

# Understanding the Asylum Process in the United States

This guide is adapted by Legal Services of New Jersey for the Office of New Americans, Department of Human Services, from one prepared by American Gateways. American Gateways is a nonprofit legal services organization that provides services to immigrants in Central Texas.

*This guide is not intended to provide legal advice or serve as a substitute for legal counsel.*

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Welcome to New Jersey! This informational guide contains an overview of the process of seeking asylum as a recent arrival to the United States. Asylum is a form of protection and lawful immigration status that is granted to people who are able to demonstrate to an asylum officer or Immigration Judge that they have a well-founded fear of persecution in their country of origin. You can find more details about what asylum means in U.S. law.

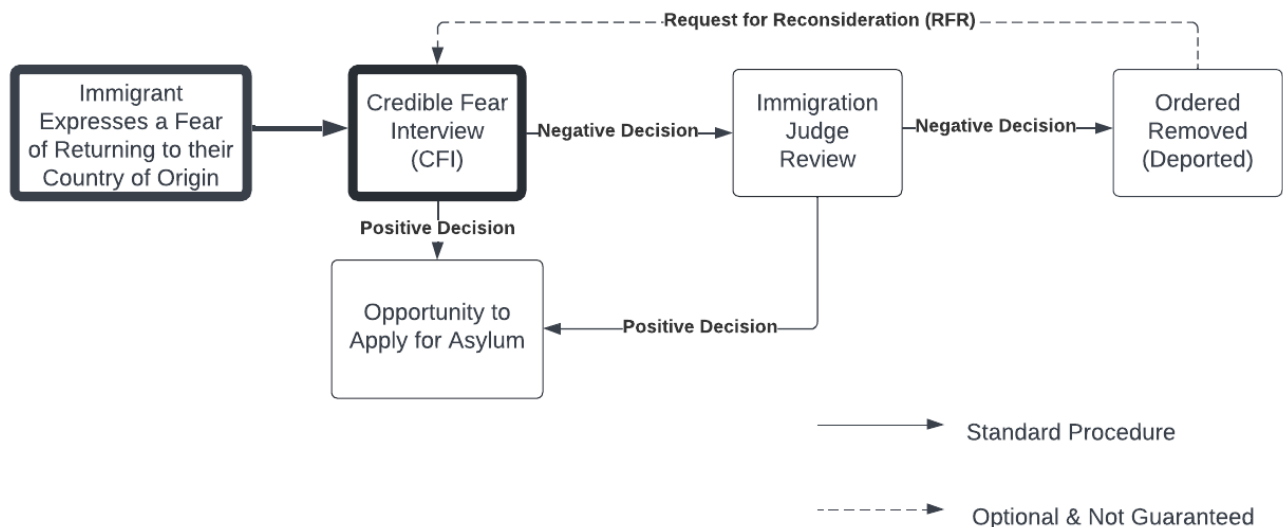
### I. THE ASYLUM PROCESS

You are probably in one of the following two situations:

- You are an Arriving “Alien.” This means you came to a port of entry at the border and told the immigration officer that you have a fear of returning to your country.
- You entered without inspection. This means you entered the United States without permission and were here for some period of time before you were arrested by an immigration official. When you were stopped by immigration officials, you informed the officials that you have a fear of returning to your country.

Most likely, after being stopped by immigration officials in one of the above situations, you were put in “expedited removal” proceedings. This is a type of removal (or deportation) proceeding for people who come to the United States without proper documentation and have been in the United States for a short amount of time. This is generally a quick process to decide if you will be given an opportunity to apply for asylum, and the first step of this process is a Credible Fear Interview, or CFI. (Alternately, you may have been issued a "Notice to Appear" without getting a CFI; if so, you can skip to the section on "Removal Proceedings" on page 3).

A diagram of the expedited removal process is below:



## **Credible Fear Interview (CFI)**

If you expressed a fear of returning to your home country, an asylum officer will interview you and decide whether you have a credible fear of persecution if you are returned to your country. If you were detained after being stopped by immigration officials, your CFI may have happened while you were detained.

### ***What does it mean to have “credible fear of persecution?”***

During the interview, the asylum officer will ask you about your fear of returning to your country (you have a right to an interpreter at this interview). The officer will give you a positive decision if they believe you can establish that you have been, or will be, persecuted in your country because of your race, religion, nationality, political opinion, or membership in a particular social group. If you are detained and pass your CFI, you may be released, e.g. on "parole". If you are released, that does not mean your case is over. Your case will continue at the Asylum Office and/or Immigration Court nearest to you.

