



Homeland Security

[Home](#) > [News](#) > **Written testimony of USCIS for a House Oversight and Government Reform Subcommittee on National Security hearing titled “Border Security Oversight, Part III: Examining Asylum Requests”**

News

[Blog](#)

[Comunicados de](#)

[Prensa](#)

[Data](#)

[Events](#)

[Fact Sheets](#)

[Multimedia](#)

[Press Releases](#)

[Publications](#)

[Speeches](#)

[Testimony](#)

[Media Contacts](#)

[Social Media](#)

Written testimony of USCIS Refugee, Asylum, and International Operations Associate Director Joseph Langlois for a House Committee on Oversight and Government Reform, Subcommittee on National Security hearing titled “Border Security Oversight, Part III: Examining Asylum Requests”

Release Date: July 17, 2013

2247 Rayburn House Office Building

Introduction

Chairman Chaffetz, Ranking Member Tierney, and distinguished members of the Subcommittee: Thank you for the opportunity to testify at today's hearing on border security; I am sorry that we were unable to accommodate the last hearing request. I am Joseph Langlois, the Associate Director of the Refugee, Asylum and International Operations (RAIO) Directorate within U.S. Citizenship and Immigration Services (USCIS) at DHS. I oversee the asylum and refugee programs within USCIS and my testimony today will focus on how USCIS supports U.S. efforts related to border security while upholding our refugee protection obligations.

The United States has a long history of providing humanitarian protection to refugees and other vulnerable individuals. We are party to the 1967 Protocol relating to the Status of Refugees and the Convention against Torture (CAT), which obligate contracting states to abide by the principle of non-refoulement -- to refrain from returning individuals to countries where they fear certain types of harm. Our obligations under the Protocol and the CAT are implemented through various mechanisms, all of which incorporate the principle of non-refoulement. For example, individuals may seek asylum in the United States in one of two ways, either by applying for asylum “affirmatively” with USCIS or “defensively” while in removal proceedings before an Immigration Judge within the Department of Justice’s (DOJ) Executive Office for Immigration Review (EOIR).

Affirmatively Filed Asylum Applications

In general, any individual present in the United States and not in removal proceedings may file an affirmative asylum application with USCIS. Affirmative asylum procedures require an in-depth, in-person interview of every principal asylum applicant. This interview is conducted by specially trained Asylum Officers. These officers are a professional cadre within USCIS, dedicated full-time to the adjudication of asylum claims. They are extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, making proper credibility determinations, and fraud detection.

The Asylum Officer fully explores the applicant’s persecution claim, considers country of origin information and other relevant evidence, assesses the applicant’s credibility and completes required security and background checks. The Asylum Officer then determines whether the individual is eligible for asylum and drafts a decision. Supervisors review 100 percent of Asylum Officers’ cases prior to issuance of a final decision. If the Asylum Officer does not grant the asylum application, in most cases the applicant is referred to removal proceedings for a hearing

AILA InfoNet Doc. No. 13071860. (Posted 7/18//13)

before an Immigration Judge, including a decision on the asylum claim and any other claims for relief from removal.

Defensively Filed Asylum Applications

Individuals who have been placed in removal proceedings under the Immigration and Nationality Act (INA) receive a full hearing in Immigration Court, which are operated by DOJ's Executive Office for Immigration Review, and have the right to request certain types of relief from removal, including asylum, before an Immigration Judge.

The Expedited Removal and Credible Fear Processes

Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), individuals seeking admission to the U.S at a port of entry or those apprehended attempting to enter the United States unlawfully were able to present their requests for asylum directly to an Immigration Judge. IIRIRA, however, amended the INA to allow for the expedited removal of individuals who lack required documentation or possess improper documentation at ports of entry. Under delegated authority, DHS also applies the expedited removal process to individuals who are present without admission and encountered by an immigration officer within 100 air miles of the United States border, and were not physically present in the United States for the 14-day period immediately before their arrest, and to aliens unlawfully arriving in the United States by sea.

The expedited removal provision was designed to deter individuals from entering the United States illegally and to streamline what had been a lengthy, resource-intensive process. Individuals subject to expedited removal are immediately removable from the United States and are generally not entitled to a full hearing before an Immigration Judge. To ensure that the United States maintains compliance with its international treaty obligations related to non-refoulement, however, individuals subject to expedited removal who indicate a fear of persecution or torture or who indicate an intent to apply for asylum are referred to a specially trained USCIS asylum officer who conducts a detailed screening for potential asylum eligibility. Individuals who are able to establish a credible fear of persecution or torture to an asylum officer may then apply for asylum defensively in removal proceedings.

