, but you do know it happened during the summer, put that it happened during the summer. If you do not know the distance in kilometers between your town and the capital, but you do know that it takes a full day by foot, put that. If there were between 4 and 6 men, do not put 5, put "between 4 and 6." If you think something happened in 1992, but it is also possible that it was 1991, put "1991 or 1992." If a certain date is your best guess, put "approximately," even on the forms. In addition, make sure that whatever fact you put in your declaration is the same as what you say at your hearing.

Many people have these problems for cultural reasons. People in the United States think in order of what happened, that is, first this happened, then this, and then that. In your culture, it may be that this order is not as important. But you have to explain your case to a judge in the United States, and for this reason, you have to force yourself to think like him or her. So, try to be precise. Even if you can not remember the year something happened, try to remember if it was before or after some other event and to put the events in order and always tell them in this order. It may help you to make a list that you keep for yourself in which you put in order each event that you want to put in your declaration. For example: 1) I was born in 1962; 2) My family moved to San Marcos; 3) There was a massacre in the town of Santa Lucía, etc.

### > Mistakes in translation <

When translating from one language to another, it is easy to make mistakes. If someone translated your declaration into English for you, ask the person to read it back to you slowly in your own language so that you can be sure there are not any mistakes. It is important to review everything in your application form and declaration very carefully.

### Some Questions in Part B

Remember to write “**Please see declaration**” at the end of each question in Part B if you plan to do a longer declaration as we have suggested.

**Question 1** asks why you are applying for asylum. You should check one or more of the boxes (Race, Religion, etc.) that apply to you because there may be more than one reason that someone mistreated or wants to mistreat you. For example, it is possible to be persecuted because of your race and membership in a social group, or because of your membership in a social group and your political opinion.

You should explain why you are afraid to return to your country and why you left your country in questions 1.A. and 1.B. Many people say that they came to the United States because they want to work and get ahead. Others say they came to reunite with their family members. Remember that the purpose of asylum is not to protect poor people who want to work, nor to reunite families. Its purpose is to protect people who are persecuted for one of the five reasons discussed above. So, while you do have to tell the truth, you do not have to mention every single reason you came to the U.S., unless it relates to a fear of persecution due to one of the five grounds or a fear of torture. If you are applying for protection under CAT, you should include in your answer to this question why you fear you will be tortured if returned to your country.

**Question 1A** asks if you, your family, or close friends or colleagues have ever experienced harm or mistreatment or threats in the past by anyone. If you answer "no," you will need to explain why you think you would be mistreated or threatened in the future if you have not been in the past. If you check, "yes," you should explain in detail what happened, using the questions on the form as a guide.

**Question 1B** asks if you fear harm or mistreatment if you return to your home country in the future. If you check “yes”, you should explain in detail, using the questions on the form as a guide. You should think about what exactly you are afraid of. Are you afraid that you will be taken by force and detained by the government or some other group? Are you afraid you will be tortured? Are you afraid that you will be killed? Are you afraid of all of these things? Say what you really think would happen. Say why you think it would happen. Has it happened to others? How are they like you?

**Question 2** asks whether you or a member of your family has been “accused of, charged, arrested, detained, interrogated,” etc., anywhere other than in the U.S. In other words, have you ever been stopped or detained by government authorities or anyone else? Have you ever been kidnapped or held somewhere against your will by the government or anyone else? Have you ever been questioned by authorities or anyone else? In your answer, you should include incidents of persecution as well as arrests for criminal activity, whether in your country or some other country. As far as problems of persecution, it is very important to give all the information asked for on the form and to explain how you were treated when you were detained.

**Question 3** asks if you or your family ever belonged to or had some kind of relationship with any organizations or groups in your country. Think hard before answering this question to make sure that you remember all your activities and the activities of your family members that put you in danger. Be sure to

provide all of the information asked for, such as the name of the group, the dates you or your family were members of the group, what the responsibilities of you or your family member were, etc. You should also include information under 3. B. about whether you or your family continues to participate in these organizations or groups.

**Question 4** asks whether you fear being tortured in your home country or any other country. This is an important question. If you fear that you will be subjected to severe physical or mental abuse or suffering, you should check yes. The question is important because if for some reason you do not qualify for asylum or withholding, you might qualify for protection under CAT. You should explain in detail what you think could happen to you and why you think it will happen. Also, if you have been tortured in the past, you should mention it here. You may have already explained what happened to you in the past in Question 1, but you should mention it again here. Rather than explain what happened again, you could write “See Question 1.”

### **Part C: “Additional Information About Your Application”**

**Question C 1** asks whether you, your husband or wife, your children, your parents, or your brothers or sisters ever applied to the United States Government for refugee status, asylum, or withholding of removal. If you are not sure whether you were included in an application filed by your mother, father, husband, or wife, do not check any box. Instead, put “unsure” and attach a sheet of paper explaining what you know about the situation.

**Question C 2** asks what countries you, your husband or wife, or children traveled through after leaving your country. It also asks you to explain whether you or any family members applied for lawful status in any other countries. If your plan was to run from persecution in your country and come to the U.S. because you would feel safe here and there are better economic opportunities here, that is okay. Be honest. Talk about any problems you had in any of the countries you traveled through, for example, if you had to hide from authorities so as not to be caught and removed, or if you had to live in a camp where your activities were limited.

**Question C 5** is where you get the chance to explain why you think that you should still be able to apply for asylum if you are applying more than one year after your last arrival in the U.S. As we explained before, you have to show “important changes” or “extraordinary circumstances” in order to apply for asylum after the one-year deadline. If you cannot, you can still apply for withholding, if you are eligible.

**Question C 6** asks whether you have any past criminal problems. You must include any criminal problems you (or any family member included in the application) have had in the United States. You must include all arrests or convictions. DHS most likely has this information and will ask you about it in your hearing. If you do not put these things on your application, the judge will think you are trying to hide things. Even if you were innocent, you should list any arrests or charges filed against you. Also, you should include the fact that you have been or continue to be detained in the U.S. by DHS.

### **Part D**

If someone else helps you prepare the form I-589 or translates it into English for you, that person must sign in this section, and give his or her address and phone number. Even if this person was someone else in custody like you, he or she should fill out Part E. The form also says that the person must read the whole application to you (including your declaration, if you included one) in your own native language (your original or first language) before you sign it. You may not be able to find anyone who speaks both your native language and English. If someone helps you complete the form by speaking to you in another language that you also understand, we recommend that the person cross out the words “in his or her native language” and instead say

what language he or she used to help you. This could be important if it turns out that your helper made some mistakes in translating your answers.

### **Part E**

Do not sign this part until your court hearing.