## **Immigration Judge Review after a Negative CFI**

If you received a negative decision after your credible fear interview, you will then have the opportunity for an immigration judge to decide whether they believe you have a credible fear. If the Judge gives you a positive decision, you will then have the opportunity to apply for asylum. If the Judge gives you a negative decision, you will be ordered deported but may have the option of sending the asylum office a Request for Reconsideration.

## **Requests for Reconsideration (RFR)**

- A Request for Reconsideration (RFR) can be sent to the Asylum Office if the immigration judge also gives you a negative decision on your CFI. An RFR is a request for another interview with an asylum officer. You are not guaranteed another interview.
- You must submit an RFR within 7 days of receiving a negative decision from the immigration judge.
- You can only submit one RFR.

## Removal Proceedings

If you passed your CFI, you will be issued a "Notice to Appear" (NTA); you may also receive an NTA without getting a CFI. The filing of the NTA starts your case before the Immigration Court. This is called "removal proceedings." The Immigration Court in New Jersey is located at 970 Broad St, Room 1200, Newark, NJ 07102. Please note that some people may be asked to check in with a local ICE office in addition to, or in advance of, appearing in Immigration Court; you can find more information here: <https://www.ice.gov/check-in>.

You will then be scheduled for an initial Master Calendar Hearing (MCH). This is a preliminary hearing where the Judge will inform you of your rights, review the information in the Notice to Appear, and give you some time to file your asylum application (Form I-589) and supporting evidence. You may have more than one MCH. Ultimately, you will be scheduled for a Individual (Merits) Hearing, which is the final trial for your asylum case, where the Immigration Judge will consider your evidence, your testimony, and the testimony of any witnesses.

You must file your Form I-589 within one year of your arrival to the United States. There are very few exceptions to this deadline. You can find this form online here: <https://www.uscis.gov/i-589>. If you are in removal proceedings, you must file the original application form with the Immigration Court, and a copy to the Department of Homeland Security, Office of Chief Counsel (the attorneys who are representing the U.S. government in pursuing deportation against you). You must also send the first three pages of the form to U.S. Citizenship and Immigration Services following these instructions: <https://www.uscis.gov/sites/default/files/document/legal-docs/Pre%20Order%20Instructions%20EOIR.pdf>. The I-589 form must be completed in English. Any supporting documents you end up submitting in your case, including a required declaration or affidavit detailing the reason(s) you are seeking asylum, must either be in English or must include certified English translations. Note: you will typically not be eligible to apply for a work permit until you have filed your asylum application and at least five months have passed since the date that you filed it (more details about this on page 7).

