

## DEFINING THE IMMIGRANT AND REFUGEE POPULATIONS

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### KEY TERMS

non-immigrants, immigrants, refugees, asylees, deportation, citizenship

### CHAPTER HIGHLIGHTS

- Differences between immigrants, refugees, and asylees
- Reasons for deportation/removal
- Obtaining citizenship

Given current economic, social, and environmental trends, more and more people move across borders to escape persecution, find better employment, find better education for themselves or their children, or to join families already abroad. Once in the new country, social service providers may be providing housing, health, mental health, education supports, or other services. An understanding of legal policies and procedures and knowledge of key terms may help social workers, mental health practitioners, and other human service providers to ensure effective and culturally competent service.

This chapter will provide an understanding of differences between immigrants, refugees, and citizens but will focus on refugees as a particular vulnerable but resilient population. Throughout, the chapter will explore the role that social workers, mental health practitioners, and other providers can play along the way to ensure strong and resilient immigrant and refugee communities.

### KEY TERMS

U.S. Immigration law defines individuals who live outside and come into the United States as “aliens.” This chapter will use the word *newcomer*, although the word is also

not quite accurate. Some individuals have been in the United States for a long time and therefore are not quite “new.” Immigrant, as a legal term of art, refers to individual who have lawfully immigrated to the United States and are now **lawful, permanent** residents or have their “green cards.”

**NONIMMIGRANT AND IMMIGRANT.** Some individuals may have originally entered for a short term (e.g., to study, to work, to visit). They are called nonimmigrants.<sup>1</sup> There are over 22 categories of nonimmigrants, but reasons individuals typically enter the United States temporarily as nonimmigrants include to visit, to study, or to work temporarily. If later, the nonimmigrant wants to remain in the United States, there are two main avenues for permanent residency. The first is to be sponsored by a family member, and in this way can she or he can then become a lawful permanent resident.<sup>2</sup> If an employer sponsors the individual, this too is an avenue toward a lawful permanent residency.<sup>3</sup> Absent family or employment sponsorship, individuals can sponsor themselves, if they can show that they deserve protection from persecution and should not be returned home.<sup>4</sup>

Given the dangerous situation of refugees if returned to the country of origin and the need for health and mental health supports in the new host country, this chapter will focus on this population of people who seek protection from persecution and ask that they not be deported.

**REFUGEE AND ASYLEE.** The definition of a refugee, as found in the UN Refugee treaty<sup>5</sup> and as mirrored by the U.S. government in the US Refugee Act<sup>6</sup> defines a refugee as a person who

Owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

If the person is OUTSIDE of the United States trying to come in and succeeds, the person enters with the legal designation “refugee.” For example, an Iraqi crosses the border into Jordan and is interviewed by the U.S. authorities in a refugee camp or at the U.S. embassy in Amman, Jordan, applies for protection, meets all of the elements of the refugee definition above, and enters/is resettled to the United States as a “refugee.”

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<sup>1</sup> Immigration and Nationality Act (INA); 8USC 1101 lays out the 22 various categories of non-immigrants—from students to visitors to temporary workers as examples

<sup>2</sup> INA Section 203(e)

<sup>3</sup> Ibid.

<sup>4</sup> Immigration and Nationality Act, The Immigration and Nationality Act of 1952 (Pub. L. 82–414, 66 Stat. 163); Title 8 of the United States Code (8 U.S.C. ch. 12).

<sup>5</sup> UN 1951 Convention relating to the Status of Refugees, adopted by the United Nations General, Resolution 429(V) of 14 December 1950; amended by the 1967 Protocol relating to the Status of Refugees, Resolution 2198 on December 16, 1966

<sup>6</sup> United States Refugee Act of 1980, Pub. L. 96-212; 8 U.S.C. Ch. 12, Sub Ch. I §1101 et seq.

If the person entered the United States as a nonimmigrant—for example, as a visitor, student, temporary worker—or entered with documents and the documents expired, or entered without documents, the person can apply for protection as well. If the individual is already INSIDE the United States and applies for protection and meets all of the elements of the refugee definition above, the applicant gets the legal designation of “asylee.” For example, an Iraqi might enter the United States as a visitor or to study (without having gone through a second country like Jordan, as in the example above), then applies for protection in the United States, is recognized as a refugee, and gets asylum. In both cases, whether applying for protection outside the United States or already inside the United States, the standard is the same: The applicant has to prove “a well-founded fear of persecution on account of race, religion, nationality, or political opinion.” (See Footnote 6).