#### **Other Papers**

It is hard to succeed in your case by simply filling out the form and explaining your case to the judge on the day of your hearing. If possible, you should try to get other papers or witnesses to support your case. Often, the most persuasive evidence is an expert witness who can testify in support of your specific claims. If you cannot get an expert witness you should at least get supporting documents, such as letters from family members or others who know about your situation in your country, newspaper articles, human rights reports, photos, or other things that have to do with the situation in your country or with you, your group, your family, or an important event. If you do not file any papers other than your application form, you must explain in Supplement B of the Form I-589 why you have not submitted such documents. Without other evidence to support your claims, the judge will be less likely to approve your case.



**If you can, get letters and other documents to help prove your case.**

Here are some other examples of papers you may want to give to the judge. Suppose you left your country because you received a threatening letter from a group that opposes the government. It is likely that you do not have this letter, but if you do, you should file it with the Court.

Also, if your family members did not leave with you, they may have news of what is happening in your country. For example, suppose some men from the group that threatened you went to your house after you left. If you found out about this through a letter you got from your family, you should file this letter as well. You can also write to your friends or family asking them for more details about what has happened since you left. These letters may serve as proof in your case.

Also, if you have proof of your membership in a group and you fear persecution because of your membership in this group, it is very important to bring this proof to court. For example, if you fear persecution on religious grounds, perhaps your birth certificate lists your religion, or your family name shows your membership in that religion. Bring someone from your religious group who can testify about the meaning of your name. If you were a soldier for the government and fear persecution because you were a soldier, try to get proof of your military service. If you fear persecution because of your ethnic background, get proof of your background. If you cannot get this type of proof, be prepared to explain why not. This type of proof is very important to the courts.

In addition, if someone can get newspaper or magazine articles or human rights reports for you that have to do with your case, you can file those. The articles and reports can talk about the political situation in your country, problems that members of your group have had, or certain incidents that have to do with your problems.

The more the articles have to do with you or people in your country who are similarly situated to you, the more helpful the articles will be to your case.

## Documenting Your Claim to Protection

Supporting your asylum, withholding, or CAT claim with documents may make the difference between winning or losing your case. You must prove to the judge that you are likely to be persecuted if you have to return to your home country. To obtain asylum, you must prove either past persecution, or a well-founded fear of future persecution based on race, religion, nationality, membership in a particular social group, or political opinion. **It is important that you gather documentation to support your claim.**

Documenting your case will be important to show that you are telling the truth about what happened or is happening in your country. Documents that can help your claim include:

- Official/government documents (birth/death certificates, school or tax records)
- Personal documents (character affidavits, letters of commendation, awards, letters from family or friends, written threats, medical reports, etc.)
- Expert witness affidavits on country conditions, cultural issues, or specific human rights issues
- Articles in newspapers and periodicals showing country conditions or human rights abuses
- Radio or TV transcripts
- Books
- Human Rights reports from government or nongovernmental documents (for example: Amnesty International, United Nations, Human Rights Watch, U.S. Department of State etc.)

There are many things you can do to gather documents to support your claim:

1. Have family members, friends, colleagues write letters explaining conditions in your home country that prove your asylum claim, have them send articles or other information that support your case.
2. Contact one of the organizations listed on the following pages to gather documentation for your case.
3. **Give this information to an attorney or accredited representative who will represent you at your hearing.**

If you do not have an attorney then you should do the following:

1. Read all of the documentation carefully. Submit only the documents that prove your claim. Do not submit evidence that will contradict what you say. In other words, use only the information that supports what you will tell the immigration judge. Remember you must show that what you say is true. \_
2. Underline, mark, or highlight the sections of the information that specifically support your asylum claim. Do all that you can to gather documentation that helps your case.
3. **Read the following list of organizations carefully. Pick the organization that will best suit your needs. Fill out a copy of the Documentation Request Form. Please remember to fill out all parts of the form. If you leave any sections blank it will be more difficult for an organization to help you gather documents.**

## Ways to Get Documentation

There are several ways that you may be able to get documentation about conditions in your home country.

**ONE:** If you or family members have access to the internet, the following websites may provide information about your home country:

**Amnesty International:** <http://www.amnesty.org>

**Human Rights Watch:** <http://www.hrw.org>

**AsylumLaw.org:** <http://www.asylumlaw.org>: this site has human rights reports from a variety of sources including individual country conditions packets produced by Human Rights Documentation Exchange (HRDE).

**U.S. Department of State:** <http://www.state.gov>

**DHS Resource Information Center:** <http://www.uscis.gov/graphics/services/asylum/ric/index.htm>

**TWO:** You can call or write to the following organizations for a list of publications for purchase that may cover your home country or specific issue:

**The Refugee Program, AIUSA**

600 Pennsylvania Avenue, SE, 5<sup>th</sup> Floor

Washington, DC 20003

Phone: 202-544-0200 x540

Fax: 202-546-7142

Email: [refugee@aiusa.org](mailto:refugee@aiusa.org)

**Human Rights Watch**

350 Fifth Avenue, 34th floor

New York, NY 10118-3299 USA

Phone: 1-(212) 290-4700

Fax: 1-(212) 736-1300

Email: [hrwnyc@hrw.org](mailto:hrwnyc@hrw.org)

However, you should know that there is a charge for ordering these materials and that the process may take some time. You should start right away to make sure you have enough time to receive the information before your documents need to be submitted to the judge. You should also indicate on your request for documentation what your time deadline is, that is, what is the date that your asylum documents must be filed with the Immigration Judge.

**THREE:** If you are looking for information about conditions in your home country specifically related to sexual orientation, gender identity, or HIV status, the following groups may be able to provide documentation regarding your home country for a reduced fee or for free (see contact information on the next page):

**International Gay & Lesbian Human Rights Commission (IGLHRC)**

**The National Asylum Partnership for Sexual Orientation (NAPSO)**

**FOUR:** If you have the money to pay for the research, one of the following organizations may be able to help you (see contact information on the following page):

**The Data Center  
Political Asylum Research and Documentation Service (PARDS)**

Unfortunately, at the time of updating this booklet (July 2010), there are no organizations that can do research about conditions in your home country for free.

**Organizations**

Please read the list carefully and select only the organization that will best suit your needs. The following organizations are available to help you gather documents in support of your asylum, withholding, or CAT claim. These organizations cannot provide legal counsel and cannot represent you at your hearing. Many of the organizations can however, provide you with a list of legal advocates/lawyers who might be able to help you.