The credible fear screening process employed by USCIS has some similarities to the affirmative asylum process described previously, but is a separate and distinct process. For example, individuals in expedited removal proceedings, including those who indicate a fear of persecution or who indicate an intent to apply for asylum, are subject to mandatory detention and therefore credible fear interviews are conducted by USCIS officers while the individual is detained. During the credible fear interview, individuals are questioned regarding their biographic information, their fears of persecution or torture, and whether they may be subject to a mandatory bar to asylum. USCIS officers elicit information during the interview to develop the record regarding the applicability of the mandatory bars. USCIS also conducts security checks including preliminary biographic (TECS) and biometric (US-VISIT) checks during the credible fear process to assess identity and inform lines of questioning. Upon completion of the credible fear interview, and while the individual remains detained, the USCIS Asylum Officer determines whether or not the individual established a credible fear of persecution or torture.

The Credible Fear Standard

The credible fear screening standard, defined by statute, was designed to be a low legal threshold. In order to establish a credible fear of persecution or torture, the Asylum Officer must find that a "significant possibility" exists that the individual could establish eligibility for asylum or withholding or deferral of removal. The purpose of this screening standard is to dispose of claims where there is no significant possibility of success, while not foreclosing possibly viable claims. This procedural safeguard allows the expedited removal process to act as an efficient mechanism in maintaining border security while ensuring compliance with the United States' international treaty obligations regarding non-refoulement.

Historically, only a small percentage of individuals placed in expedited removal proceedings have expressed a fear of return. Throughout the years the percentage of individuals placed into expedited removal who express a fear of return has ranged from 2 percent to 13 percent. Expedited removal proceedings have been effective and saved significant resources since their implementation in 1997 while also ensuring that the United States upholds its international treaty obligations regarding non-refoulement.

Credible Fear Determinations

Like affirmative asylum decisions, 100 percent of credible fear determinations undergo supervisory review. Individuals who are ultimately found not to have a credible fear are subject

to immediate removal by Immigration and Customs Enforcement (ICE), unless they request a limited review of the Asylum Officer's determination by an Immigration Judge. If the individual establishes a credible fear of persecution or torture, USCIS issues a Notice to Appear (NTA) and the individual is placed into removal proceedings before an EOIR Immigration Judge at which point he or she can seek asylum or other forms of relief as a defense to removal. USCIS confirms initiation of additional security checks and those results are also provided to, and considered by, ICE and the Immigration Judge. Information used to make a determination on the individual's claim, including the interview notes, biographic information, completed security checks and decisional documents, are placed into the individual's file and are available for use by ICE attorneys during removal proceedings. The Immigration Judge ultimately determines whether the individual is eligible for asylum or any other requested forms of relief.

During the pendency of the removal proceedings, certain individuals are entitled to a custody hearing before the Immigration Judge. For arriving aliens, DHS has adopted parole standards to determine whether individuals should be paroled into the United States during the pendency of the removal proceedings.

Background Checks in the Affirmative Asylum Process

Before individuals may be granted asylum, they must all establish identity and pass all requisite national security and law enforcement background security checks. Each asylum applicant must pass extensive biometric and biographic security checks. Both law enforcement and intelligence checks are required – including through the Federal Bureau of Investigation (FBI), the Department of Defense, the Department of State, and other agencies.

In conducting background screenings, asylum applicants are first checked against the USCIS Central Index System to determine if an applicant has previously been issued an alien number. They are also screened against TECS – Custom and Border Protection's primary law enforcement and anti-terrorism data base system which contains enforcement, inspection, and intelligence records. For applicants ages 14 through 79, an FBI search is conducted of the person's name(s) and date(s) of birth. A USCIS Application Support Center also takes the 10 fingerprints and biometrics (signature, photograph and index print) of asylum applicants between the ages of 12 years and 9 months and 75 years. The FBI electronically searches the databases within the Integrated Automated Fingerprint Identification System, the FBI's Criminal Master File. The 10-prints are also electronically submitted to the US-VISIT database, where they are enrolled and associated with matching fingerprint records. This system is used to confirm identity, determine previous interactions with immigration officials, and detect imposters. In addition, a biometric check against the DOD Automated Biometric Identification System (ABIS) is conducted for certain cases. Finally, the Asylum Division is also piloting the screening of asylum information against the National Counterterrorism Center's terrorism holdings.

Conclusion

The expedited removal process is a critical tool for effective border management. The credible fear screening process that identifies individuals potentially in need of protection in the larger expedited removal framework affords those border efficiencies while ensuring U.S. compliance with its international treaty obligations relating to non-refoulement. Prior to IIRIRA, *all* individuals apprehended while unlawfully entering the United States were placed in deportation or exclusion proceedings before an Immigration Judge – such a framework today would overwhelm DHS's and DOJ's already stretched resources.

It is important to note that an Asylum Officer's positive credible fear finding does not confer an immigration benefit or guarantee any lawful status in the United States. Rather, a finding of a credible fear results only in an individual's opportunity to present his or her protection claim before an Immigration Judge in removal proceedings.

Thank you again for the opportunity to testify. I would be happy to answer your questions.

Review Date: July 17, 2013