In sum, refugee status is given to an individual *before* entering the United States. Asylum status is granted *after* someone enters the United States and formally applies for asylum. Many potential asylum seekers enter the United States on visas that do not show that they are fleeing persecution (e.g., short-term visitor visas or student visas) or with no documents at all. These individuals can apply for asylum upon entering the United States. However, as immigrant populations are often viewed with suspicion in the United States, asylum seekers remain at risk of being detained and/or threatened with deportation.

The service provider’s role in supporting an individual applying for asylum can greatly enhance the chances of obtaining asylum. Regardless of the stage in the asylum process— assessing eligibility stage, the application stage (telling the story), and after the interview or hearing—the social worker or mental health provider can make a meaningful difference.

## ASSESSMENT/ELIGIBILITY STAGE

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Since newcomer individuals might have more contact with service providers than with lawyers, (whether public interest or private attorneys), providers can help individuals engage in a first level “self screening” to see if they are eligible for asylum and then refer to a legal expert. If after discussion the applicant feels she or he might be eligible, the service provider may then help with identifying and referring to attorneys with specialization in immigration and/or refugee law.<sup>7</sup>

As described above, both international and U.S. law requires that all asylum seekers prove each of the following criteria in order to obtain protection and get asylum:

- Have a well-founded fear of persecution on account of race, religion, national origin, political opinion, or membership in a particular social group

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<sup>7</sup>Immigration advocates maintains a list of nonprofits around the United States that can assist person in immigration matters. Search by state link: <http://www.immigrationadvocates.org/probono/volunteer/>

- Must apply for asylum within one year of most recent arrival to the United States. If the applicant is applying AFTER the one-year deadline, service providers can help with applying for a waiver of the failure to meet the deadline (grounds for possible exemptions or waivers will be described below)

The applicant's narrative, laying out the fear of persecution and on which ground(s) the fear is based is laid out on an immigration form, "Application for Asylum."<sup>8</sup> This section will dissect each of the elements, so that service providers can help the individual assess whether they are even eligible to apply for asylum.

**FEAR.** The first element of the refugee definition that applicants must meet is "fear." The element of fear is both subjective and objective. *Subjective fear* refers to the *individual's* own fear of persecution. This can be established through the applicant's candid, sincere, and truthful testimony. The service provider can help the applicant talk and later write about what happened to him or herself, to relatives (shootings, torture, disappearances), such that she fears that what happened to them, might also happen to her. *Objective fear* refers to whether this fear is based on events happening in the country of origin. The UN published a handbook to help government authorities and advocates determine who is a refugee. This *UN Handbook on Procedures and Criteria for Determining Refugee Status*<sup>9</sup> states:

The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin—while not a primary objective—is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.<sup>10</sup>

Applicants do not need to prove that they will definitely be persecuted if they return home. They need to demonstrate a "reasonable" fear of this occurring.

**PERSECUTION.** In addition to proving fear, both subjectively and objectively, as described above, asylum seekers must prove that they fear persecution if returned home. Providers can also help applicants to first **identify** the type of persecution (imprisonment, torture, or even death) and then help the applicant gather **evidence** of the persecution (expert witnesses, newspaper clippings, journal articles, etc). Applicants for asylum who can testify as to past or future harm, and in addition, present evidence that backs up the past persecution or fear of future persecution—through articles, witnesses, affidavits—can increase their chances of obtaining asylum.

<sup>8</sup> Form I-589, available at <http://www.uscis.gov/sites/default/files/files/form/i-589.pdf>

<sup>9</sup> The *UN Handbook on Procedures and Criteria for Determining Refugee Status*, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979

<sup>10</sup> Ibid, para. 42.