**Organization:**                      **Description:**

<p><b>Amnesty International (AI)</b> The Refugee Program, AIUSA 600 Pennsylvania Avenue, SE, 5<sup>th</sup> Floor Washington, DC 20003 Ph: 202-544-0200 x540 F: 202-546-7142 E-mail: <a href="mailto:refugee@aiusa.org">refugee@aiusa.org</a> Website: <a href="http://www.amnestyusa.org/refugee/">http://www.amnestyusa.org/refugee/</a></p>	<p><b>Services:</b> Annual reports and other documents from 1996 are available on our website. Detention libraries should have the current year's annual report. If it is not available, our program will send the relevant information from the annual report to detained individuals who do not have access to the Internet. Our program will send hard copies of identified AI materials not available on the internet, and will do research as possible. We maintain a network of volunteers who may be able to provide information about conditions or verification about a specific incident or event in a particular country. We will prepare a letter of analysis on a limited basis. <b>Fees:</b> No charge. <b>How to request information:</b> Contact by email is preferred. Detained individuals may also mail or fax a request. Please include your alien number, country of origin, contact information, case status, including date of next interview or hearing. Where available, send the complete text of your affidavit or declaration, but identify one or several key points that you are seeking to confirm.</p>
<p><b>The DataCenter</b> 1904 Franklin St., Suite 900 Oakland, CA 94612-2912 Phone: 1-800-735-3741 Fax: (510) 835-3017 <a href="http://www.datacenter.org">http://www.datacenter.org</a></p>	<p><b>Services:</b> The DataCenter retrieves articles from a wide range of publications for information pertaining to the human and civil rights conditions in countries around the world. Select monographs (books) and specialized reports from human rights agencies and reference sources provide additional information. <b>Fees:</b> Hourly fee for labor, document photocopying, delivery fees dependent upon the service requested, and on-line access and retrieval fees. Typical search is \$300.00-\$500.00. A deposit equal to the estimated cost is required, payable by check, VISA or MasterCard. No pro bono or sliding scale available. <b>How to request information:</b> Have your attorney or family member contact us regarding your request by phone or email. <b>No collect phone calls accepted.</b></p>

<p><b>International Gay &amp; Lesbian Human Rights Commission (IGLHRC)</b> Asylum Documentation Program P.O. Box 550 San Francisco, CA 94104 Phone: (415) 398-2759 Fax: (415) 398-4635 <a href="mailto:asylum@iglhrc.org">mailto:asylum@iglhrc.org</a></p>	<p><b>Services:</b> The Asylum Documentation Program of IGLHRC supports claims for asylum made by those who fear persecution because of their sexual orientation, gender identity, or HIV status. We provide a select number of country conditions packets, including support documents on human rights abuses perpetrated against lesbians, gay men, bisexuals, the transgendered, and people with HIV/AIDS. We provide these packets to persons considering an asylum claim, asylum applicants, lawyers, immigration advocates, and other interested parties. We do not provide legal counsel, but may provide a list of immigration advocates. Please call, email, fax or mail a completed Asylum Request for Documentation Form available at <a href="http://www.iglhrc.org">http://www.iglhrc.org</a>. Allow 2-3 weeks for country conditions packet. Fee waivers are available if unable to pay documentation fee. <b>Collect phone calls are accepted.</b></p>
<p><b>The National Asylum Partnership for Sexual Orientation (NAPSO)</b> 208 S. LaSalle, Suite 1818 Chicago, IL 60604 Phone: (312) 660-1370 Fax: (312) 660-1505 Intake Hrs: Weds 9:00 - noon Languages: English, Spanish, French &amp; Arabic. Other languages available upon request</p>	<p><b>Services:</b> NAPSO staff provides technical assistance to attorneys nationwide who are representing individuals in sexual orientation or HIV-based asylum claims. We can also provide a list of legal service providers and refugee advocacy organizations to asylum seekers. People in detention in the Midwest region only who are in need of an attorney should contact us at the address or phone number listed. The resource guide, "Winning Asylum, Withholding and CAT Based on Sexual Orientation, Transgender Identity and/or HIV Positive Status" is available online at; <a href="http://www.MIHRC.org">www.MIHRC.org</a>. <b>How to request information:</b> Please contact us by phone, fax or mail.</p>
<p><b>Political Asylum Research and Documentation Service (PARDS)</b> 145 Witherspoon Street Princeton, NJ 08542 Phone: (609) 497-7663 (no collect calls accepted and no multilingual staff available)</p>	<p><b>Services:</b> We provide asylum applicants and their attorneys with documentation and access to country and issue-specific experts willing to review and evaluate applications. We conduct claim pre-filing evaluations to determine the merit of a claim. We provide affidavits and/or testimony for meritorious claims and comprehensive evaluations of the State Department human rights reports. In some instances, we can also conduct an applicant interview and assist in preparing a well-reasoned claim. We offer foreign government authentication for documents. <b>Fees:</b> PARDS is a fee for service agency. Fees are calculated based on the time required and nature of request. Most, but not all, experts also charge. Reduced fees are available for individuals in DHS detention who are without legal representation, and in some cases, individuals who are being represented on a pro bono basis. <b>How to request information:</b> Please mail completed request form with (1) a copy of your I-589 form (request for asylum) and a highly detailed affidavit stating the basis for your asylum claim; (2) information on the status of the case, (3) the date of your next interview, hearing or appeal and (4) the services you are requesting. Please send copies not originals. All requests must be in English, typed or printed in black ink using block letter. Please include names and phone numbers of outside contacts with whom we can discuss your claim and payment. <b>**Note:</b> please make sure persons contacting PARDS by telephone can converse well in English.</p>

**Please note: Any asylum application (I-589), letters or form which you send are for internal use only to help document your claim. This information will not be shared with any other organization, the DHS or any other governmental agency without your prior consent.**

If you would like to contact any of the organizations listed above, use the Documentation Request Form attached at the end of this booklet.

### **Turning in Letters & Documents to the Court**

Each letter or document you file with the Court that is not in English has to have an English translation along with it. At the end of the translation, the translator has to put the following:

I, (name of translator), certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.

(signature of translator)/ (date)



**If a document or letter is not in English, attach an English translation!**

If you can get letters from friends or family members who know about what happened to you in your country or what might happen to you if you have to go back, there are certain things each letter should have:

### **RULES FOR LETTERS TO THE JUDGE**

1. They should be addressed to "Honorable Immigration Judge."
2. The person should state his or her name, address, employment, age, immigration status, and relationship to you (for example, brother, cousin, neighbor, boss).
3. The person should write the letter in his/her own words.
4. If possible, the letter should be notarized.
5. If the letter is not in English, it must be accompanied by an English translation, with a certificate of translation (Use the exact words in the example we just gave you.).



#### **What should people say in their letters to the judge?**

If you do not tell your friends, family members or former employers what to write about, they will not know what to put in their letters. You should write to each person you want to get a letter from. In the letters you write, you should:

1. Explain that you are in immigration proceedings and that you are applying for asylum to remain in this country. Explain the criminal conviction or other problem, and that you need to show the judge that you deserve asylum and will be a productive member of society.