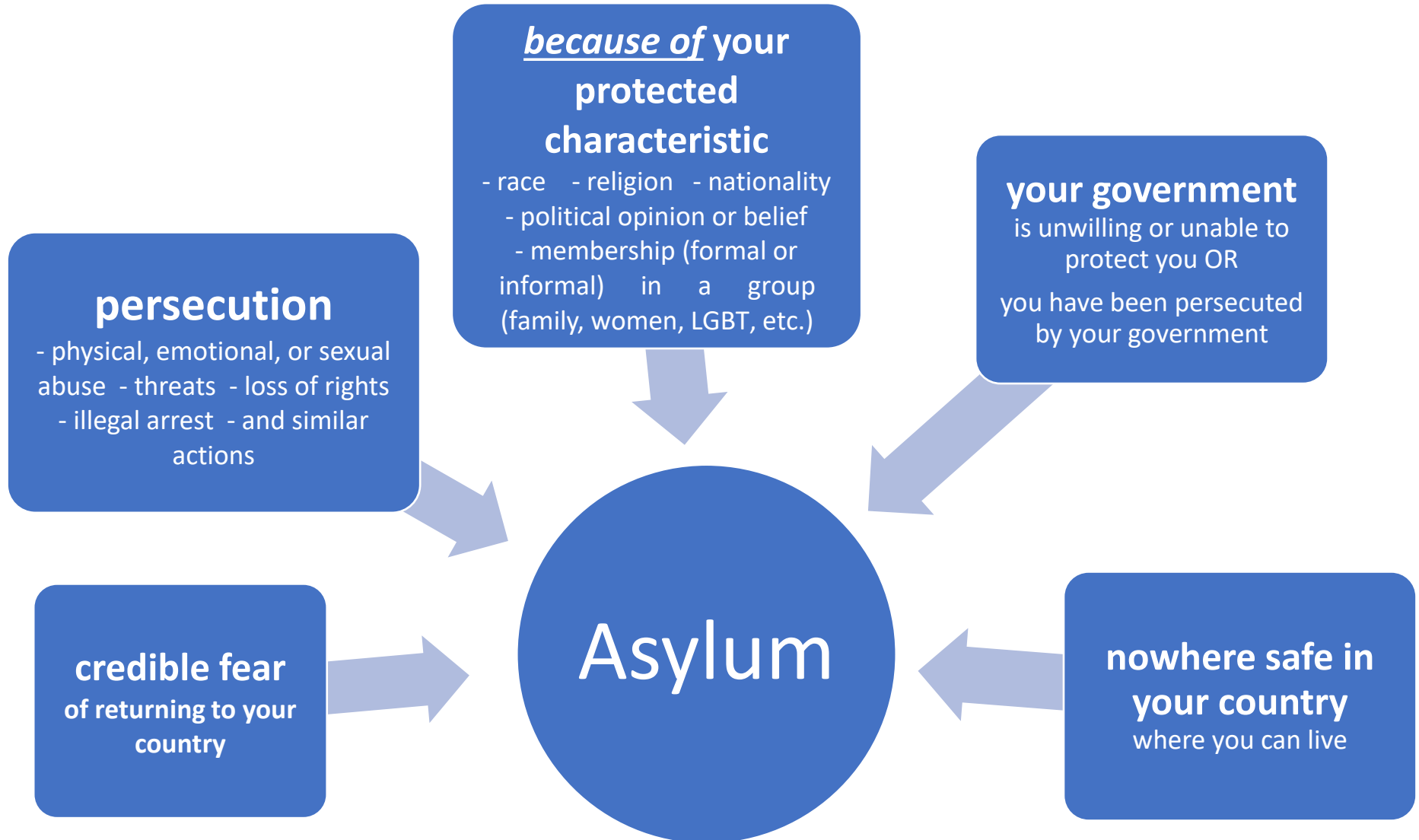
Also, keep in mind that a missed court date will likely result in the Immigration Judge ordering you removed from the country *in absentia* (in your absence). After getting your NTA, make sure your correct address is on file with the Immigration Court. You should provide any change of address using Form EOIR-33 (<https://www.justice.gov/eoir/form-eoir-33-eoir-immigration-court-listing>). If your removal proceedings have started with the Newark Immigration Court and you move out of state, you will also need to submit a motion (request) to change venue to the Immigration Court in your new state. Otherwise, your case will proceed in New Jersey. Similarly, if your removal proceedings have started with an Immigration Court in a different state and you have moved to New Jersey, you will need to file a motion to change venue so your case can continue before the Newark Immigration Court, or you will have to appear for your hearing in the out-of-state Court. You can monitor the hearing date in your case by calling the Court's information line at 1-800-898-7180 or by going to <https://acis.eoir.justice.gov/en/> (you can change the language to Spanish near the top right). You will need to input your Alien Registration number (or "A" number) which can be found on the documents you have received from immigration authorities, such as your NTA.

You have the right to an interpreter for the language you are most comfortable in; the Immigration Court will provide the interpreter. You also have the right to be represented in your immigration hearing, but there is no right to a government-paid attorney. At your initial MCH, if you are unrepresented, you can ask the Immigration Judge for additional time to find an attorney. You can ask the Immigration Judge for a copy of the Free Legal Providers list that is maintained by the Immigration Court, but note that there is no guarantee that one of these organizations will be able to provide you with a free lawyer. If you lose your case before the Immigration Judge, you have a right to file an appeal within 30 days to the Board of Immigration Appeals. If you do not fight or win your case, you will be ordered to leave the United States and may not be able to legally return to the United States for many years.

## II. PREPARING TO TALK ABOUT YOUR ASYLUM CASE

Before any interview or hearing relating to your asylum request or application, think about what you want to say. You can focus on your current fear and why you came to the United States at this time. **Everything you say is confidential.** No one in your home country will know the information you share. To practice, answer the questions: Why are you afraid to return? What has happened to you in your country of origin? Why did that happen to you? When did it happen? What would happen if you had to return? How do you know that the authorities in your country are not going to protect you? Is there anywhere you can live safely in your country?

