

# ASYLUM, WITHHOLDING OF REMOVAL, CONVENTION AGAINST TORTURE

## WHAT IS IN THIS PACKET?

- A** – Information about Asylum, Withholding of Removal, and the Convention Against Torture
- B** – Checklist for My Asylum Case
- C** – Frequently Asked Questions about Form I-589
- D** – How to Write a Declaration
- E** – Preparing for Your Individual Hearing

## WHAT ARE ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE?

Asylum, Withholding of Removal, and protection under the Convention Against Torture are three forms of relief from removal or deportation for people who are afraid to return to their home countries. The forms of relief have different requirements and different benefits.

---

### ASYLUM

Asylum is one form of relief available to people who are afraid to return to their home countries.

If the judge grants you asylum, you will be released, have permission to work immediately and be eligible for permanent residency (a green card) one year from the date asylum is granted. You will be able to apply for travel documents, and you can eventually apply to become a U.S. citizen. You might also be able to have your immediate family members join you in the U.S.

You must be able to check **all** of the following boxes in order to apply for asylum:

- You are applying within the one-year deadline.**
  - You must apply within one year of your most recent arrival in the United States, or
  - You must apply within a reasonable time after establishing that there are:

- Changed circumstances that make you eligible for asylum when you weren't eligible before (e.g., a new government is now in control in your home country and is hostile toward your religion), or
  - Extraordinary circumstances that prevented you from applying within your first year of residence in the United States (e.g., you arrived in the US as an unaccompanied minor child or you have been in the United States with authorization before now).
- You have been harmed in the past and/OR you fear harm in the future.** You must show that you have a “well-founded fear” (meaning that there is at least a 10% chance) of being persecuted in the future if returned to your home country. This can be established by showing that you have been persecuted in the past. The following are examples of persecution:
- Serious physical harm;
  - Serious threats or attempts to harm;
  - Coercive medical or psychological treatment;
  - Overly harsh punishment by police or government.
- The persecution you fear is on account of at least one of the five protected grounds.** You must show that the abuse has been, or would be, because of your:
- Race or ethnicity;
  - Religion;
  - Nationality;
  - Political opinion; or
  - Membership in a particular social group (that is, a group of people who share a common characteristic and that society sees as a distinct group of people - for example, if you would be harmed or killed because of your sexual orientation, or because you are a member of a family that is being targeted for persecution, or because you are a victim of domestic violence and the police in your country will not protect you).
- The government of your home country is responsible for the harm, or cannot or will not help you.** You must show that the abuse has been, or would be, inflicted by the government or by a group the government is unable or unwilling to control.
- You have not been convicted of an aggravated felony or “particularly serious crime”.** If you have been convicted of an aggravated felony or a particularly serious crime, you are not eligible to apply for asylum. (See instead the sections on Withholding of Removal and the Convention against

Torture. See the “Guide for Detained Immigrants” for information on crimes that are considered aggravated felonies.)

- You can show you deserve to receive asylum.** Even if you qualify for asylum, the judge does not have to give you asylum. You should be able to show that you are a good person, and that you deserve an opportunity to make a life for yourself in the United States.

---

## WITHHOLDING OF REMOVAL

Withholding of Removal (WOR) is harder to win than asylum, and it also does not give you as many benefits in the United States.

**WOR will not make you eligible for permanent residency or citizenship.** Instead, you will be technically ordered deported, but the United States will not deport you to the country where you fear being persecuted. However, it is possible that you may be deported to a third country you may have ties with. After this relief is granted, you cannot return to the U.S. if you leave.

With WOR you can receive permission to work in the United States, and will not be deported unless the government re-opens your case and shows that you are no longer likely to be persecuted in your home country.

You might be able to apply for WOR even if you have an aggravated felony. You can also apply at any time, not just within your first year of living in the United States. Finally, you don't have to show the judge you deserve WOR – if the judge finds that you meet the requirements below, she must grant WOR.

