



Differences between Refugees and Asylees

Who is a refugee?

Credit: Migrant and Refugee Section/Vatican

A refugee is any person who is unable to return to their home country out of a well-founded fear of persecution because of their race, religion, nationality, political opinion, or membership in a particular social group.¹

What two humanitarian protection systems does the United States have for refugees?

Under US law, there are two humanitarian protection systems for refugees: (1) asylum and (2) refugee resettlement.²

Who is protected by the asylum system?

The *asylum system* protects individuals who meet the refugee definition after applying for U.S. asylum while already being in the United States or while applying for admission from a contiguous country at a U.S. border or port of entry.³

Is seeking asylum legal?

Yes, it is legal to request asylum. In fact, the U.S. is obliged under U.S. law and international treaties to provide protection. Individuals have the right to seek asylum in the US, regardless of their country of origin or their current immigration status.⁴ However, an individual generally must file for asylum within a year upon arrival to the US or they may face deportation.⁵ The U.S. has an Affirmative and a Defensive Asylum process which are outlined in our immigration laws.

What are the Affirmative and Defensive Asylum Processes?

Affirmative Asylum requires the individual to be physically present in the United States and to apply for asylum before they have had encounters with the Department of Homeland Security (DHS). Defensive Asylum allows individuals to seek asylum in response to possible deportation after being apprehended and put into immigration court proceedings by U.S. Immigration and Customs Enforcement (ICE).⁶

How would you describe people waiting to enter the US at the US/ Mexico border?

Many of the people waiting have expressed fear of returning to their home countries, and are seeking asylum in the U.S., so they are called *asylum seekers*. Those who later win asylum are called *asylees*.

Who is protected by the refugee resettlement system?

The *refugee resettlement system* protects certain persons of special humanitarian concern to the United States who meet the refugee definition, are outside the United States, and are referred for U.S. refugee resettlement.⁷ Resettlement is a durable solution

that generally serves the most vulnerable who are neither safe in their home country nor the country where they first take refuge.⁸

What other U.S. interests does the refugee resettlement program serve?

Besides serving the important U.S. humanitarian interests described above, U.S. resettlement plays other crucial strategic roles. It protects refugees who are in danger for having aligned with the United States, it supports U.S. allies who host refugees and is often a catalyst by example for other nations to join in that support, it helps to stabilize sensitive regions, and it creates good will and a positive, visible expression of U.S. values to the world.⁹

Can you work in the U.S. if you are classified as a refugee, asylee, or asylum seeker?

Refugees and **asylees** have work authorization granted to them immediately, as part of their status, when they become refugees or asylees, and they can then apply for an Employment Authorization Document (EAD) as further evidence of that authorization.¹⁰

Asylum seekers cannot apply for a work permit until 150 days after they have applied for asylum. If there is still no decision, they can apply at the 150 day mark, although USCIS cannot issue an EAD until 180 days without an asylum decision.¹¹

Can you obtain U.S. citizenship under either status?

A refugee may apply for a green card one year after their arrival to the United States.¹² An asylee may apply for a green card one year after being granted asylum in the United States.¹³ Either can apply for U.S. citizenship after having a green card for five years.¹⁴

The U.S. is accepting less refugees in the last few years and the Administration says that it is related to the large number of asylum seekers coming to the U.S. Have we always grouped these two populations, refugees and asylum-seekers, together?

No. Traditionally asylum seekers and refugees were separate with different processing and legal requirements. This year's Presidential Determination is the first time the two distinct protection systems for refugees and asylum-seekers, have been conflated.

Does the US have the capacity to resettle more refugees now in this time of need than what we are resettling even though there are many asylum-seekers coming?

Yes. The US has the capacity to resettle more refugees than it is doing and is intending to do in Fiscal Year (FY) 2020. The new President Determination from President Trump will allow for the admittance in FY 2020 of just 18,000 refugees,¹⁵ though we have the capacity for many more. During the nearly 40-year program, the average annual refugee admission goal for the United States has been 95,000.

Endnotes

1 "United Nations High Commissioner for Refugees, "What is a Refugee?" available at <http://www.unrefugees.org/what-is-a-refugee/>

2 See Proposed Refugee Admissions for Fiscal Year 2020: Report to Congress, 9/26/2019, p.4, available at <https://www.state.gov/wp-content/uploads/2018/12/Proposed-Refugee-Admissions-for-Fiscal-Year-2019.pdf>

3 Immigration and Nationality Act (INA), Section 208, USCIS, available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1158&num=0&edition=prelim>.

4 "Refugees & Asylum," USCIS. 11 12, 2015, available at <https://www.uscis.gov/humanitarian/refugees-asylum>

5 "Asylum Bars," USCIS, 4 1 2011, available at <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/asylum-bars>

6 "The Affirmative Asylum Process," USCIS, 4 19 2019, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>

7 See INA, Section 207, USCIS, available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1157&num=0&edition=prelim>

8 "Refugee Resettlement Facts," UNHCR, 2 2019, available at <https://www.unhcr.org/en-us/resettlement-in-the-united-states.html>

9 Letter from Retired US Military to Secretary Pompeo, 9 3 2019, available at <https://twitter.com/markhertling/status/1168977433455988739?lang=en>

10 Instruction for forms I-765, USCIS, p. 1, available at <https://www.uscis.gov/i-765>

11 Ibid. p.19, available at <https://www.uscis.gov/i-765>

12 "Green Card for Refugees," USCIS, 6 26 2017, available at <https://www.uscis.gov/greencard/refugees>

13 "Green Card for Asylees," USCIS, 7 10 2017, available at <https://www.uscis.gov/greencard/asylees>

14 "Path to US Citizenship," USCIS, 4 17 2019, available at <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/path-us-citizenship>

15 "Report to Congress on Proposed Refugee Admissions for FY 2020," p. 13.