Sanctuary for Families

THE AFFIRMATIVE ASYLUM PROCESS

If your client is filing for asylum and is not in removal proceedings, the application is considered "affirmative." These applications notify U.S. Citizenship and Immigration Services (USCIS) that the applicant wishes to remain here indefinitely due to a fear of return to their home country. This chapter explains what to file, when to file it, and what to expect once you have filed.

Timing of Filings

Affirmative applications should be filed before the one-year anniversary of your client's arrival in this country. If your client last arrived in the United States less than one year ago, you must file the application before one year has passed since your client's arrival, and you should aim to allow at least a few weeks for any administrative or other errors in filing. Even if your client's filing deadline is several months away, it is in your client's best interests to file the application as soon as possible so that they may become eligible for certain benefits, provided you are able to prepare supporting materials in advance of the projected date of the client's interview. As described later in this manual, your client should be eligible to apply for an employment authorization document (EAD) 150 days after USCIS receives their asylum application. Additionally, in New York, asylum applicants are eligible for state-funded Medicaid and cash assistance.[1] If your client arrived more than one year ago, you must not be responsible for any additional delay in filing and you should do your best to file as quickly as possible.

The initial application packet should include Form I-589 and copies of identity documents for your client and any family members included in the application. Under current policy, the Asylum Officers schedule interviews on a last in first out basis, which means your client could expect an interview within four to six weeks of filing the initial I-589 application.[2] You should hold off on filing your client's affidavit or any other supplementary statements with your initial I-589 application, as you will need to cross-check details in all your supporting documents, including expert and fact witness affidavits, for accuracy and consistency. However, please prepare and finalize supporting documents as soon as possible prior to the filing of Form I-589, so you can be prepared for an interview should you be scheduled immediately. Your contact at Sanctuary for Families will provide you with technical assistance to help you prepare your client's submissions.

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[1] According to the New York State Department of Health, "[a]n alien who establishes that he or she is PRUCOL [Permanently Residing in the United States under Color of Law] is eligible for State Medicaid and FHPlus benefits if the alien meets the program's financial and other eligibility requirements." 08 OHIP/INF-4. The New York State Department of Health definition of PRUCOL includes any aliens who "have filed official applications with the federal immigration agency, typically USCIS or EOIR, for a particular immigration status or to obtain other relief." 08 OHIP/INF-4. According to the New York State Office of Temporary Disability, asylum applicants with valid work authorization are recognized as permanently residing under the color of law (PRUCOL) such that they are eligible for safety net cash assistance. *See* http://otda.ny.gov/policy/gis/2017/17DC047.pdf.

[2] *See* USCIS, Affirmative Asylum Interview Scheduling, available at https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling

Once you file Form I-589, you will be notified of its acceptance by USCIS by mail within a few weeks. This notice includes a receipt date, the asylum office before which the application is pending, and an identification number called an "alien registration number" or "A number." The A number should be used whenever referring to your client in future correspondence with USCIS. Please email a copy of the notice to your contact at Sanctuary so that they can help track your client's case and, if the client resides in New York, make referrals to assist with Medicaid enrollment. Your client will also receive a notice to appear for biometrics at a service location near them.

Under the current scheduling policy, your client may receive a notice to appear for an interview at either the Newark Asylum Office or the New York Asylum Office immediately, depending on the mailing address you provided for your client. If you do not receive an interview notice within one month following the issuance of a receipt notice, it is likely your case has been added to the backlog, because the number of new applications exceeded the interview slots available that month. While your client will remain at the front of the line, there is no way to tell when the officers will issue an interview notice for your client. Asylum offices are currently experiencing significant delays in scheduling interviews.

If you do not receive an interview notice within a month of receiving a receipt notice, you may be able to advocate for an earlier interview date for your client based on urgent circumstances, such as a serious medical condition or a spouse or child abroad whose safety is at risk. The Newark Asylum Office also maintains a list of applicants who are willing to take an interview slot if another applicant cancels with as little as a three-day notice. You should speak with your contact at Sanctuary and client to discuss these and other possible options. In order to ensure that you and your client are in a position to request an earlier interview date, you should prepare and finalize your memorandum of law and all supporting documentation as soon as possible for submission. Any requests for an earlier interview should then be faxed or e-mailed under separate cover to the asylum office where your client's application is pending.

If you receive an interview notice but will not be available on the day of the scheduled interview, you may request another interview date by emailing a brief letter to the asylum office and following up with a call within a few days to confirm that you will be granted the extension. Typically, the Asylum Offices will accommodate a first interview reschedule request, but require establishment of good cause for subsequent requests. Your client's new interview date may not be immediately available and may take anywhere from weeks to months to be scheduled. Moreover, you and your client should be aware that any requests to reschedule an interview will stop the "asylum clock"; in other words, any subsequent lapse in time will not count towards the 150 days your client must wait before applying for an EAD.