## 2. Ask the person to include:

- How he or she knows you (for example, s/he is your neighbor, sister, boss), and how long he or she has known you.
- Other information the judge will want to know, for example:
  - What are the good points this person knows about you? What are the good things you have done for this person or for others in the family or in society?
  - What will happen to you if you are sent back? Only people who personally know about your situation in your country, such as your family members, should answer this question.
  - What kind of work history do you have? Your boss or former employer can say how long you worked for him or her, what your responsibilities were, and what kind of a worker you were.
  - If you were convicted of a serious crime, a person who knows you well or knows about the circumstances of the crime should talk about how you got involved in this problem, and why he or she thinks you will not repeat this behavior and you will not be a danger to society. You may even be able to get a letter from the lawyer who represented you in criminal court.

If the Immigration Judge has determined that you may only be eligible for withholding (because you do not qualify for asylum), the judge cannot consider letters like this. As we have already discussed, he or she can only consider your crime if he or she is deciding whether you will be eligible for protection, in other words, whether your crime is a “particularly serious crime.” See below for other types of proof you may present to help your case if you have criminal convictions.

### **The Index**

If you have attached letters, articles, or other documents to turn in with your application, you should make a list of the documents. This list, called an "index," helps the judge see at a glance what documents you have turned in and also gives him or her the opportunity to see if any documents are missing. At the top of the list, put your name, A number, and the words, "Index to Documents in Support of Asylum Application."

### **Certificate of Service**

You should turn in all your letters, articles, and other papers at the same time you turn in your application form, if you can. But if you cannot, you will usually be allowed to file them later (but before your hearing). In that case, you may be filing the papers by sending them in the mail rather than giving them to the judge and DHS lawyer in court. If so, you will also need to file a paper that shows the judge that you sent DHS a copy. That paper is called a “Certificate of Service” and you will find one at the end of this booklet. To fill it out, put your name, A number, and the date you are mailing the documents. Then, put the address of the office of DHS that is handling your case. Ask an officer if you do not know the address. Sign the Certificate of Service and make four copies.

You must mail the original Certificate of Service and the original I-589, plus 2 copies (including the Certificate of Service), to the judge. You must submit to the judge 3 copies of any supporting documents (supporting country conditions claims, specific claims in your case, passport or immigration documents,

identification documents and evidence of family relationships). Mail a copy of all these documents to DHS and keep the last copy for yourself. Remember to keep your original important documents (e.g. passports, birth and marriage certificates, identification cards) and submit only copies of these documents to the judge and to DHS. If you submit original copies of important documents to the government you may not be able to get these important documents back from the government.

### **Fingerprints and Photographs**

As we said before, if you are including family members in your application, they need to have their fingerprints (biometrics) taken (unless they are under age 15) and to supply photographs. You also must submit your own fingerprints and photographs. If you are detained, you must ask DHS to help you take care of this. If you are no longer in custody at the time you file your application, you need to take care of this yourself. You will need to follow DHS' instructions entitled *Instructions For Submitting Certain Applications In Immigration Court and For Providing Biometric and Biographical Information to U.S. Citizenship and Immigration Services*, that specify how, when and where to get your fingerprints (biometrics) taken. **You must get biometrics done by the DHS. Do not get this done by any other agency because they will not be accepted.** You will get the instructions from the DHS trial attorney when you inform the judge that you plan to file your application. Please note that **if you fail to comply with these biometrics requirements without a good reason, the judge may find that you have abandoned your application for relief.**

### **FOR THOSE WITH CRIMINAL CONVICTIONS**

If you are applying for asylum and you have criminal convictions or other negative factors in your case, remember that the judge can deny your asylum case even if the judge believes you fear persecution in your country. If you have a criminal conviction or other negative factors in your case, you should turn in documents that show the judge that you are sorry for your criminal conduct, you are not a danger to the community, and that you will be a productive member of society. For example, someone who knows you well -- a neighbor, a representative of your church or temple, or even a family member -- can speak about your moral character and why he or she thinks you will not get involved in more problems. If you can get a letter from an employer offering you a job when you get out, that also may be helpful.

### **Proof regarding criminal convictions**

In addition to getting letters from family and friends, there are three things you may try to get if you have criminal convictions that may help you prepare your case:

- 1) The "Presentence Report" from your criminal case;
- 2) A copy of DHS' file on you; and
- 3) Your FBI "rap sheet"

We will talk about what these are and how to get them.

### **The Presentence Report**

This is a report that is sometimes written before someone is sentenced in a criminal case. It normally talks about your personal history, your criminal history, including probation violations, and the circumstances of the crime, among other things. It may say helpful things, and in this case, you will want to file it with the Immigration Court. On the other hand, it may say bad things about you. If so, you probably do not want to give a copy to the

judge. It is a good idea to review the report in case DHS has a copy and wants to use it against you. Be prepared for any questions that DHS might ask you based on the report.

You can get a copy of this report by calling or writing to the lawyer who represented you in criminal court. If you do not remember who that was, you can ask a DHS officer to look in your file. The paper from criminal court should show the name of your lawyer. If the lawyer was a public defender (not someone you paid), you can call or write the public defender's office in the county or city where your case was.

### **DHS's File**

You can get a copy of what is in your immigration file by making a "**Freedom of Information /Privacy Act Request (Form G-639).**" You do this by filling out a Form G-639. Ask a DHS officer for one. **If you are detained, your address on the form should be your address at the detention center.** If a question does not apply to you, write "not applicable." You need to sign the form in several places. First, under question number two, where it says "Signature of Requester," then under number seven, where it says "Signature of Subject of Record," and last under number eight which begins, "If executed within the United States...". By signing, you agree to pay copying costs, but in most cases, there will not be any charge.

After you fill out the form, mail the original to DHS and write "FOIA Request" on the envelope. The person who deals with these papers may be at a different address than where you mail your other papers, so ask an officer for the address of the "FOIA officer" for the DHS district where you are. Keep a copy for yourself. **Do not send a copy of this form to the Court.**

It can take a long time to get a response to your request, and you may have your hearing before then. But, it does not hurt to file the form and it may help you by letting you know what DHS may try to prove against you in Court. Seeing your file gives you the chance to get ready to talk about your criminal and immigration history in Court or to object to certain papers DHS' attorney may want the judge to consider.