You must be able to check all of the following boxes in order to apply for WOR:

- You are more likely than not to be harmed in the future.** You must show that there is more than a 50% chance you will be persecuted if returned to your home country. This is harder than what you have to show for asylum. The following are examples of persecution:
  - Serious physical harm;
  - Serious threats or attempts to harm;
  - Coercive medical or psychological treatment;
  - Overly harsh punishment by police or government.
- The persecution you fear is on account of one of the five protected grounds.** You must show that the abuse has been, or would be, because of your:
  - Race or ethnicity;

- Religion;
  - Nationality;
  - Political opinion; or
  - Membership in a particular social group.
- The government of your home country is responsible for the abuse, or cannot or will not help you.** You must show that the abuse has been, or would be, inflicted by the government or by a group the government is unable or unwilling to control.
- You have not been convicted of a “particularly serious crime,” have not persecuted others, and you are not a danger to the security of the United States.** If you have been convicted of a particularly serious crime (including an aggravated felony with a sentence of 5 years or more or a drug trafficking offense), you are probably not eligible for WOR.

---

## CONVENTION AGAINST TORTURE

Protection under the Convention Against Torture (CAT) requires proof that it is **more likely than not** (more than a 50% chance) that you will be tortured upon return to your home country by the government of that country, or by a person or group that the government will allow to torture you. Torture is defined as “an extreme form of cruel and inhuman punishment” that “must cause severe pain or suffering.” Unlike asylum or WOR, criminal convictions generally do not bar you from receiving protection under CAT.

## HOW DO I APPLY FOR ASYLUM, WOR AND/OR CAT?

You need to submit the following at your master calendar hearing:

- Form I-589 (you use this one application to apply for any or all of asylum, WOR, and CAT).
- The original will go to the judge, and you should make at least two copies of your application: one copy goes to the ICE Attorney, and you should keep one copy for your records.

Then you should work on and be ready to submit the following at your individual hearing (unless the judge tells you to submit them earlier):

- A declaration, telling the judge about any past persecution you have suffered and/or why you fear future persecution. If you are applying more than one year after entering the United States, you should also include an explanation of the changed circumstances that now make you eligible for asylum or the extraordinary circumstances that prevented you from filing within the first year. Look at the “My Declaration” guide, Document C, for a more detailed explanation.

- ☐ In addition to the application and your declaration, you should submit any **supporting documentation** (See Checklist – Document B for more details). The more documentation you have, the stronger your case will be.

Once you have written your declaration, and received any supporting documents, write out a table of contents listing all the documents you are going to submit and make two copies of the entire package. Give the **original** to the court, give one **copy** to the government and keep a copy for yourself.

# CHECKLIST FOR MY ASYLUM CASE

## STEP 1: FIGURE OUT IF YOU QUALIFY

✓	I read <b>Document A</b> , Information about Asylum, Withholding of Removal, and the Convention Against Torture.
	I suffered persecution in my country or fear persecution in the future.
	The persecution I suffered or that I fear suffering was account of my race, religion, nationality, political opinion, or membership in a particular social group.
	These people: _____ will do (or did do) this to me: _____ _____ because of: _____ _____. (For example: “The Christians beat me repeatedly because I am a Muslim,” or “The MS gang will kill me because I testified against a gang leader.”)

## STEP 2: FILL OUT THE APPLICATION

	I have filled out <b>Form I-589</b> in English.
	I have reviewed <b>Document C</b> , Frequently Asked Questions about Form I-589.
	I have reviewed <b>Document D</b> , Information about Declarations.
	I have written my declaration in English or had it translated into English, and the declaration provides details about my story and why I am afraid to go back to my country.

## STEP 3: SUBMIT THE APPLICATION IN COURT

	I made three copies of the Form I-589 – the original and one copy for the court, one for the ICE attorneys, and one for myself.
	I submitted the application to the judge.