Your job is to tell the truth and show that your case meets the asylum requirements listed below (a further written description follows):



## What is Asylum?

The United States of America allows individuals who have been persecuted, or who have a "well-founded" fear of future persecution, in their country of nationality/citizenship to:

- a. live here indefinitely;
- b. petition for spouse and children to obtain legal immigration status in the U.S.;
- c. receive work authorization; and
- d. apply for legal permanent residency (i.e. a "Green Card") one year after the asylum grant.

## Am I eligible for asylum?

You may be eligible to apply for Asylum if:

- a. You are physically present in the United States;
- b. You have suffered past persecution and/or have a "well-founded" fear of future persecution in your home country; and
- c. Your race, religion, nationality, membership in a particular social group and/or political opinion was a central reason for the persecution.

In addition, to be eligible to be granted Asylum, you must file your application within one year of arriving in the United States, or show changed or extraordinary circumstances that explain a late filing. You also may not be eligible for Asylum if:

- a. You have persecuted others; or
- b. You have provided material support to a terrorist organization; or
- c. You have received legal permanent residency in a third country prior to coming to America; or
- d. You previously filed for Asylum and were denied; or
- e. You have committed a serious crime in the United States; or
- f. You have committed a serious nonpolitical crime in another country.

*Note: if for any reason you are found not to be statutorily eligible for Asylum (e.g. you filed more than a year after arrival and do not meet any of the one-year deadline exceptions; you have a conviction for a particularly serious crime; etc.), you may be eligible to seek related fear-based forms of relief called Withholding of Removal or relief under the Convention Against Torture.*

## What is persecution?

Persecution is suffering or harm, and may include sexual or physical violence, unlawful imprisonment, death threats, torture and threats to your freedom. The persecution has to be inflicted **because of at least one protected characteristic: your race, religion, nationality, political opinion, and/or membership in a particular social group**. The persecution may be by the government or by a group the government cannot or will not control. Groups the government cannot or will not control may include (but are not limited to): clans or tribes, guerrilla forces, paramilitary groups, gangs, etc.

You must show that no matter where you live within your country, the government cannot or will not control the persecutor and that the persecutor could harm you anywhere in the country, or that it would be otherwise unreasonable for you to relocate within your country. In

cases where the government is the persecutor, it is presumed that the risk of persecution is countrywide.

### **What is a Well-Founded Fear?**

A well-founded fear of persecution means not only are you *subjectively* scared to return to your country, but that your fear is *objectively* reasonable (meaning, it is supported by proof of country conditions, such as news articles and reputable human rights reports, showing that people who share your protected characteristic(s) are harmed, tortured, unlawfully imprisoned, and so forth). If you have been persecuted in the past on the basis of the protected characteristic(s), that creates a presumption of your fear being well-founded.

### **What do you mean by Race?**

Race includes all types of races, ethnicities, tribes, and indigenous groups.

### **What do you mean by Religion?**

Religion includes your right to practice a religion in the way you choose, or to hold, practice and live according to any chosen belief system, and to change it at any time. This means you are entitled to membership in any religious community, and to worship in private or public.

### **What do you mean by Nationality?**

Nationality refers to your national origin or citizenship.

### **What do you mean by Political Opinion?**

Political Opinion can include any opinion on any issue of significance to the government or society of your home country or to a persecutor the government cannot or will not control. It is enough that a persecutor thinks you have this opinion regardless of whether or not you actually hold that belief.

### **What do you mean by Membership in a Particular Social Group?**

A Particular Social Group refers to a group of people who share a characteristic that they cannot or should not be expected to change. Whether a Particular Social Group exists depends on the specific country conditions of a particular country. Examples of a Particular Social Group in some countries may include people with shared characteristics such as: sexual orientation, gender identity, family affiliation, etc.

### **How do I apply for Asylum?**

As described in the last section above, your Asylum application must be filed within one year of your arrival to the United States using Form I-589, Application for Asylum and for Withholding of Removal. Be sure to fill out the form carefully because any errors or omissions may be held against you and used to attack your credibility.