Individuals who have not been previously persecuted are still eligible to apply but may have a more difficult time proving their fear of future persecution. In this case, it is especially useful to explain current conditions in one's home country and submit materials to support the claim. Providers, especially mental health providers, can help applicants articulate and write about the persecution they suffered or may suffer and do so in a nurturing, thoughtful way that minimizes the trauma the individual may face in retelling the story. In an application for asylum, the individual may have to tell the story a minimum of three times: to the lawyer, to the service provider (who may be helping put the testimony together and gather evidence and find expert witnesses as described above), to the lawyer again in a mock interview or hearing through various client prep sessions, and finally to the government authority who will make the final decision. The applicant may have to tell their story an additional time to a higher-level government authority, if there is an appeal from a denial of a first decision.

**“ON ACCOUNT OF RACE, RELIGION, NATIONAL ORIGIN, POLITICAL OPINION, OR MEMBERSHIP IN A PARTICULAR SOCIAL GROUP”** (see Footnote 6). Finally asylum seekers must link the fear of persecution to one or *any* of the grounds of persecution: race, religion, national origin, political opinion, or membership in a particular social group. If applicants do not fit into the first four categories, the “social group” category is sometimes used as a catch-all to try to win asylum. Again, service providers can help applicants to develop the grounds for fear of persecution. Applicants must first prove that they are a member of this group, for example, the LGBT community. In this example, it may be difficult if U.S. immigration officers assigned to the case have ideas about LGBT identity that is based on U.S. norms and stereotypes. Government officers’ expectations do not always match an applicant’s expression of their personal sexuality and/ or gender identity. The applicants own testimony, plus documents proving membership in an LGBTQ organization, evidence of engagement in same-sex relationships, or expert witness testimony as to persecution of LGBT individuals in that country may all increase the likelihood of winning asylum based on membership of a particular social group.

Next, applicants must prove that they fear persecution specifically because of their social group. The applicant must prove that the government commits the persecution or that the persecution is perpetrated by nongovernment forces (e.g. gangs, paramilitary, grandmothers performing female genital mutilation on their granddaughters), which the government is unable or unwilling to control. There are several immigrant-serving nonprofits that can either provide detailed information on country of origin information to support the application, and there are nonprofit direct legal services providers who can effectively provide service.<sup>11</sup>

**APPLY WITHIN ONE YEAR OF ARRIVAL.** In addition to proving fear and persecution—based on a ground(s), the final prong an applicant may have to prove, depending on

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<sup>11</sup> As an example, LGBT Freedom and Asylum Network page on the application process is detailed <http://www.lgbt-fan.org/application-process/>

the application venue—the asylum seeker must file the request within one year (365 days) of the last arrival in the United States. The one year filing deadline is measured from the applicant’s most recent arrival, so earlier trips to the United States should not affect applications unless the applicant was previously deported. Applicants who are approaching one year in the United States can submit a “skeleton case” of Form I-589 before the deadline and later add supporting information and documents to strengthen their case.

Applicants who have been in the country for more than one year *may* be able to claim an exemption from the one-year filing requirement, *if* they can argue one of the following exemptions:

1. *Changed Circumstances*: An asylum applicant can argue that a change in circumstances after the deadline prompted them to apply. For example, they may not have “come out,” or they may not have realized that they identify as LGBT until they entered the United States. They may have maintained a lawful immigration status (i.e., a visa sponsored by an employer) since arriving to the United States, which abruptly ended. Perhaps their home country introduced new laws criminalizing LGBT identity while the applicant was in the United States.
2. *Extraordinary Circumstances*: An asylum applicant can argue that he or she was *unable* to apply by the deadline. For example, they may have been misled by their lawyer, suffered significant mental health concerns or mental health depression upon entering the United States, or been otherwise prevented from submitting their claim.

With the latter reason for filing late (after the 365 day deadline), providers can be helpful in drafting affidavits to support the applicant’s reasons as to why he failed to meet the deadline. Reasons can be depression (if well-documented by the provider), which may have been caused by trauma in the home country, trauma caused in the flight, or trauma experienced in the new host country. The resulting depression, an applicant might argue, is an “extraordinary circumstance,” which may have barred the individual from filing within the one-year deadline. A provider’s affidavit explaining services provided and root cause of the trauma and depression may buttress the applicants claim of mental health issues, which may then result in the application be allowed to move forward.<sup>12</sup>

## POST-DECISION ASSISTANCE

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If the applicant loses the application for asylum, depending on a number of grounds, there may be a possibility of appeal. Again the provider may be able to refer the individual to a legal services organization with expertise in immigration matters.<sup>13</sup>