## STEP 4: GATHER EVIDENCE

	<p>I have DOCUMENTS TO PROVE MY IDENTITY. For example:</p> <ul style="list-style-type: none"> <li>• Passport</li> <li>• Driver’s License/State ID</li> <li>• ID from my country (for example, a Mexican <i>matricula consular</i> or a consular ID card)</li> <li>• Birth Certificate</li> <li>• Affidavits from family or friends who know you</li> </ul>
--	--

	<p>I have GENERAL HUMAN RIGHTS REPORTS. For example:</p> <ul style="list-style-type: none"> <li>• Reports from human rights organizations such as Amnesty International, the United Nations, Human Rights Watch, U.S. State Department Religious Freedom Reports or others that address the persecution of people in my situation.</li> <li>• If possible, a report from an expert on the conditions in my country of origin.</li> </ul>
	<p>I have OFFICIAL DOCUMENTS. For example:</p> <ul style="list-style-type: none"> <li>• Death Certificates of people in my situation who have died because of the persecution.</li> <li>• Hospital Reports showing my injuries from the persecution.</li> <li>• Police Reports that document the persecution and show that the police were asked to protect me or people in my situation.</li> <li>• Real membership cards from the groups that I am a part of that are being persecuted (for example, a church, a political party or a human rights organization).</li> </ul>
	<p>I have NEWSPAPER ARTICLES AND PHOTOGRAPHS. For example:</p> <ul style="list-style-type: none"> <li>• Newspaper articles that describe the persecution to me or my friends and family.</li> <li>• Newspaper articles that describe the conditions or other examples of persecution happening to other people in my situation.</li> <li>• Photographs demonstrating the injuries or persecution I suffered.</li> <li>• Photographs showing that I am a member of the group I'm claiming to be a member of (for example, photos of me in a uniform, or at a political rally).</li> </ul>
	<p>I have AFFIDAVITS or LETTERS OF SUPPORT. For example:</p> <ul style="list-style-type: none"> <li>• Affidavits from people in my country describing what happened to me and what would happen to me if I had to go back.</li> <li>• Affidavits from people not in my home country describing what happened to me and what would happen to me if I had to go back.</li> <li>• Affidavits from people describing what happens to people in my specific situation.</li> </ul>

## STEP 5: PREPARE FOR THE INDIVIDUAL HEARING

	I filled out the <b>Respondent's Supporting Documents</b> sheet with all of the evidence I could get.
	I made two copies of my supporting documents, one for the judge and the ICE attorney.
	I have arranged for any witnesses to come to court or testify by phone.
	I have met with NWIRP and talked about what will happen at the individual hearing.
	I have completed the Asylum Worksheet that NWIRP provided to me.

# ABOUT FORM I-589

## PART A.I. INFORMATION ABOUT YOU

If you believe you would be *tortured or killed* if deported, you *must* check the box at the top of the first page to apply for protection under the Convention against Torture.

#7: For your physical address, use the address for the detention center:

1623 East J Street, Suite 5

Tacoma, WA 98421

#13: This question asks you about your present nationality. Your nationality (where you were born) and citizenship are usually the same, but if you don't think this is true for you, you should make this clear in the application.

#14: This question asks you about your nationality/citizenship at birth. If you have moved to another country permanently and received citizenship, it may be different from #13.

#15: Some people belong to specific ethnic or tribal groups within their country. For example, people from Guatemala may be Mayan and of a specific ethnic group. If you do not have a distinct tribal group, the answer to this may be "Latino," "White/Caucasian," or another racial background.

#16: This question asks you about both your main religion (such as Jewish, Christian, Buddhist, Muslim, etc.) and also any particular part of that religion you belong to (such as Orthodox, or Catholic). If you are applying for asylum because of religious persecution, you should be particularly careful to specify your religion here.

#17: You are now in Immigration Court proceedings, and should check that box (b).

#18 a-g: These questions request information about your most recent departure from your country and entry into the U.S., as well as previous entries. If you entered without permission or illegally, write "no inspection" and put "N/A" where it asks for "I-94 number."