Please notify your contact at Sanctuary what date is ultimately set for the interview, as we can accompany you the day of the interview and assist you in preparing your client beforehand. We would be happy to help you explain to your client what they can expect at their interview with an asylum officer and set up a mock interview.

Completing Form I-589

An application for asylum is initiated by filing Form I-589, available at www.uscis.gov. Please be sure to read the form's online instructions in their entirety before finalizing your filing.

When you fill out the form, be sure to respond to every single question, even if you must answer "N/A" or "unknown" by hand. An application will be rejected if there are any empty boxes. Also, after printing out your completed Form I-589, be sure to review your answer to each question before submission, as glitches in the pdf version of the form may automatically change your answer from "yes" to "no," or vice versa.

For the purpose of the initial filing, we recommend that you include only brief answers to the substantive questions that make up the second half of the application. Your answers should fit inside the boxes provided, and you should not submit lengthy addenda. Because time may pass between filing the application and submitting supporting documentation, corrections may have to be made to the substance of the I-589 if overly detailed answers are submitted this early in the process. That said, minor changes to Form I-589 can be made on the day of the interview.

What to File

Along with the original, signed form I-589, you should provide a complete copy of your client's passport from front to back, or if a passport is unavailable, a copy of your client's birth certificate, national identification card, or other form of identification. Under no circumstances should you send any original identification documents. You must provide a certified translation of any document not in English, with the exception of passports. If your client does not have any form of identification, or if there are discrepancies between you client's documents and the information your client claims is accurate, you may need to explain this in the client's affidavit.

You should also include an original G-28 form, printed on blue paper and signed by your client, as well as a passport-style photograph stapled to page 9 of Form I-589. For each child or spouse who is in the United States and included as a derivative on your client's application, please include a separate copy of Form I-589 with the derivative's passport-style photograph attached to page 9 along with a copy of their passport or other identifying document.

Do not staple or bind any of the documents together; USCIS will separate bound pages, which could inadvertently damage important segments of the application in the process. It is better to two-hole punch the initial application packet at the top and fasten the documents together using a simple, two pronged fastener. Please submit one extra copy of the initial I-589 packet, as per the USCIS "Special Instructions" for Form I-589 available at https://www.uscis.gov/i-589 (USCIS is in the process of updating the pdf version of its Form I-589 instructions). The copy of the I-589 packet should also be fastened together using a two pronged fastener.

Your supporting documentation should be filed separately from the I-589 application and should include your client's affidavit, a psychological evaluation, and country conditions at a minimum. Please see the "Checklist for Supporting Documentation" chapter for other possible evidence that may be relevant and necessary to submit in your client's particular case. When you are ready to file your memorandum of law, table of exhibits, and supporting documentation, you should fasten the packet together using a two-pronged fastener as described above. You must also include one extra copy of the entire supplemental packet, as you did with the initial I-589 packet.

Where to File

The initial application packet should be sent by private courier with tracking service to:

USCIS Vermont Service Center
Attn: Asylum
75 Lower Welden Street
St. Albans, VT 05479-0589

Please retain your tracking slips to demonstrate the date you mailed the I-589 in the event that the application is lost or you have to prove timely filing.

Depending on the mailing address of your client that you provided on the I-589 form, your client's application will be pending at either the Newark or New York Asylum Office. Contact information for each asylum office is below:

Susan Raufer, Director
Newark Asylum Office
1200 Wall Street West, Fourth Floor
Lyndhurst, NJ 07071
Tel: (201) 508-6100
Fax: (201) 531-1877
Email: newarkasylummailbox@uscis.dhs.gov

Patricia Menges, Director
New York Asylum Office
1065 Stewart Avenue, Suite 200
Bethpage, NY 11714
Tel: (516) 261-0000
Fax: (516) 261-0141
Email: newyork.asylum@uscis.dhs.gov

Your client's receipt and interview notice will indicate the asylum office which will adjudicate your client's case. If your client's case has been assigned to the Newark Asylum office, your supplemental packet should be sent by private courier to the Newark Asylum Office at least one week before the scheduled interview date at the following address: asylum office your client's case has been assigned to, as indicated on the receipt notice. The New York Asylum Office, however, currently requests that all supporting materials be hand delivered at check-in on the morning of the interview, but not in advance.

The Asylum Interview

The asylum interview, a "non-adversarial" procedure, is conducted by an asylum officer who may or may not be an attorney but who has received training in asylum law.

You will not know to which officer you have been assigned until the day of the interview. If you are representing a client who is not comfortable speaking about their past in front of an officer of the opposite sex, you may request a female or male officer in writing by faxing a letter to the asylum office at least one week in advance. These requests are accommodated depending on staffing within the asylum office.

