

Information about Asylum, Withholding of Removal, and the Convention Against Torture

For more information about **Asylum, Withholding of Removal, and Protection under the Convention Against Torture**, look in the **law library** for the packet on “How to Apply for Asylum and Withholding of Removal” provided by NWIRP.

What is 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 eligible for permanent residency one year from the date asylum is granted, and you will receive travel documents and permission to work immediately. You can eventually become a U.S. citizen.

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).

- You have been harmed in the past, and/OR you fear harm in the future.** You must show that you have been persecuted in the past, or that there is at least a 10% chance you will be persecuted if returned to your home country. 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,
 - Severe discrimination and economic persecution, or

- Severe criminal extortion or robbery.
- 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 do not have an aggravated felony or “particularly serious crime”.** If you have been convicted of an **aggravated felony**, you are not eligible to apply for asylum. (See instead the section on Withholding of Removal. See the “Guide for Detained Immigrants” for information on crimes that are considered aggravated felonies.)
- You can show you deserve to receive asylum because of your good moral character.**

WITHHOLDING OF REMOVAL

Withholding of Removal (WOR) is harder to win than asylum, and it also does not give you as many rights 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 at least a 50% chance you will be persecuted if returned to your home country. 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,
 - Severe discrimination and economic persecution, or
 - Severe criminal extortion or robbery.
- 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 do not have a “particularly serious crime” and have not persecuted others.** If you have been convicted of an **aggravated felony and sentenced to 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** you will be tortured upon return to your home country. Torture is defined as “an extreme form of cruel and inhuman punishment” that “must cause severe pain or suffering.” Unlike asylum or WOR, there are no criminal bars to applying for protection under CAT.

There are two types of protection under CAT. The first is another type of **withholding of removal**, and it prohibits the return to your home country unless the government re-opens your case and shows that you are no longer likely to be tortured in your home country. The second form, called **deferral of removal**, is a more temporary type of relief. It can be terminated more quickly and easily than withholding of removal if the individual is no longer likely to be tortured if forced to return to her home country. Additionally, an individual granted deferral of removal under CAT may be detained by the DHS if she is deemed to be a threat to the community.

How do I apply for asylum, WOR and/or CAT?

You need to submit the following:

- Form I-589 (the application for asylum, WOR, and CAT)
- 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.

- ☐ In addition to the application and your declaration, you should submit any **supporting documentation** such as:
 - Letters or news articles from reputable sources documenting and describing the persecution that you, or people similar to you, have suffered in your home country
 - Police reports or hospital records or photos documenting physical abuse
 - Letters of support from friends and family
 - Documentation of when you entered the United States
 - Identifying documents (birth certificates, passports, etc.)
 - Employment records
 - School records
 - Copies of past tax returns
 - Documentation of membership in a community or religious organization
 - Proof of rehabilitation efforts, if you have been convicted of any crimes

The more documentation you have, the stronger your case will be.

Once you have filled out the application, written your declaration, and received any supporting documents, 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.

ADDITIONAL GUIDES:

- “My Declaration”
- Documentation
- Testimony