#19-21: If you do not have a passport, write "none" in #19. If you have ever had a passport, fill these out the best you can.

#22-24: You may speak several languages. #22 asks for the language you speak best, and you should also note any specific dialect within that language. In #23, only check yes if you are 100% comfortable speaking to the judge in English. In #24, list any other languages that you speak fluently.

**PART A.II. INFORMATION ABOUT YOUR SPOUSE AND CHILDREN**

Only fill this part out if you are currently married and/or have children. If you are not married, check the box at the top that says “I am not married.” If you do not have any children, check the box in the middle of the page that says “I do not have any children.” If you have more than four children, you can use “Supplemental Form A” at the back of the application or a blank piece of paper to list information about your other children. Be sure to write your name, A number, the date, and “Continuation of I-589, Part B” at the top of any blank pages you use, and remember to sign these pages.

#24: Spouses and children may only be included if they are in the United States and they do not already have legal status such as permanent residence or citizenship. If you are including a spouse or child you need to submit an extra copy of the application and should try to get a passport-sized photograph of the spouse or child you are including. If you do not include a spouse or child, or if you cannot because they are not in the United States, you can still petition for them later if you win your asylum case.

**PART A.III. INFORMATION ABOUT YOUR BACKGROUND**

#1-4: For all of these sections, always start with the most recent information and work your way backwards.

#5: If your parents or siblings are deceased, you still need to list them and then check the “deceased” box in the “current location” part. If you have more siblings, use another sheet to write their information.

**PART B. INFORMATION ABOUT YOUR APPLICATION**

This is the most important part of the application. Before doing this part, you should try to write out your claim on a separate paper as a Declaration (see the sheet “My Declaration,” Document C, for more information). Also read the packet called “Information About Asylum, Withholding Of Removal, And The Convention Against Torture,” Document A.

If you write a separate Declaration, then answer the questions in Part B with a short summary and write “Please See Declaration.”

#1: Identify the ground or grounds on which your fear is based: race, religion, nationality, political opinion or social group. Your claim may be based on several different or related grounds, and you should mark any and all of the boxes that relate to your claim. You should also check off the Torture Convention box if you are afraid of torture or death.

A: This question asks you to identify if you, your family, or people in a similar situation to you suffered harm or threats in the past.

## FREQUENTLY ASKED QUESTIONS ABOUT FORM I-589 – **C**

B: This question asks specifically why you are afraid to return to your home country. Remember to focus on the reason that you identified in part #1 (race, religion, nationality, political opinion, or membership in a particular social group).

#2: This question asks you to discuss any time you were arrested, interrogated, convicted, imprisoned, etc. in your home country. You should include both specific problems you had in your home country (the mistreatment or abuse you suffered), as well as any other times you were arrested or imprisoned for any reason at all.

#3.A: If you have been a member of any political party, union, military group, human rights group, ethnic group, the press, any student group, any religious organization such as a church, or other similar groups, it is important to explain that here.

#3.B: If you or your family still consider yourselves part of the groups you wrote about in #3.A, you should include that here.

#4: This question is most important for those seeking relief under the Convention against Torture, but all people should answer it.

### **PART C. ADDITIONAL INFORMATION ABOUT YOUR APPLICATION**

#1: If any of your family applied to the United States for asylum status before, you need to give as many details as you can.

#2.A: If you traveled through any country to get to the United States, you need to mark yes and list it here. If you were in the other country only to travel through on your way to the U.S., write that as well.

#2.B: This question asks for information to determine whether you ever received permanent protection in a third country. If you received permanent refugee status in another country, you need to list it here. If you received some sort of temporary status, list it and explain.

#5: If you are filing this application more than one year after the last time you came into the United States, you need to explain why. See the first page of this packet for more information.

#6: For this question you need to write any criminal history you have in the U.S., including any arrests or charges. Do the best you can with every detail.

### **PART D. YOUR SIGNATURE**

This is where you sign and swear that everything you wrote is true and correct. If you intentionally submit an application with false information, you will not be eligible for any kind of relief from deportation.