Typically interviewees are called early in the morning, and you must arrive at least half an hour earlier than the scheduled time so that you and your client can go through security and so that your client's biometrics can be repeated on site. Your client should bring their passport, even if it is expired, to the interview for identification. Asylum officers typically review the materials you provide them just before the interview even if they were filed ahead of time, so waiting times can

be very long. You and your client should be prepared to wait in the asylum office waiting room without access to your cell phone, email, food or drink for the better part of the work day, and your client should make any necessary childcare arrangements accordingly. However, if your client's children are derivatives on the asylum application, they will have to appear at the asylum office with your client on the day of the interview.

Applicants may bring an attorney and an interpreter into the interview room. If you wish to have multiple attorneys present, you may make a request to the asylum office in writing by emailing a letter to the office about one week in advance. If your client is not fluent in English, please make sure that you have made arrangements for an interpreter to be present at the interview, as the asylum office will not provide one. The interpreter should have had some experience translating for your client to ensure that your client is comfortable with the translator and that they can comprehend one another.

As the interview commences, you may be asked to present a new G-28 showing that you and any other representatives from your team are authorized to represent your client during the interview. Typically you are not given an opportunity to present an opening statement. However, at the end of the interview, some asylum officers invite attorneys to either present closing statements, summarizing the claim factually and legally, or to question their own clients in order to draw out additional information or to clarify critical points. During the interview, you should take detailed notes of the officer's questions and your client's answers. It is also a good idea to keep a list of key points your client should raise during the interview, to help you ask your clients any additional questions at the end if you are given the opportunity to do so.

The interview can last anywhere from one to four hours. All interviews will consist of a series of questions aimed at discovering: a) whether your client is telling the truth, and b) whether your client meets the definition of a refugee under the law. After your client is sworn in, the officer will typically start by walking through the biographical data portion of the I-589 to ensure that the information is correct and that you do not need to make any changes. If you do need to make changes, bring in an errata sheet that you can hand the officer to make the process easier for them. Some interviewers will begin with targeted questions aimed at drawing out the details of your client's persecution or fear thereof. Others will ask your client to begin by answering a broad question, such as "why are you asking for asylum?" or "why do you want to stay in the United States?" Your client should be prepared for both open-ended and highly specific questioning.

Regardless of the interviewer's manner of questioning, this is your client's best opportunity to get their story across in a clear and compelling way. Your client should be ready to tell their story, answer questions about the motivation behind the persecution they fear, and explain why any bars to asylum should not apply in their case. Your contact at Sanctuary can assist with this process by discussing potential interview topics and by conducting or observing a practice interview with your client.

We have experienced and heard of situations where asylum officers behaved in inappropriate ways during interviews. If you feel your client is being unfairly questioned or mistreated, you may request that the interview be stopped and that you be allowed to speak with a supervisor. A supervisor will either join the interview or will stop it and reschedule it. It has been our experience that the directors of both asylum offices are sympathetic to these requests and that this course of

action has not prejudiced our clients' cases. You may also make a complaint after the interview is completed about any egregious behavior on the part of the officer. However, any complaint should be submitted as soon as possible after the interview so that it is considered meritorious.

The Asylum Office's Decision

Please advise your client that a decision will not be provided at the interview itself. Typically, the client will be requested to return in two weeks to pick up a decision. During these two weeks, the officer may request additional information from you, and you may also submit additional information if you feel that an issue arose during the interview that you did not anticipate. You may receive a call from the office just before your two-week appointment asking you to wait to receive a decision in the mail. If this is the case, make sure that you contact your asylum officer on a regular basis to ask for a status update, and always create a written record of these requests. Some cases can take months to be decided for various reasons, and your persistent advocacy is the only way your client's life can move forward. Sanctuary can help you with your advocacy if this occurs.

Typically, the decision you receive will either be an asylum approval or a referral to immigration proceedings. If you receive an asylum approval letter, your client has asylum indefinitely. Your client will automatically receive an EAD in the mail, and it will be valid for two years. Your client will be eligible to apply for their green card one year after the date stamped on the asylum approval letter and on the I-94, which is stapled to the letter. Your client will also be eligible for a range of public benefits. Please retain copies of these documents and ask your client to keep the originals in a very safe place.

If the asylum office does not grant your client's asylum application, it will either deny your client asylum or refer them to Immigration Court depending on your client's immigration status at the time. If your client remains in valid status in the United States, the asylum office will issue a Notice of Intent to Deny (NOID) with an opportunity for you to rebut the asylum office's concerns before it makes a final decision. Most likely, however, your client will not have valid status at the time of the interview, in which case the asylum office cannot deny your client's asylum application; instead, the asylum officer will refer your client to Immigration Court for removal proceedings. If your client receives a referral notice instead of an approval, only a very brief explanation will be included. The referral notice will be accompanied or followed by a Notice to Appear in Immigration Court (NTA). You will eventually receive notice as to the date and time of your client's first hearing before an immigration judge. Please see the next chapter on "The Defensive Asylum Process" for further information. Your Sanctuary contact would be happy to help you prepare for this next phase and to attend hearings with you and the client.