You should also prepare a Personal Declaration to submit with your Form I-589. Your Personal Declaration is a chronological narrative that should tell your story of persecution, including:

- a. Why you fear returning to your home country;
- b. Who you fear will harm you;
- c. How will they harm you;
- d. Will your government protect you from that harm;
- e. If not, why not and how do you know;
- f. How are other people in similar circumstances such as yourself treated in your home country;
- g. Have you suffered past persecution in your home country;
- h. If so, what happened and why, when and by whom were you persecuted;
- i. Why did you leave your country;
- j. When did you arrive in the U.S.;
- k. How did you arrive in the U.S.;
- l. Where did you arrive in the U.S.

You should also submit corroborating documents (these may be filed with your application or by deadlines set by the Asylum Office or Immigration Court). A corroborating document is any document that helps prove that you are telling the truth including: party identification cards, photographs, school records, affidavits from a political party, medical records, letters from witnesses, family and/or friends, human rights reports and news articles. You must provide proof of identity, nationality, and other proof that you fall within the protected class(es) upon which the claim for asylum is based. You should try, if possible, to corroborate all the claims and events you described in your application and declaration, and if you cannot, you should be prepared to explain why. When filing the asylum application, or submitting other documentation, submit copies of any documents (not the originals, except for affidavits and letters of support). All documents in a language other than English must be submitted with a certified English translation. When you are filing evidence with the Immigration Court, you must submit a copy to the appropriate government attorneys' office. Your filing with the Immigration Court should include a signed "Certificate of Service" that states how and when you provided the government with their copy. For Newark Immigration Court cases, the government attorneys' address is: DHS/ICE, Office of Chief Counsel, 970 Broad Street, Room 1300, Newark, NJ 07102. You can check addresses for other states here: <https://www.ice.gov/contact/field-offices?office=12>.

Be aware that the submission of a fake document may result in the denial of your claim. Be certain that your Personal Declaration, Form I-589 and supporting documents are all consistent.

If you ultimately win your asylum case, you will be able to apply for your green card (legal permanent residency) after being physically present in the United States for one year following the grant. As an asylee, you can petition for your spouse and children (unmarried and, as of the time you filed your I-589, under 21) to obtain derivative asylee status, whether they are in the United States or elsewhere. You can also seek a travel document for travel abroad, but note that traveling to the country from which you claimed asylum could result in your asylum grant being withdrawn. You may also file for a work permit (employment authorization document) after your asylum grant and, in most cases, even earlier while your asylum application is pending (generally after 150 days have elapsed from the date you filed your application, as long as you subsequently did not cause any delays in the adjudication of your case, for example by requesting to reschedule or postpone an interview or hearing date).

For a further detailed guide on how to prepare an asylum application, please see the following prepared by the Florence Immigrant and Refugee Rights Project in Arizona: [https://firrp.org/wp-content/uploads/2022/01/Asylum\\_WOR\\_CAT-Guide-2013-SPA-1.pdf](https://firrp.org/wp-content/uploads/2022/01/Asylum_WOR_CAT-Guide-2013-SPA-1.pdf)

### III. SEEKING ASYLUM AFTER MAY 31, 2022 - THE "AMI" PROCESS

On May 31, 2022, new asylum processing rules went into effect. The new rules do not currently affect everyone in expedited removal proceedings; however, they do affect certain individuals who the United States government has selected based on where they plan to live in the United States. So please note these rules may not apply to you.

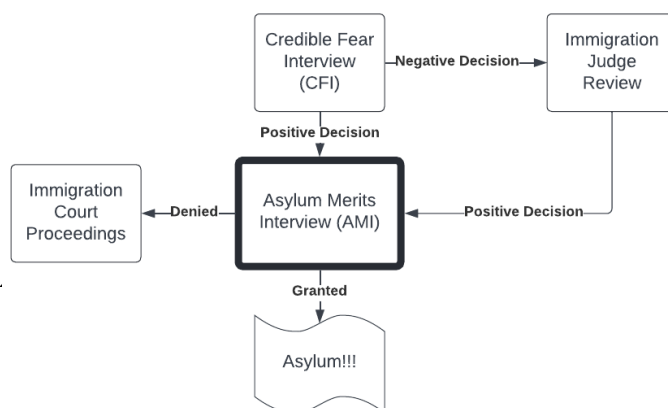
**The information from this point forward applies only to those subject to the new rules.**