**PART E. DECLARATION OF PERSON PREPARING THE FORM**

If someone else helped you complete the application, he or she should fill out and sign this section.

**PART G**

This part will be completed in front of the judge.



# HOW TO WRITE A DECLARATION

Write the story of your life, concentrating on why you are afraid to return to your country. Do your best to include details such as full names, dates, time of day, how you know facts (such as who people are), and description of threats or harm.

Try to answer the following questions in writing your declaration:

- What** is the past harm that you, your family, or other people like you suffered? Be specific and detailed.
- Why** were you harmed in the past or why do you fear harm in the future? What was this persecution based on? Was it because of your race, religion, nationality, membership in a particular social group, or political opinion? How do you know that was why the persecution happened?
- When** and **How** were you threatened, harmed or tortured (what specifically happened to you)?
- Who** specifically was doing this to you? Were they part of the government or other group? How did you know it was them? Were they in uniform? Did they identify themselves? What, if anything, did they say to you?
- Why** do you fear return to your country now? Is there a threat of future harm to you? How do you know this? Remember to be specific!

It should end with a statement that if you returned to your home country, you will be harmed, mistreated, tortured and/or killed (or whatever your circumstances would be).

The Declaration does not need to be notarized.

NOTES:

---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



# PREPARING FOR THE INDIVIDUAL HEARING

This worksheet will help you prepare for your individual hearing. Remember that the purpose of the individual hearing is for the Immigration Judge to decide whether or not it is too dangerous for you to return to your country. You will need to explain to the judge *why* you are afraid to return to your country.

## HOMEWORK

Ask yourself these general questions about why you are afraid to return to your home country. Try to answer them with as much detail as possible so that you will be prepared to explain your story to the judge.

- Why did you leave your home country?
- Who are you afraid of?
- Why are you afraid of them?
  - Why do they want to harm you or others like you?
- What do you think they will do to you if you return?
- How do you think they will know that you are back?
- Who else are they threatening or mistreating now?
  - Are the people they are hurting similar to you?
  - How are they similar to you?
  - Are they similar to you because of their race, religion, nationality, political opinion, or membership in a social group?
  - How do you know that these people are still being harmed?



## QUESTIONS THAT THE GOVERNMENT ATTORNEY MIGHT ASK

At your individual hearing, the lawyer for ICE (the government) may ask questions to try to convince the judge that you should **not** get protection in the United States. The lawyer may want to show that it is safe for you to return to your country, or that you are not eligible to win protection for some other reason.

*Ask yourself the following questions to help you answer the lawyer's questions in court.*

- Can you identify those who harmed you?
  - What were their names? Rank? Profession?
  - Would you recognize them again?
  - Would they recognize you?
- Do you have proof that it is still unsafe for you to return home (for example, newspaper articles, death certificates, etc.)?
- Could you go somewhere in the country where you would be safe? Why or why not? (This could be asked for any country, but especially for large countries with different regions.)
- Have the conditions in your country changed since you left it?
  - If yes, would this make it safe for you to return? More dangerous? (Is there a new political regime in power? Has a war ended? Has a rebel movement been defeated? Have there been democratic elections? Has there been a coup?)
- If you were mistreated previously, was it for a reason NOT related to one of the five grounds? (Remember, the five grounds are race, religion, political opinion, nationality, membership in a particular social group.)
  - For example, was it because of a civil war? Was it due to poverty? Was it a personal vendetta? These may not be grounds for asylum.
- Have you ever returned to your home country since you left it?
  - If so, how were you able to stay safe when you went back? Could you stay safe again?
- Have you ever received permanent residency or protective status in another country? Could you return there now?
- Have you ever threatened or mistreated **others** for reasons related to one of the five grounds?
- Have you committed any crimes in the United States?
  - If so, do you take responsibility for the mistakes you made?
  - Have you completed any classes or rehabilitation?