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**PROCEDURE FOR APPLYING FOR ASYLUM OR REFUGEE STATUS
FROM THE U.S. GOVERNMENT.**

By Christopher Kerosky

A person may gain permanent residence in the U.S. on the grounds that he or she faces persecution in his or her homeland. If the person is already in the United States, the person requests “asylum” status; if they are outside the U.S., they request “refugee” status.

In order to be admitted to the U.S. as a refugee, the person must prove that he or she has a “well-founded fear of persecution” on the basis of at least one of the following internationally recognized grounds: race; religion; membership in a social group; political opinion; or national origin. Refugees generally apply for admission to the United States in refugee camps or at designated processing sites outside their home countries. In some instances, refugees may apply for protection from within their home countries (for example, Cuba, Vietnam, former Soviet Union). If accepted as a refugee, the person is sent to the U.S. and receives assistance through the “refugee resettlement program.”

A person who is already in the United States and fears persecution if sent back to his or her home country may apply for asylum in the U.S. by filing an application with the Immigration & Naturalization Service. Like a refugee, an asylum applicant must prove that he or she has a “well-founded” fear of persecution based on the same grounds, that is: race; religion; membership in a social group; political opinion; or national origin. In most cases, an individual must apply for asylum within one year of arriving in the U.S.

The process starts with an application sent to the CIS office in Nebraska, which is the central receiving location for asylum applications. If the applicant lives in the Bay Area, the file is then sent to the CIS asylum office at 75 Hawthorne St., San Francisco. Within approximately two months after applying, the applicant is usually given an interview. The interviews are held at the Hawthorne St. office and typically last about one hour. The CIS has a well-trained staff who only conduct

asylum interviews. The confidential interviews are conducted by one CIS officer, who then makes a recommendation to his superior to either approve or deny the application. Usually, a decision is made on applications two weeks after the interview.

If the application is approved, the immigrant is entitled to stay in the U.S. and obtain similar “asylee” status for their spouse and minor children. In one year, the successful applicant can apply for permanent residence.

If an asylum application is denied, the case is “referred” to Immigration Court. That process can take from two months to 18 months, depending upon the judge’s caseload and other factors. There will be a final court hearing where the applicant will be allowed to present evidence and testimony again in support of their case. The immigration judge usually makes a decision at the conclusion of the hearing. If the judge denies the case, the applicant can appeal to the Board of Immigration Appeals, and then to the U.S. Court of Appeals for the Ninth Circuit.

The appeal process can take up to five years or even more. During this process, the applicant is permitted to remain legally in the U.S. and their time waiting is not considered time “out of status” for purposes of the law penalizing persons out of status in the U.S.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last five years by San Francisco Magazine “Super Lawyers” edition (2006-2010). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had an office in San Francisco for 20 years, but recently opened a Santa Rosa office and lives in West Sonoma County.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento) or (707) 433-2060.