### **FBI Records**

If you have criminal convictions, one of the documents DHS has in your file is a "rap sheet" from the Federal Bureau of Investigations (FBI), which lists your criminal history, including any arrests, even if you were not convicted. You can usually get this faster than you can get a copy of your DHS file. Send 1) a completed fingerprint card (Form FD-258), 2) a money order for \$18 made out to the "FBI," and 3) a letter asking for your rap sheet. You must sign the letter and indicate the address to which the rap sheet should be mailed. You should also indicate the date by which you need the record as it can take up to eight weeks. Send to:

Federal Bureau of Investigations – CJIS Division  
1000 Custer Hollow Road  
Clarksburg, West Virginia 26306

**Do not send a copy to the Court or DHS.**

## **WHAT WILL HAPPEN AT MY INDIVIDUAL HEARING?**

At your final hearing, you get to tell your story and the judge decides your case. At the hearing, the Immigration Judge, an interpreter (if you are not fluent in English), the lawyer representing DHS (called the "trial attorney"),

and you will all be present. If you have witnesses, they have to be there, too. DHS may have witnesses against you, but that almost never happens.

If you have a criminal conviction that may prevent you from being eligible for asylum or withholding of removal, the judge may schedule a special hearing just to consider whether your crime bars you from asylum or withholding of removal eligibility. If you are successful in that hearing, you will have your asylum and/or withholding of removal hearing.

At the end of the asylum/withholding of removal hearing, the judge usually decides whether you will be granted asylum/withholding or not. Sometimes, though, a judge will take some time to think about or write down his or her decision, and you will have to wait a while longer.

### **What will the judge do at the hearing?**

The judge will decide whether you qualify for asylum and/or withholding of removal or withholding of removal under the CAT and if you are applying for asylum, whether you deserve it. He or she will ask you questions based on the forms, your declaration, and other documents you have turned in, in order to better understand why you left your country, and to decide whether you are telling the truth.

### **What will the lawyer for DHS (trial attorney) do?**

The trial attorney also will ask you questions. He or she may try to show the judge that you do not qualify for asylum or withholding of removal, or if you are applying for asylum, the trial attorney may try to show that you do not deserve it. He or she may ask questions that confuse you to damage your testimony. . The trial attorney may try to show that some of your answers are different from what you put on the application form, or to show that you came to the United States to work or to avoid military service, or for some other reason, and not because you are afraid of being persecuted. If you give information at your hearing that you did not include when you filed your application, be prepared to explain why it was not in your application because the trial attorney may ask about it.

### **What will the interpreter do?**

The interpreter will translate the questions asked by the judge and the trial attorney and will translate your answers into English. The interpreter's job is to translate every question you are asked and every word that you say. If you are having problems understanding the interpreter or think that the interpreter is not correctly translating what you say, bring this to the judge's attention on the record.

### **If there are witnesses, what will they do?**

The witnesses will answer questions that the judge, the trial attorney, or you ask. If the person is testifying for you, you will be the first to question him or her. After you have finished with your questions, the trial attorney and the judge will ask questions. It will be similar to when they asked you questions. If DHS has any witnesses against you, you will have the chance to ask them questions, too.

### **What should I do?**

At the beginning of the hearing, make sure the judge has a copy of every document you want him or her to see. If you have received a new letter, article, or other document since filing your application, give it to the

judge at the beginning of the hearing, with a copy to the trial attorney. **Always remember to keep a copy for yourself, too.**

You will answer questions asked by the judge and the trial attorney. You should speak clearly so that the interpreter can hear every word you say. Give the interpreter enough time to translate one or two sentences before continuing your answer or the judge will only hear part of what you want to tell him or her. In addition, you should look at the judge directly when you speak, and not look at the ground or only at the interpreter. Otherwise, the judge may think you are lying or are not sure about what you are saying.

When you answer questions, you can call the judge's attention to facts in the letters or other documents that you submitted. That way, you can make sure that the judge pays attention to them. If you have a witness, you will ask him or her questions. You should ask his or her name, address, occupation, and how he or she knows you. If the person has personal knowledge of the events that made you leave your country, you should ask questions about those events in particular. Ask open questions like "Who?" "When?" "Where?" "Why?" and "After that, what happened?" so that the story comes out in the person's own words instead of in your words. Try not to ask questions like, "Is it true the guerrillas came to our village three times?" or "I am not a dangerous person, right?"

## HOW DO I PREPARE FOR MY HEARING?



To get ready for your hearing,

1. If possible, request articles, human rights reports, and other documents that can help you show the judge that you have been persecuted or will be persecuted if you return to your country.
2. Review your declaration, your application and whatever else you turned in to the Court. Do this **several times** in order to be sure about facts, dates, and other details.
3. Make a list of the most important events in your declaration, especially details about past harm or threats. The judge or trial attorney may ask you about these at the hearing. Practice talking about these events out loud. If you have a friend who can help you, ask him or her to read the documents and ask you questions as if you were at the hearing. If, at the hearing, the judge and trial attorney do not ask you about these events, be prepared to explain them yourself.
4. If you have witnesses, write out the questions that you will ask them in Court. Go over these questions and their answers with them.

**Also, if you have had criminal problems,**



**Get together letters of support and other documents in your favor (including your presentence report, if it is helpful), and prepare to talk about your criminal problems.**

## WHAT HAPPENS WHEN THE JUDGE DECIDES MY CASE?

Both you and DHS have the right to keep fighting the case by appealing the decision to a higher court called the Board of Immigration Appeals (or BIA). This court is a group of judges in Virginia who look at all the papers filed in the case and everything that was said in court, and decide if the judge was right. In most cases, unless

the judge made a mistake about the law or the facts in your case, the Board will not change the decision. As soon as the judge tells you the decision (unless you get it later, in writing), he or she will ask both you and the trial attorney whether you want to “reserve appeal,” that is, whether you want to hold on to your right to appeal. You can also “waive appeal,” which means to give up your right to appeal. If both sides “waive appeal,” that is the end of the case. If you “waive appeal” you will not be able to later change your mind and challenge the judge’s decision. So, if the judge denies your case, even if you are not sure that you want to appeal, you should reserve appeal just in case. If someone “reserves appeal,” he or she has 30 days to file a paper called a “Notice of Appeal” with the Board in Virginia. If DHS appeals, it has to send you a copy of this Notice and if you appeal, you have to send DHS a copy. If neither side files a Notice of Appeal after 30 days, then the immigration judge’s decision becomes final. The Notice of Appeal must reach the Board of Immigration Appeals within 30 days of the judge’s decision.

### **What if DHS appeals my case?**

The trial attorney may say he or she wants to “reserve appeal,” but that does not mean DHS will actually appeal. You may not know for sure until 30 days from the judge’s decision, and if DHS has not filed a Notice of Appeal by then, it cannot appeal (You should know because you should get a copy if it files one.)

If DHS does file a Notice of Appeal and, on the form, says that it will file a brief or written statement later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement and when you should mail to the Board any response you want to write to DHS’s arguments. Try to get a lawyer to help you with this if you can.



