§ 1158

Asylum

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien’s arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(E) Applicability

Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 229(g) of title 8).

(3) Limitation on judicial review

No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for granting asylum

(1) In general

(A) Eligibility

The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(B) Burden of proof

(i) In general

The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish
that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) Sustaining burden

The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) Credibility determination

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions

(A) In general

Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182(a)(3)(B)(i) of this title or section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

(A) In general

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age on the date on which such parent applied for asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) Continued classification of certain aliens as children

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 1159(b)(3) of this title, if the alien attained 21 years of age after such application was filed but while it was pending.

(C) Initial jurisdiction

An asylum officer (as defined in section 1225(b)(1)(E) of this title) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as de-
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fined in section 279(g) of title 6), regardless of whether filed in accordance with this section or section 1225(b) of this title.

c) Asylum status

(1) In general

In the case of an alien granted asylum under subsection (b), the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of such authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum

Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if

(1) In general

In subsection (b), the Attorney General—

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of such authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that—

(i) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;
Chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

**AMENDMENTS**

2002—Subsec. (b)(3). Pub. L. 107–208 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.”
2001—Subsec. (b)(2)(A)(v). Pub. L. 107–56 substituted “(III), (IV), or (VI)” for “(II), (III), or (IV)”.
1996—Pub. L. 104–208 substituted “Asylum” for “Asylum procedure” as section catchline and amended text generally, substituting subsecs. (a) to (d) for former subsecs. (a) to (e).
Subsec. (a). Pub. L. 104–132, § 421(a), inserted at end “The Attorney General may not grant an alien asylum if the Attorney General determines that an alien is excludable under subclause (I), (II), or (III) of section 1182(a)(3)(B)(i) of this title or deportable under section 1251(a)(4)(B) of this title, unless the Attorney General determines, in the discretion of the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.”

**Statutory Notes and Related Subsidiaries**

**Effective Date of 2008 Amendment**

Amendment by Pub. L. 110–229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110–229, set out as an Effective Date note under section 1806 of Title 48.

**Effective Date of 2005 Amendment**


“(1) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect as if enacted on March 1, 2003.

“(2) The amendments made by subsections (a)(3), (b), (c), and (d) [amending this section and sections 1225(a) and 1231 of this title] shall take effect on the date of the enactment of this section [May 11, 2005] and shall apply to applications for asylum, withholding, or other relief from removal made on or after such date.”

**Effective Date of 2002 Amendment**


**Effective Date of 2001 Amendment**

Amendment by Pub. L. 107–36 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on,
or after Oct. 26, 2001, and to all aliens, regardless of
date of entry or attempted entry into the United
States, in removal proceedings on or after such date
(except for proceedings in which there has been a final
administrative decision before such date) or seeking
admission to the United States on or after such date,
with special rules and exceptions, see section 411(c) of
Pub. L. 107–56, set out as a note under section 1182 of
this title.

**Effective Date of 1996 Amendments**

Pub. L. 104–208, div. C, title VI, §604(c), Sept. 30, 1996,
110 Stat. 3009–694, provided that: "The amendment
made by subsection (a) [amending this section] shall
apply to applications for asylum filed on or after the
first day of the first month beginning more than 180
days after the date of the enactment of this Act [Sept.
30, 1996]."

1270, provided that: "The amendment made by sub-
section (a) [amending this section] shall take effect on
the date of the enactment of this Act [Apr. 24, 1996] and
apply to asylum determinations made on or after such
date."

**Effective Date of 1990 Amendment**

5053, as amended by Pub. L. 102–232, title III, §306(a)(13),
Dec. 12, 1991, 105 Stat. 1752, provided that:

"(1) The amendment made by subsection (a)(1) [amending
this section] shall apply to convictions en-
tered before, on, or after the date of the enactment
of this Act [Nov. 29, 1990] and to applications for asylum
made on or after such date.

"(2) The amendment made by subsection (a)(2) [amending
section 1253 of this title] shall apply to con-
victions entered before, on, or after the date of the en-
tactment of this Act [Nov. 29, 1990] and to applications for
withholding of deportation made on or after such
date."

**Effective Date**

Section effective Mar. 17, 1980, and applicable to fiscal
years beginning with the fiscal year beginning Oct. 1,
1979, see section 204 of Pub. L. 96–212, set out as an
Effective Date of 1980 Amendment note under section
1101 of this title.

**Regulations**

vided that:

"(1) ISSUANCE OF REGULATIONS.—Not later than 60
days after the date of enactment of this Act [Oct. 3,
2008], the Attorney General and the Secretary of Home-
land Security shall promulgate final regulations estab-
lishing that, for purposes of sections 208(b)(1)(A)(iii)
and 208(b)(2)(A)(iii) of the Immigration and Nationality
Act (§ 1158(b)(2)(A)(iii)), an alien who is deportable under section 237(a)(4)(F) of
such Act (§ 1227(a)(4)(F)) or inadmissible under
section 212(a)(3)(G) of such Act (§ 1182(a)(3)(G))
shall be considered an alien with respect to whom there
are serious reasons to believe that the alien committed
a serious illegal political crime.

"(2) AUTHORITY TO WAIVE CERTAIN REGULATORY RE-
QUIREMENTS.—The requirements of chapter 5 of title 5,
United States Code (commonly referred to as the 'Ad-
ministrative Procedure Act'), chapter 35 of title 44,
United States Code (commonly referred to as the 'Pa-
perwork Reduction Act'), or any other law relating to
rulemaking, information collection, or publication in
the Federal Register, shall not apply to any action to
implement paragraph (1) to the extent the Attorney
General or the Secretary Homeland of (sic) Security
determines that compliance with any such requirement
would impede the expeditious implementation of such
paragraph."

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

**Expedient Removal for Denied Asylum Applicants**

Stat. 2288, provided that: "The amendment made by
subsection (a) [amending this section] shall apply to
applications for admission to the United States under
sections 237(a)(4)(F) or inadmissible under
sections 237(a)(4)(F) or 1158(b)(2)(A)(iii), and 208(b)(2)(A)(iii) of the Immigration
and Nationality Act (as added by section 411(c) of
Pub. L. 101–690, set out as a note under section
1182 of this title)."

Stat. 109, provided that: "The amendment shall
establish the asylum procedure referred to in section
208(a) of the Immigration and Nationality Act (as added
by section 201(b) of this title) not later than June 1, 1988.

**§ 1159. Adjustment of status of refugees**

(a) Inspection and examination by Department of
Homeland Security

(1) Any alien who has been admitted to the
United States under section 1157 of this title—

(A) whose admission has not been termi-
nated by the Secretary of Homeland Security
or the Attorney General pursuant to such reg-
ulations as the Secretary of Homeland Secu-
ritry or the Attorney General may prescribe,

(B) who has been physically present in the
United States for at least one year, and

(C) who has not acquired permanent resident status,

shall, at the end of such year period, return or
be returned to the custody of the Department of
Homeland Security for inspection and examina-
tion for admission to the United States as an
immigrant in accordance with the provisions of
sections 1225, 1229a, and 1231 of this title.

(2) Any alien who is found upon inspection and
examination by an immigration officer pursuant to
paragraph (1) or after a hearing before an im-
migration judge to be admissible (except as oth-
ervise provided under subsection (c)) as an im-
migrant under this chapter at the time of the
alien’s inspection and examination shall, not-
withstanding any numerical limitation specified in
this chapter, be regarded as lawfully admitted to the
United States for permanent residence as of
the date of such alien’s arrival into the
United States.

(b) Requirements for adjustment

The Secretary of Homeland Security or the
Attorney General, in the Secretary’s or the At-