



ADVOCATING FOR OUR COMMUNITIES

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APPLYING FOR ASYLUM BASED ON GENDER IDENTITY PERSECUTION

An information and resource publication of:

The Asylum Program (LLCR)
(415) 543-9444

&

The Transgender Law Center
(415) 865-0176

Asylum Basics

What is gender identity persecution?

Gender identity persecution is when someone is harmed because they are transsexual, transgender or do not conform to gender stereotypes. Persecution can include threats, attacks, beatings, forced sex, mental abuse, and severe economic harm.

What is asylum?

Asylum is a U.S. legal mechanism for protecting immigrants who know, or believe, they will be harmed if they go back to their home countries. People who are granted asylum are allowed to stay in the U.S., get a work permit and some public benefits, and eventually apply for a green card.

What do I need to prove to get asylum?

To qualify for asylum you'll need to prove three main things.

- (1) You are afraid someone will harm you if you return to your home country. The harm must come from your government or from a group or person that your government cannot or will not control.
 - (2) Your fear is "well founded." Don't let this language worry/confuse you. It means that there is a real danger if you return to your home country.
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(3) Your fear of being harmed is based, at least in part, on your race, religion, nationality, membership in a particular social group, or your political opinion. Applicants from California have been granted asylum based on their gender identity. In these cases, the courts have seen transsexuals as a particular social group.

If you are afraid you would be harmed in your home country because you identify as transgender or transsexual or for one of the other reasons listed above, you may have a good claim for asylum.

Preparing to Apply

Should I apply for asylum?

Deciding whether to apply for asylum is sometimes a tough decision. If you win asylum, you will be able to stay in the U.S. and to apply for several public benefits. But, if you do not win asylum, you might eventually be ordered to leave the U.S. and return to your country. Applying for asylum if you have a weak case can be very risky. For some people, it is better if they do not apply. But, you should make this decision only after you have talked to the Asylum Program or an immigration attorney.

How do I get legal help?

Because asylum law is confusing and because everything you tell or give to the INS may become a part of your asylum record, we strongly encourage you to talk to a lawyer before sending anything to INS. If your 1-year filing deadline is coming up or has already passed (see below), get help right now. Don't wait.

The **Asylum Program** (LCCR) is an excellent place to begin looking for a lawyer. The Program offers **free** legal help and can be reached at **(415) 543-9444**. The Asylum Program has **no** connection to INS. Everything you say to them is **confidential** and cannot be shared with the U.S. government or anyone else without your permission.

If you call the Asylum Program, they may be able to meet with you to talk about your case. The Asylum Program may be able to find you a lawyer to represent you for free. Or, the Program may give you a list of attorneys who charge lower than average fees.

The Asylum Program at the International Gay and Lesbian Human Rights Commission (IGLHRC) can also offer you a list of immigration attorneys who have handled other asylum claims based on sexual orientation, gender identity or HIV status. You can reach IGLHRC at (415) 255-8680.

If you look for legal help somewhere else, be aware that some people who say they are immigration experts are not experts and may not even be lawyers. Sometimes asylum applicants will pay a notario or paralegal to help them apply for asylum. It has been our experience that using these kinds of services is often a mistake. Many times these people can ruin your chances for asylum. If you want to use one of these businesses or think you were harmed by one of them, call the anti-fraud unit of the **Immigrant Legal Resource Center at (415) 255-9499 extension 774.**

The Application Process

How do I apply for asylum?

You'll need to fill out forms from the INS office and also get documents to support your case. Ideally, you'll get help from an attorney in filing your paperwork. Once you are done with the application, it must be mailed to a central INS office outside of the state.

What happens once I have applied?

You will be given an interview with an asylum officer. This officer will look at your application, listen to your story, and ask you questions. In most cases, you will get a decision 2 weeks after your interview. You will be granted asylum, or your case will be sent to an immigration judge to decide.

If your case is sent to a judge, make sure to show up in court, and bring a lawyer, if possible. You will have a chance to tell your story to the judge, who can grant you asylum. If the judge does not grant you asylum, you can still appeal the judge's decision, and you are allowed to stay in the U.S. while you wait for a final decision.

Will I be able to get a work permit?

It is difficult to get a temporary work permit during your application period. Most applicants do not get any kind of work permit until after they have won asylum. Simply put, if the government takes longer than 150 days to give you a final decision on your application, you will be allowed to apply for a temporary work permit while you wait for your decision.

But, if it takes longer than 150 days to decide your case because of something you did (you asked for more time or you did not show up at a hearing), you will be given a work permit only after you have been granted asylum.

What can I do to help my lawyer?

The most important thing you can do is be as honest as possible. If you meet with someone from the Asylum Program or hire a private lawyer on your own, anything you say to that lawyer is confidential. That means that this lawyer is not allowed to tell this information to the U.S. government or to anyone else without your permission.

While you might be worried about how some part of your case will hurt your chances for asylum, it is best to talk to your lawyer about this. She or he may be able to calm your fears or help you think through the best way to present the information.

You should also help your lawyer get documents for your case. Some helpful documents include pictures of yourself from when you lived in your home country, a birth certificate or identity card, and letters from relatives or friends that will help prove your case. If you don't have any of these documents, don't worry. You can still win your case without them. But if you can get them, they may help.

You may also want to contact the Asylum program at IGLHRC (number above) to obtain "country packets." These packets contain information about a country's persecution of people based on sexual orientation and/or HIV status.

Special Considerations

1-year Deadline

You are supposed to apply for asylum within 1 year of your last arrival in the U.S. The INS requires you to mail your application to them before the 1-year deadline. It is safest to mail it at least several weeks before the deadline. If you apply after the 1-year deadline, without a very good reason, your asylum claim can be denied.

If you have already been in the U.S. for more than 1 year since your last arrival, you should see a lawyer right away and find out if you can still apply for asylum. Don't wait! Every day you delay may hurt your case.

Past Convictions for Aggravated Felonies

The INS will deny asylum to anyone who has been convicted of an "aggravated felony." Some people believe that this means a conviction for any crime. **It doesn't.** So, if you have been convicted of a misdemeanor or even a felony, you are still strongly encouraged to talk to the Asylum Program or a private attorney to see if you are still eligible for asylum or if you have other options for legally remaining in the U.S.

Non-Asylum Options

Even if you can't get asylum, there may be other ways for you to stay in the U.S. if you fear harm in your home country. Two such ways are "Withholding of Removal" and "The Convention Against Torture."

If you missed the 1-year deadline for asylum, without a very good reason, or have been convicted of an "aggravated felony," you may be able to stay in the U.S. legally and get a work permit through either of these options. Neither of them is likely to get you all of the benefits of asylum, but both are good back-up plans if you can not qualify for asylum. Be sure to ask an attorney for more information.