**In addition, if you are successful and DHS reserves its right to appeal, ask the judge or DHS to order you released on your own recognizance (without having to pay bond)!**

As we mentioned at the beginning of the booklet, some people qualify to ask the judge for their release, but some people do not and must ask DHS for their release. Other booklets explain this in detail. If you qualify to ask the judge for a bond and you are successful in your case, ask the judge to release you right then and there! If you do not get the chance, write the judge a letter asking for a bond hearing (even if you had one before).

### **If I lose, how do I appeal?**

If you lose and you “reserve appeal,” the Board of Immigration Appeals must receive your papers by the 30th day or the judges there will not read them, and you will lose your right to appeal. The forms you must fill out in order to appeal the judge's decision are:

1. a white "Notice of Appeal" form (EOIR-26), and
2. a brown "Appeal Fee Waiver Request" form (EOIR-26A) (unless you can pay a \$110 fee, in which case, follow the instructions on the “Notice of Appeal” and pay the fee)

The forms explain how to fill them out and where to send them.

If, after 30 days, the appeal papers have not been received in Virginia, you will not be allowed to appeal and the judge's decision will become final. For this reason, we recommend mailing the papers as soon as possible and

mailing them by express mail or “certified mail” (with proof of receipt).

If the Board has received your forms, it will give DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it usually takes from four to six months for the Board to decide the appeal. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

### **What if the Board of Immigration Appeals decides against me?**

You may be able to appeal the Board’s decision to a federal court, but the federal court may only review certain types of issues. Also, unless you get a special order from a federal court called a “stay” of your removal order, DHS may remove you from the country while the federal court considers your case! This can happen fast, so if your case is appealed to the Board, you should try to get a lawyer’s help before the Board makes its decision so that a request for a stay of removal may be filed in federal court as soon as the Board denies the appeal. Appealing a case to federal court is very complicated, so this booklet does not explain how to do that.

### **WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY HEARING?**

If you are allowed to leave the detention center before your case is over, your case continues. You must notify the Immigration Court of your new address within five days of any change using a Form EOIR 33/IC. The court will send you a letter telling you the date, time, and place of your next hearing. For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.



**When you leave the detention center, look for legal help for your case!**

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a "Motion for Change of Venue" on which you write the address where you plan to live when you leave the detention center. (**This has to be a street address, not a post office box!**). At the back of this booklet is a form that you may use but some courts may want you to use a different form, so find out. At some detention centers, a DHS officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center and make sure to file the right form with the court (with a copy to DHS’ attorney). When the court gets this paper, it will send your file to the Immigration Court closest to the address you wrote down. That court will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to the new Court and DHS in your new location.



**When you leave the detention center, if you do not want your next court hearing to be where you are now, file a "Motion for Change of Venue!"**

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

**Remember, if you miss a hearing, the judge can order you removed without giving you another chance to apply for asylum or withholding of removal!**

## What should I do if I move?



Every time you move, it is your responsibility to tell both the Immigration Court and DHS! You must tell the Immigration Court within five days of your move and you must tell DHS within 10 days of your move. There are special forms to do this and you can get one from the Immigration Court (EOIR Form 33/IC) and a different one from DHS (Form AR-11) (The officers may give you the forms when you leave.). Letting the Immigration Court and DHS know your new address will not change where you will have your hearing. Instead, the special forms used for changes of address let the Immigration Court and DHS know where to send you papers about your case.

When the Immigration Court and DHS send you papers, they will send them to the address you gave them. If the Immigration Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you don't show up to court on that date, you will receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.



**If you move, send the Immigration Court your new address using the EOIR 33/IC form within 5 days of your move! Also you must send the DHS your new address using the AR-11 form within 10 days of your move!**

**It is important to remember that the Immigration Court and DHS are two different things and that the forms required are different.** If you let DHS know your new address but you don't send the right form (a blue EOIR 33/IC, "Change of Address" form) to the Immigration Court, the Immigration Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge. This is also true if your case is on appeal to the Board of Immigration Appeals. You must also notify the Board of Immigration Appeals within 5 days if you move using the Form EOIR 33/BIA.

## Can I get a work permit?

You can get a work permit if you have filed an application for asylum and/or withholding of removal with the Immigration Court, but you must wait 150 days after filing the asylum application to file for the work permit. If you lose your case before the 180 days have passed, you cannot get a work permit, even if you appeal the judge's decision. If you are granted asylum or withholding of removal before the 180 days have passed, you can apply for a work permit right after succeeding in your case. If your case still has not been decided and it has been 150 days since you filed your asylum and withholding of removal application, you can apply for a work permit but you will not receive it until 180 days have passed.

### **Application for Employment Authorization (Form I-765)**

In order to apply for a work permit, you must fill out a "Form I-765" and mail it to the appropriate address identified in the instructions with a copy of your I-589 (asylum application - just the form and your declaration) together with proof that you have filed it with the Immigration Court. The Immigration Court will have stamped the first page of your asylum application with the date you filed it, and if you got your copy stamped, the page with the stamp will prove that you filed it. If not, you may have to get a copy of the first page from the Immigration Court so you can send that with your application. If you won your case, include a copy of the judge's order with your Form I-765. If you have won your asylum case you must follow the judges' oral advisal

and the written instructions you receive from the DHS trial attorney entitled, *Post-Order Instruction for Individuals Granted Relief or Protection from Removal by Immigration Court*, to obtain your evidence of status and work authorization documentation from the DHS, U.S. Citizenship and Immigration Services. Note: If you have received a final order of withholding of removal, you must follow the filing instructions for the Form I-765.

Read the instructions that go with the work permit application form and answer all questions. The instructions also tell you what else you need to include with the application.

For **Question #14**, if you entered illegally, write “entered without inspection.”

For **Question #15**, if the judge has not decided your case, write “asylum/withholding pending.” If you won asylum, write “asylee.” If you won withholding or Torture Convention withholding, write “granted withholding.”

For **Question #16**, if the judge has not yet decided your case, or if you won but DHS appealed, put “(c)(8)” and mail the application to a DHS Service Center (the instructions tell you which one to mail it to). If you won asylum and DHS did not appeal, put “(a)(5)” and follow the instructions of the Immigration Judge and the written instructions you receive from the DHS trial attorney entitled, *Post-Order Instruction for Individuals Granted Relief or Protection from Removal by Immigration Court*. Effective April 1, 2005 if you won withholding (either general or Torture Convention) and DHS did not appeal, put “(a)(10)” and you must file your application Form I-765 at the Chicago Lockbox Facility. The direct mail address is: U.S. Citizenship and Immigration Services, P.O. Box 805887, Chicago, IL 60680-4120 or non-U.S. postal service carriers (private couriers) U.S. Citizenship and Immigration Services, Attn: FBASI, 427 S. LaSalle – 3<sup>rd</sup> Floor, Chicago, IL 60605-1098. If you were granted Torture Convention deferral of removal and you were released from DHS custody, put “(c)(18)” and follow the instructions in the work authorization booklet.