\*The local Asylum Office for individuals in New Jersey is\*

Gateway 3  
100 Mulberry Street, Suite 199,  
Newark, NJ 07102

#### ASYLUM MERITS INTERVIEW (AMI)

- If you received a positive decision after your credible fear interview and are released after your CFI to one of the following eight cities: **Boston, Los Angeles, Miami, New York, Newark, New Orleans, San Francisco, or Washington, DC**, you will likely then have an Asylum Merits Interview (AMI). *\*At this time, the process may only apply to single adults released to the listed cities after detention in certain facilities in Texas and California; but coverage may expand gradually.*



- At your AMI, an asylum officer (not an immigration judge) will review your case and all presented evidence.
- Your Asylum Merits Interview (AMI) should be held 21-45 days from when you received a copy of the record of your positive credible fear decision.
- The information you provide at your CFI becomes your asylum application (no form is required).
  - o The date you receive a copy of your CFI record is considered the date you applied for asylum.
- All changes, corrections and additional information or evidence are due to the Asylum Office 7 days before the AMI (10 days if sent by mail).
  - o Asylum officers may consider late submissions for good cause.
  - o Generally, asylum officers will not consider late submissions that would prevent them from making a decision within 60 days after you receive the CFI record.
- **You have the right to:**
  - o Have an attorney represent you at the AMI, but the Government will not provide a lawyer;
  - o Make a closing statement at the end of the AMI; AND
  - o Request an interpreter in your native language or a language you are **fluent** in.
- If the Asylum Officer grants your application for asylum, you have won your case and now have legal immigration status in the United States as an asylee – congratulations!
- If the Asylum Officer denies your application for asylum, you will have the opportunity for an immigration judge to review your asylum application in streamlined immigration court proceedings.



## Streamlined Immigration Court Proceedings After Denial at Asylum Merits Interview (AMI)



### Initial Master Calendar Hearing (MCH)

- This is a preliminary hearing where the judge will inform you of your rights and review the information in the Notice to Appear.
- The MCH should be scheduled 30-35 days after an asylum officer denies your application for asylum after an AMI.
- You should receive a full transcript of your AMI at this hearing, if not sooner.

### Status Conference (SC)

- This is another preliminary hearing where both the asylum applicant and the government attorney must provide the court with specific information.
- The SC should be scheduled 30-35 days after the MCH.
- At the SC you must tell the court:
  - o If you will testify;
  - o Who you will call as witnesses;
  - o If you plan to file additional evidence;
  - o If there were mistakes or things left out from the AMI record;
  - o If you wish to continue with your application for asylum; AND
  - o If you will apply for any other immigration relief besides asylum.
- Generally, you must submit initial evidence no later than the SC. If you wish to submit supplemental evidence, you must do so no later than 5 days prior to the merits hearing.

### Individual Calendar Hearing (Merits Hearing)

- This is your final hearing in front of the immigration judge where you will present your case.
- The Merits Hearing should be scheduled 30 days after the SC or 60-65 days after the MCH.
  - o The Merits Hearing must be held within 135 days of the MCH unless fundamentally unfair
- The immigration judge may make a decision without a Merits Hearing:
  - o If the immigration judge decides they can approve the case based on the AMI record and evidence submitted; OR
  - o If no one requests testimony and the government attorney does not ask to speak with you.

### \*\*\*IMPORTANT NOTES\*\*\*

- **You have the right to:**
  - o A lawyer, but the Government will not provide a lawyer;
  - o An interpreter in your native language or a language you are fluent in;
  - o Offer testimony;
    - Waiving your right to offer testimony could result in not having a final Merits Hearing.
  - o Present all defenses you qualify for; AND
  - o Appeal the immigration judge's decision.
- If you choose to apply for a defense other than asylum and meet the basic requirements, your case will not move on the same timeline and will likely move more slowly.
- It is possible to ask for deadline extensions if you can show there is a good reason for the extension.
  - o Each extension cannot be longer than 10 days unless the immigration judge decides a longer extension would be more efficient.
  - o Generally, you cannot receive an extension that would cause your merits hearing to take place more than 90 days from your master calendar hearing or more than a total of 30 days of extensions throughout your case.
  - o If there are scheduling delays caused by the immigration court or government attorney, those days **should not** be considered in your requests for extensions.
    - DHS' failure to meet deadlines also does not mean you advance to the next step automatically or that you will be automatically granted asylum.