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Policy Manual

Chapter 6 - Termination of Status and Notice to Appear Considerations

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On occasion, an officer reviewing the adjustment application will discover evidence that indicates the applicant was not eligible for asylum status at the time of asylum grant or is otherwise no longer eligible for asylum status. The officer should return the file to the asylum office for further review and potential termination of status.

A. Basis

A grant of asylum does not convey a right to remain permanently in the United States and may be terminated. [1] The date of the asylum grant guides the termination procedures.

Fraud in the application pertaining to eligibility for asylum at the time it was granted is grounds for termination regardless of the filing date.

1. Asylum Application Filed on or after April 1, 1997

USCIS may terminate asylum if USCIS determines that the applicant:

- No longer meets the definition of a refugee;
Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
Constitutes a danger to the community of the United States, if convicted of a particularly serious crime;
Committed a serious nonpolitical crime outside the United States prior to arriving in the United States;
Is a danger to the security of the United States, including terrorist activity;
May be removed, to a country (other than the country of the applicant's nationality or last habitual residence) in which the applicant's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, where the applicant is eligible to receive asylum or equivalent temporary protection;
Has voluntarily availed himself or herself of the protection of the country of nationality or last habitual residence by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or
Has acquired a new nationality and enjoys the protection of the country of his new nationality.

2. Asylum Application Filed before April 1, 1997

USCIS may terminate the approval of asylum if USCIS determines that the applicant:

- No longer has a well-founded fear of persecution due to changed country conditions;
Was convicted of a particularly serious crime or an aggravated felony;
Was firmly resettled in third country;
Can reasonably be regarded as a danger to the security of the United States; or
Is a persecutor or has engaged in terrorist activity.

B. Procedures

If an officer determines that termination is appropriate, he or she should forward the case to the appropriate asylum office with jurisdiction. The asylum office may only terminate asylum status if an asylum officer or a District Director granted the status. Asylum status granted by an immigration judge may not be terminated by USCIS since jurisdiction rests with the immigration court. In such cases, asylum offices should coordinate with the Refugee and Asylum Law Division at the Office of Chief Counsel, USCIS Headquarters.

For those cases within USCIS jurisdiction, a Notice of Intent to Terminate (NOIT) must be served on the applicant by the asylum office at least 30 days prior to an interview with an asylum officer. The NOIT must contain prima facie evidence supporting the termination. The grounds of termination must be proven by a preponderance of the evidence. The applicant has an opportunity to present evidence that he or she is still eligible for asylum. The officer must provide the applicant with written notice if asylum and/or related employment authorization are terminated.

An immigration judge may terminate a grant of asylum made under the jurisdiction of USCIS at any time after the applicant has been provided a Notice of Intent to Terminate (NOIT). A termination hearing may take place in conjunction with removal proceedings.

If USCIS terminates the applicant's asylum status or the officer cannot approve the adjustment of status application due to the applicant's inadmissibility, the officer should deny the application issue the applicant a Notice to Appear (NTA). The applicant should be placed in removal proceedings. The denial order should set forth all the reasons for the denial in clear language which can be understood by the applicant. There is no appeal from the denial of the application, but the alien may renew the application for adjustment in his or her removal proceedings before the immigration court. [2]

Footnotes

- [1] See INA 208(c)(2).
[2] See 8 CFR 209.2(e) and 8 CFR 209.2(f).

Current as of May 21, 2020

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