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<sup>12</sup>The USCIS training to their immigration officers contains a “lesson plan” on issues related to the one-year deadline <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTTC%20Lesson%20Plans/One-Year-Filing-Deadline-31aug10.pdf>

<sup>13</sup>Immigration advocates maintain a list of nonprofits around the United States that can assist a person in immigration matters. Search by state link: <http://www.immigrationadvocates.org/probono/volunteer/>

**DEPORTATION.** An applicant may lose his or her application for asylum because the government determines that

- the applicant did not meet all of the criteria for asylum—fear, persecution, nor any of the grounds—or
- the applicant falls within one of the grounds of deportation.

U.S. immigration policies set out various reasons for deporting individuals.<sup>14</sup> They are the following:

- The person was inadmissible at the time of entry into the United States. This includes many inadmissibility grounds, such as convicted of a crime, false representation of being a U.S. citizen, insufficient passport expiration date, and invalid visa.
- Criminal offenses.
  - If the person is convicted of a crime involving moral turpitude and the crime was committed within five years of admission and the sentence for the crime the applicant was convicted of is one year or longer.
  - An alien or lawful permanent residence is deportable if, after admission, the person is convicted of two crimes involving moral turpitude and the two crimes arose not from one single scheme of criminal conduct.
- An alien or lawful permanent residence is deportable if he or she commits aggravated felonies at any time after admission, plus failure to register and falsification of documents. A person is deportable if he or she either (a) commits document fraud, (b) fails to notify the USCIS in writing of an address change as required by law, or (c) claim false U.S. citizenship.
- Security and related grounds. A person who has engaged, is engaged, or at any time after admission engages in espionage or sabotage or violates or evades any law prohibiting the export from the United States of goods, technology, or sensitive information; activity, which endangers public safety or national security or any activity a purpose of which is the opposition to or the control or overthrow of the government of the United States by force, violence, or other unlawful means.
- The person becomes a public charge. A person may subject to deportation if the U.S. Attorney General opines that he or she has become a public charge within five years of entry from causes not shown at the time of entry.
- Unlawful voting. A person who votes in violation of any federal, state, or local government law is deportable.

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<sup>14</sup>INA Section 237

## CITIZENSHIP

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If the applicant wins the asylum case, providers can continue to provide other needed support—housing, health, mental health, job training, and referrals to educational institutions such as community colleges. In addition, if the applicant wins asylum, a year later, she can apply to “convert” the asylum status to lawful resident status and obtain her “green card.” To become a U.S. citizen and naturalize, the law states that applicants must have been a lawful permanent resident from three to five years (depending on how they became lawful permanent residents), and must take a test on the following:

- English
- Civics (U.S. history and government)

After winning asylum, providers can help lawful permanent resident apply to become naturalized U.S. citizens by preparing them or referring them to agencies that can help them to prepare for the English and civics portion of the naturalization test.<sup>15</sup> In this way, individuals can participate in the full fabric of U.S. society—voting, working, and supporting their children so that they can be equally resilient and contributing members of society.

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<sup>15</sup>The US government provides resources to help prepare. For more information on the Naturalization Test <http://www.uscis.gov/us-citizenship/naturalization-test>. For civics study Citizenship Resource Center <http://www.uscis.gov/citizenship>.

## REFLECTION QUESTIONS

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1. For macro students: If you were in charge of policy, what recommendations would you have for policy changes at the local, state and or federal level to strengthen immigrant and refugee communities?
2. For clinical practice students: If you were providing services to immigrants and refugees, what would be the top five steps your organization could take to ensure access to services to the community

## CASE STUDY

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Mauricio, a young man from Honduras, fled eight years ago and is now in your office. He claims he refused to join a youth gang and did not want to become involved in its violent and criminal activities. He is now asking you for advice on how he can stay in the United States.

1. What are some questions you might want to ask to ascertain if he is eligible for asylum?
  - a. What might be his grounds for asylum?
  - b. What might be the biggest challenge in meeting the eligibility criteria?
2. What are some nonlegal questions you might ask to assess his health, mental health, and other needs?
3. In your region, where might you refer him for further assistance?

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