**Make a copy of the Form I 765 and everything you send with it for your personal files, and if you are filing it by mail, send it by certified mail.** The permit does not cost anything the first time. It lasts one year. When you renew it, you have to pay a fee.

It should take 30 days to get a decision regarding whether work authorization will be granted. If you have not gotten a decision within 30 days, you should go to a local DHS office to try and get a temporary work permit.

**Can I travel outside of the United States after getting out of detention?**

**If you leave the country before your case is over, you will automatically lose your case. You should not leave until you have received a final decision. Even if the judge gives you asylum, withholding or deferral of removal, if DHS appeals, the decision is not final so you should not leave the country.**

If you won asylum and the decision is final, you have to wait a year before you can apply for permanent residence (your "green card") by filing a Form I-485, Application to Register Permanent Residence or to Adjust Status. You can travel during this time, if you ask for and receive permission from DHS by filing a Form I-131, Application for a Travel Document or by requesting Advance Parole, but **you should not return to your country until you have been given permanent residence, or you may lose your legal status.** If you receive withholding of removal or deferral of removal you should speak with an immigration attorney before traveling outside of the United States.

## **PREPARE YOUR CASE WELL**

Sometimes, the difference between winning and losing a case is how much time and energy you put into preparing it. If you follow the instructions in this booklet, you should be ready to present your case, and you will have a better chance of being successful. Good luck with your case!

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## Documentation Request Form

**Please fill out all sections and write neatly. Send this form to one of the organizations listed on the Organizations page. It will be helpful if you also send your asylum application (I-589), letters or forms that explain your case. These are for internal use only to help document your asylum claim. This information will not be shared with any other organization, DHS or any other governmental agency without your prior written consent.**

NAME: \_\_\_\_\_ A#: \_\_\_\_\_

ADDRESS: \_\_\_(address where you want the information sent)\_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

TODAY'S DATE: \_\_\_\_\_ DATE OF YOUR HEARING/APPEAL: \_\_\_\_\_

PLEASE LIST ALL OF THE ORGANIZATIONS YOU HAVE CONTACTED: \_\_\_\_\_  
\_\_\_\_\_

YOUR CITY/TOWN, STATE, AND COUNTRY OF ORIGIN: \_\_\_\_\_

YEAR OF ARRIVAL IN UNITED STATES: \_\_\_\_\_

**PLEASE CIRCLE AND ANSWER ALL THAT APPLY:**

1. ARE YOU OR WERE YOU A MEMBER OF A PERSECUTED POLITICAL ORGANIZATION? YES NO  
IF YES, PLEASE LIST ORGANIZATION: \_\_\_\_\_
2. ARE YOU OR WERE YOU A MEMBER OF A PERSECUTED TRADE UNION? YES NO  
IF YES, PLEASE LIST NAME OF ORGANIZATION: \_\_\_\_\_
3. ARE YOU OR WERE YOU A MEMBER OF A PERSECUTED CHURCH OR RELIGION? YES NO  
IF YES, PLEASE LIST RELIGION AND/OR CHURCH: \_\_\_\_\_
4. ARE YOU OR WERE YOU A MEMBER OF A PERSECUTED ETHNIC MINORITY? YES NO  
IF YES, PLEASE LIST ETHNICITY: \_\_\_\_\_
5. IS YOUR CLAIM BASED ON SEXUAL ORIENTATION (BECAUSE YOU ARE GAY, LESBIAN, BISEXUAL, OR TRANSGENDERED)? YES NO
6. WERE YOU PERSECUTED BY THE GOVERNMENT OR GOVERNMENT MEMBERS? YES NO  
IF YES, LIST GROUP: \_\_\_\_\_
7. WERE YOU PERSECUTED BY AN ORGANIZATION/PERSONS OUTSIDE GOVERNMENT? YES NO  
IF YES, LIST GROUP: \_\_\_\_\_
8. IS YOUR CLAIM BASED ON PERSECUTION BECAUSE OF YOUR GENDER? YES NO

**ON THE BACK OF THIS PAGE OR ON A SEPARATE PIECE OF PAPER, PLEASE LIST ANY SPECIFIC INSTANCES, PERSONS, DEATHS, NAMES, DATES, OR COUNTRY CONDITIONS WHICH SHOULD BE DOCUMENTED.**

**Certificate of Service**

Name: \_\_\_\_\_

A#: \_\_\_\_ -- \_\_\_\_ -- \_\_\_\_

I certify that on \_\_\_\_\_, \_\_\_\_\_, I served  
(date) (year)

the Assistant Chief Counsel for the DHS, U.S. Immigration & Customs Enforcement (ICE) with a copy of: (Description of what is being served) by placing a true and complete copy in an envelope, postage prepaid, and mailing it, addressed as follows:

Assistant Chief Counsel for the  
Department of Homeland Security  
U.S. Immigration & Customs Enforcement (ICE)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(DHS address)

---

(Sign your name here)



## **APPENDIX A: Nicaraguan and Central American Relief Act of 1997 (NACARA) & the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)**

### **NACARA Section 202 Relief for Cubans and Nicaraguans**

The deadline for applying for this type of NACARA relief for Cubans and Nicaraguans was March 31, 2000. However, under a law called the Violence Against Women Act (VAWA) 2005, Nicaraguan and Cuban spouses (husband or wife) and children who were abused (battered or suffered extreme cruelty) by a spouse or parent who either was eligible for NACARA section 202 or actually became a lawful permanent resident under NACARA section 202 may apply for lawful permanent resident status under NACARA section 202. However you must submit your application by July 2007 to be eligible.

For an abused spouse or child to apply under this law, the abusive spouse or parent must have been eligible for NACARA section 202 and met the following requirements:

- 1 Native or citizen of Nicaragua or Cuba;
- 2 Present in the United States since December 1, 1995; and
- 3 Admissible to the United States (did not have certain types of crimes that kept them from becoming a lawful permanent resident).

Absences from the United States for a total of 180 days in a row after December 1, 1995, would disqualify a person from NACARA section 202 relief. If you are not sure if you might qualify for NACARA section 202 under VAWA 2005 you should ask the judge or DHS.

### **NACARA Section 203 Relief for Guatemalans, El Salvadorans & Eastern Europeans**

Under NACARA section 203, you may qualify to apply for a defense to removal from the United States called "Cancellation of Removal" if you meet the requirements. If you qualify and obtain this type of defense, you will become a lawful permanent resident of the United States. In other words, you will get a green card.

