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APPLYING FOR ASYLUM IN THE UNITED STATES

GENERAL INFORMATION FOR NEWLY-ARRIVED TIBETANS

WHO QUALIFIES FOR ASYLUM?

Under the current law of the United States, a person may qualify for asylum within the United States if that person can demonstrate to U.S. immigration that he or she has been persecuted or can show a “credible fear” of future persecution because of his or her *political opinion, race, nationality, religion, or membership in a social group*. If the applicant spent a significant amount of time in another country before coming to the United States, he or she may also be required to show that he or she has not been “firmly resettled” in that country. These questions are decided for each individual case.

CAN I APPLY FOR ASYLUM ONCE I ARRIVE IN THE UNITED STATES?

An asylum application must be filed after the applicant has arrived in the United States, but no later than one year after the date of arrival. If a person seeking asylum fails to file within one year of the date of arrival, it becomes much more difficult to obtain asylum. The date of arrival generally is the date stamped in a passport or other travel document by U.S. immigration. An application for asylum and supporting documents usually are filed with the Asylum Office of the Immigration and Naturalization Service (INS) for the geographic area of the United States in which the applicant is living.

After the application is filed, the applicant will be called for an interview with an asylum officer. The asylum officer has the authority to grant or deny the asylum application. If the officer denies the application, the applicant may appeal the officer's decision to an immigration judge, who will then decide if the applicant is entitled to asylum. If the immigration judge denies the asylum application, the applicant may then appeal to the Board of Immigration Appeals (BIA). If the BIA denies the application, the applicant may still have the right to file an appeal in federal court. The asylum application process can take between two months and two years, depending on the circumstances of the individual case.

Sometimes, a person seeking asylum may be taken into custody immediately upon arrival in the United States. If that occurs, the person taken into custody may assert that he or she would like to apply for asylum. An immigration officer would then interview the applicant to see if he or she has a credible fear of persecution. A "credible fear" in this context means that there is a significant possibility, based on the credibility of the statements made by the applicant and other facts known to the immigration officer, that the applicant could establish eligibility for asylum under U.S. immigration law. If the officer determines that the applicant has a credible fear, the applicant is allowed to stay in the United States while he or she applies for asylum. If the officer determines that the applicant has not shown a credible fear, the INS orders the applicant removed from the United States. However, the applicant may request review of the officer's decision. Once the applicant requests review, the matter is referred to immigration

court, where a judge will review the officer's decision. During this process, the applicant will be kept in custody pending a final determination of whether they have established a credible fear of persecution.

Whatever process an asylum applicant goes through, the applicant should keep a few things in mind. First, the applicant should always tell the truth to U.S. immigration officials. For example, entering the United States by using a false passport will not bar an applicant from obtaining asylum, however, misrepresenting facts to immigration officials can seriously jeopardize an asylum claim. Also, an asylum applicant should not engage in any criminal activity within the United States. Finally, the applicant should remain in the United States while his or her asylum claim is pending. If the applicant leaves the country, he or she may be barred from reentering.

CAN I WORK WHILE I AM WAITING FOR MY APPLICATION TO BE DECIDED?

An asylum applicant is not entitled to work in the United States unless 150 days have passed since the filing of the application and the Immigration and Naturalization Service has not yet ruled on the application. If 150 days have passed since the filing of the application and the applicant would like to work, the applicant must request and obtain permission to work from the Immigration and Naturalization Service *before* beginning to work.

CAN I LEAVE THE UNITED STATES WHILE MY ASYLUM APPLICATION IS BEING DECIDED?

An asylum applicant should remain in the United States while his or her asylum claim is pending. If the applicant leaves the country, he or she may be barred from reentering.

IF MY ASYLUM APPLICATION IS DENIED, DO I HAVE TO LEAVE THE UNITED STATES?

If the asylum application is denied and there are no appeals left, the applicant must leave the United States. If the applicant fails to leave the United States voluntarily, he or she may be subject to deportation. Further, if the applicant remains in the United States without permission for 180 days or more, the applicant will be barred from reentry for three years. If the applicant remains in the United States for one year or more, he or she will be barred from reentry for ten years.

DO I NEED AN ATTORNEY TO FILE AN ASYLUM APPLICATION?

The asylum process is complicated. Persons seeking to apply for asylum should attempt to obtain the assistance of an attorney who will be able to prepare and file the application and supporting documents, accompany the applicant to the asylum interview, and prepare and file any necessary appeals. Although many attorneys charge a fee for these services, if an applicant does not have any funds to pay for an attorney, it may be possible to locate *pro bono*, or free, legal representation. Tibetans seeking legal assistance or representation may contact Tibet Justice Center, other Tibet support groups and legal assistance organizations for help.

WHAT DOCUMENTS WILL I NEED TO FILE AN ASYLUM APPLICATION?

An applicant for asylum must complete and file an application on Immigration and Naturalization Service Form I-589. A complete application should also include certain supporting documents such as proof of entry into the United States, birth certificate showing date and place of birth, and identity documents for the applicant's immediate family.

Documents which may be necessary for an asylum application include, but are not limited to:

- Passport and I-94 card (white immigration card attached to passport upon legal entry into the United States)
- Registration Certificate
- Identity Certificate
- Green Book
- Birth Certificates
- Marriage Certificate
- Plane ticket or boarding pass
- Letters regarding your identity or immigration status issued by governments or non-governmental organizations.

An asylum applicant should keep the originals of all documents in his or her possession. Only copies should be submitted to the Immigration and Naturalization Service. In addition, the applicant should keep a separate copy of all documents and a copy of the asylum application. The applicant should copy all pages of multi-page documents such as a passport or green book.

(c) Nov. 2001. This information was prepared by the Tibet Justice Center as a service to the Tibetan communities in the United States. It should be used only as an overview of the law and not as a substitute for legal consultation. Immigration laws and procedures change frequently and may be applied differently depending on an applicant's particular circumstances. For legal advice concerning a particular situation, consult an attorney. For further information or assistance, please contact the Tibet Justice Center.