

FACT SHEET FOR THE RESTORING PROTECTION TO VICTIMS OF PERSECUTION ACT

Refugees fleeing persecution and coming to the United States in search of asylum protection are required to apply for asylum within one year of arrival. This “one-year bar to asylum” prevents many asylum seekers from having their claims adjudicated on the merits. Instead, the deadline bars them from asylum on the basis of an arbitrary procedural hurdle. Congress’ goal in passing this law in 1996 was to prevent fraudulent claimants from being granted asylum. Fourteen years later, there is no evidence to show the deadline is effective in preventing fraud. Rather, the implementation of this law has resulted in the return of refugees to countries where they face persecution.

Facts and figures:

- More than 30% of asylum applications submitted from 1998 through 2009 – about 93,000 of the approximately 304,000 claims – were determined to have been filed late. Nearly 60% of all asylum applicants deemed untimely filers were rejected for the sole reason that they have not met the deadline.
- Many of those who missed the deadline did not miss it by much. Nearly one-third of those who filed after the deadline filed within two years of entry to the United States.
- Applicants who could not prove a date of entry faced an 84% rejection rate.
- Sources indicate that the application of the one-year bar has become increasingly rigid. The percentage of timeliness denials is on the rise, from 37% of late filers being denied asylum in 1998 compared to 51% being denied between 2000-2001.
- The United States is one of the few top refugee-receiving countries that mechanically applies a time limit to asylum applications.

“Exceptions to the rule” are not observed:

Along with the one-year filing deadline, Congress enacted two exceptions to excuse late-filed asylum applications. “Changed circumstances” are those that materially affect the applicant’s eligibility for asylum, such as changes in an individual’s own circumstances or worsening conditions in her or his country of origin that puts the individual in greater risk of harm. “Extraordinary circumstances” are defined as those directly related to the failure to meet the one-year deadline, such as serious illness of the applicant or a family member, or mental/physical disability.

There are few “checks” to how exceptions are applied: the Immigration and Nationality Act (INA) prohibits federal courts from reviewing adjudicators’

decisions relating to the filing deadline, and many federal courts have declined to invoke a separate provision of the INA that would authorize them to review such decisions in certain circumstances.

Adjudicators are unlikely to consider the challenges of surviving in a new country, an individual's lack of knowledge regarding asylum law, inability to find/afford competent legal representation, an individual's hesitancy to recount abuse she may have suffered, and emotional trauma/psychological disorders. Adjudicators have disregarded changed and extraordinary circumstances in the past and will continue to do so. For instance, adjudicators have been overly restrictive in second guessing determinations by mental health professionals regarding the connection between a psychological condition and late filing.

EXAMPLE: "Ida" was a teenager in Albania when she was captured by a trafficker, held captive, and raped and battered while plans were made to traffic her into prostitution. Ida escaped but could not return home for fear of being recaptured. She fled to the United States, entered as an unaccompanied minor, and applied for asylum 13 months after entering the country (and while still a minor). In immigration court, Ida presented the testimony of a clinical psychologist who diagnosed the applicant with post-traumatic stress disorder and major depressive disorder. The clinical psychologist testified that the applicant's psychological conditions prevented her from speaking about the trauma to which she had been subjected. Despite this expert testimony, the immigration judge concluded that the applicant could easily have rectified her feelings of shame by seeking out an attorney and denied asylum. The Board of Immigration Appeals dismissed Ida's appeal.

The consequences of late filing:

- When the one-year bar is applied, an applicant who would otherwise be eligible for asylum may be granted a more limited form of relief: an individual may apply to receive "withholding of removal" or seek protection under the Convention Against Torture (CAT). Both forms of relief demand a much higher standard of proof than asylum.
- Individuals granted either form of relief cannot sponsor their spouse and children to join them, even though they may also be in danger.
- An individual granted withholding of removal or protection under the CAT can be deported at any time if conditions in her home country improve or if another country can provide safe haven. Additionally, someone granted one of these forms of relief has no access to refugee benefits, and no ability to become a legal permanent resident or citizen.

Mechanisms are already in place to prevent fraud:

- Asylum applications and testimony are provided under penalty of perjury, and applicants who provide false information can be prosecuted and permanently barred from receiving any immigration benefits in the future.
- To identify document fraud, original documents submitted as evidence undergo forensic testing to verify their authenticity. Additionally, the Department of Homeland Security has extensive security procedures for asylum applicants, including FBI biometric (fingerprint) testing and identity checks through multiple intelligence databases.

Alternatives that don't work:

- Some have suggested that extending the deadline rather than eliminating it will ease the burden of asylum applicants. The fact remains that any specific window of time will still come with an arbitrary deadline. There will still be applicants with bona fide asylum claims who will not manage to file within a pre-defined window of time. And any deadline, no matter what the length, will cause bureaucratic inefficiencies in the system.
- Others have suggested that the current exceptions to the one-year filing deadline could simply be expanded to expressly recognize additional legitimate and compelling reasons for filing delays. However, no matter how many exceptions are expressly enumerated, they will always be subject to subjective and inconsistent application, of which there is virtually no judicial review.