◇ For Guatemalans the requirements are:

- A. You are from Guatemala;
  1. You came to the United States on or before October 1, 1990; and
  2. Registered for ABC class benefits on or before December 31, 1991 (Note: ABC registrants are not eligible if they were apprehended upon entry after Dec. 19, 1990); or
  3. You applied for asylum on or before April 1, 1990;

AND

- B. You establish:
  1. You have seven years of continuous physical presence in the United States;
  2. You have good moral character (this means you have not been convicted of certain crimes or spent 6 months or more in jail);
  3. You have not been convicted of an aggravated felony as defined by section 101(a)(43) of the Immigration and Nationality Act (INA)(if you have certain other crimes or immigration offenses that

make you inadmissible or deportable to the United States you may still be eligible if you meet additional requirements); and

4. You would suffer extreme hardship if you were removed from the U.S. or your spouse, parent or children who are lawful permanent residents or U.S. citizens would suffer such hardship if you were removed from the U.S.

If you meet the above requirements but have criminal convictions, you should still bring up NACARA with the judge to see if you are eligible. Also, if you are not sure whether you applied for asylum by the deadline or whether you are an ABC class member, you should ask the judge if you qualify to apply to stay in the United States under NACARA.

◇ For El Salvadorans the requirements are:

A. You are from El Salvador;

1. You came to the United States on or before September 19, 1990; and
2. You registered for ABC class benefits on or before October 31, 1991 (Note: ABC registrants are not eligible if they were apprehended upon entry after Dec. 19, 1990); or you registered for temporary protected status ("TPS") on or before October 31, 1991; or
2. You applied for asylum on or before April 1, 1990;

AND

B. You establish:

1. You have been physically in the U.S. continuously for at least seven years; and
2. You have good moral character (this means you have not been convicted of certain crimes or spent 6 months or more in jail); and
3. You have not been convicted of an aggravated felony as defined by section 101(a)(43) of the INA (if you have certain other crimes or immigration offenses that make you inadmissible or deportable to the United States, you may still be eligible if you meet additional requirements); and
4. You would suffer extreme hardship if you were removed from the U.S. or your spouse or children who are lawful permanent residents or U.S. citizens would suffer such hardship if you were removed from the U.S.

If you meet the above requirements but have criminal convictions, you should still bring up NACARA with the judge to see if you are eligible. If you are not sure whether you applied for asylum by the deadline, or whether you are an ABC class member or have TPS status, you should ask the judge if you qualify to apply to stay in the United States under NACARA.

◇ For Eastern Europeans:

A. You are a national of the Soviet Union, Russia, any Republic of the former Soviet Union, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia or any state of the former Yugoslavia; and

1. You entered the United States on or before December 31, 1990;
2. You applied for asylum on or before December 31, 1991;

AND

- B. You establish:
1. You have been physically in the U.S. continuously for at least seven years; and
  2. You have good moral character (this means you have not been convicted of certain crimes or spent 6 months or more in jail); and
  3. You have not been convicted of an aggravated felony as defined by section 101(a)(43) of the INA (if you have certain other crimes or immigration offenses that make you inadmissible or deportable to the United States, you may still be eligible if you meet additional requirements); and
  4. You would suffer extreme hardship if you were removed from the U.S. or your spouse, parent or children who are lawful permanent residents or U.S. citizens would suffer such hardship if you were removed from the U.S.

If you meet the above requirements but have criminal convictions, you should still bring up NACARA with the judge to see if you are eligible. Also, if you are not sure whether you applied for asylum by the deadline, you should ask the judge if you qualify to apply to stay in the United States under NACARA.

If you were the spouse or child of a Salvadoran, Guatemalan or Eastern European who received suspension of deportation or cancellation of removal under NACARA at the time the person received NACARA relief, you may be eligible to apply for NACARA relief as a beneficiary as long as the spousal or parent relationship still exists. You may also be eligible for NACARA, if you are the unmarried son or daughter of a parent who received NACARA relief and you entered the U.S. on or before October 1, 1990.

NOTE: The continuous physical presence requirements under NACARA do not apply if you enlisted in the U.S. armed forces while in the U.S., served 24 months in active duty status and were discharged honorably.

<b>Relief for Haitians</b>
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In October 1998, Congress passed the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) that gave certain Haitians a way to stay in the U.S. and become lawful permanent residents. The deadline for applying for this type of relief for Haitians was March 31, 2000. However, under VAWA 2005, spouses (husband or wife) and children (including unmarried sons or daughters over 21 years of age) who were abused (battered or suffered extreme cruelty) by a spouse or parent who either was eligible for HRIFA or actually became a lawful permanent resident under HRIFA still may apply for lawful permanent resident status under HRIFA.

For an abused spouse or child (including son or daughter) to apply under this law, the abusive spouse or parent must have been eligible under HRIFA and met the following requirements:

The abusive spouse or parent:

- 1 Was physically in the United States on December 31, 1995;
- 2 Was physically present in the United States continuously since at least December 31, 1995 and had not been absent from the U.S. for more than 180 days total since December 31, 1995;

AND

- 3 Filed for asylum and was present in the United States before December 31, 1995; or
- 4 Was paroled into the United States prior to December 31, 1995 and identified as having a credible fear

of returning to Haiti or was paroled for emergency reasons or because it was in the public's interest;

OR

Upon arrival in the United States:

- was under 21 years of age and not married AND arrived without parents in the U.S. and has remained in the U.S. without parents since arrival; OR
- became an orphan after coming to the United States;  
OR
- was abandoned by parents prior to April 1, 1998 and is still abandoned.

Even if you were not abused by your HRIFA eligible spouse or parent, you still may qualify for HRIFA if you are the spouse or child of a person who received HRIFA relief and you meet the following requirements:

- 1 You are a Haitian national; and
- 2 You are in the United States at the time the application for lawful permanent residence is filed.

In addition, if you are over 21 years old, unmarried and your parent obtained HRIFA relief you may be eligible for HRIFA relief if you can show you have been physically present in the U.S. continuously since at least December 31, 1995.

If you have committed a crime, you may or may not qualify to get lawful permanent residency. For some crimes, there may be a waiver possible, such as one called 212(h). If you meet all of the above requirements, you should tell the Immigration Judge or DHS that you think you qualify to get lawful permanent residency under the Haitian Refugee Immigration Fairness Act of 1998. If you have a crime and you are not sure whether you qualify, you should ask the Immigration Judge or DHS.

We do not discuss the process for applying for lawful permanent residency under this law in great detail. Ask the Immigration Judge, DHS, or an attorney/legal advocate how to apply if you think you qualify.