

APPLYING FOR ASYLUM BASED ON GENDER IDENTITY PERSECUTION

The Asylum Program (LCCR) 415-543-9444

The Transgender Law Center 415-865-0176



Transgender Law Center

Making Authentic Lives Possible

ASYLUM BASICS

What is gender identity persecution?

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

What is asylum?

Asylum is a U.S. legal mechanism for protecting immigrants who have been persecuted 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 and U.S. citizenship.

Who decides if I get asylum?

The United States Citizenship and Immigration Services (USCIS) is the governmental entity that decides if you get asylum. The USCIS is part of the U.S. Department of Homeland Security.

What do I need to prove to get asylum?

To qualify for asylum you'll need to prove two main things:

1. You have either *suffered past persecution*, or have a well-founded *fear of future persecution* if you return to your home country. "Persecution" is harm that is inflicted either directly by the government, or by other individuals who the government cannot or will not control. "Well-founded fear" means that there is a real danger if you return to your home country. Don't let this language worry or confuse you!
2. This persecution is or was based, at least in part, on your race, religion, nationality, membership in a "particular social group," or your political opinion.

Transgender applicants have been granted asylum based on their sexual orientation or gender identity. In these cases, the courts have considered transgender people to be a "particular social group."

If you are afraid you will be harmed in your home country because you identify as transgender or transsexual or for another reason listed above, you may have a claim for asylum.

PREPARING TO APPLY

Should I apply for asylum?

Deciding whether to apply for asylum can be 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 may 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. You should make this decision only after you have talked to an experienced immigration attorney who has worked with transgender clients.

How do I get legal help?

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

In the **Bay Area**, the Asylum Program at the Lawyers' Committee for Civil Rights (LCCR) offers free legal help and can be reached at 415-543-9444. Everything you say to them is confidential. If you call the Asylum Program, they may be able assist you with your case or refer you to someone who can. Another Bay Area resource is the East Bay Sanctuary Covenant (510-540-5296).

Local law schools often have asylum representation clinics where students provide free representation, research, and other assistance. If you are in the Bay Area, you may want to contact UC Berkeley (510-540-5296) or UC Hastings (415-565-4877) to ask for assistance from their asylum law clinics.

If you look for legal help somewhere else, be aware that some attorneys misrepresent themselves as immigration experts and may not even be lawyers. Sometimes asylum applicants will pay a notary or paralegal to help them apply for asylum. In our experience, 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 x 774.

THE APPLICATION PROCESS

How do I apply for asylum?

You'll need to fill out forms from USCIS and also get documents to support your case, including your own declaration of your experiences and documents describing the conditions of your home country. It is a good idea to talk to an experienced immigration attorney before you apply for asylum. Once you are done with the application, it must be mailed to a USCIS office.

In order to apply for asylum, you must be physically present in the U.S. or seeking entry at a port of entry to the country. You may apply for asylum status regardless of how you arrived in the U.S. or your current immigration status. Generally, you must apply for asylum within one year of the date of your last arrival into the U.S.

What happens once I have applied?

You will be given an interview with an asylum officer, generally within six weeks. This officer will look at your application, listen to your story, and ask you questions. Nothing you say in this interview will be provided to the government or country from which you claim a fear of persecution. In most cases, you can receive a decision two weeks after your interview. The decision will either recommend asylum or it will not. If you are recommended for asylum, this means that you have won, and that once the background checks on your fingerprints have cleared, you will be mailed a final approval notice.

If you are denied asylum, and you are validly in the U.S. (on a tourist or student visa, for example), you will receive a notice of intent to deny your case. You will then have the opportunity to submit further evidence about why you should receive asylum, and will be allowed to remain in the U.S. for the duration of your visa. Unfortunately, there is no opportunity to appeal if your application is still denied after submitting further evidence.

If you are denied asylum after your interview and you are not qualified to remain in the U.S., you will be placed in removal proceedings and your case will be referred to an immigration judge. If this happens to you, 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 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. You may only apply for a temporary work authorization if 150 days have passed since you filed your completed asylum application (not including delays that you have caused), and if the government has not made a decision on your application. If you are granted asylum, you may work immediately.

What can I do to help my lawyer?

The most important thing you can do is be as honest as possible. Whether you meet with someone from the Asylum Program, another asylum assistance group, 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 that some part of your case will hurt your chances for asylum, it is best to share your concerns with your lawyer. They 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. But if you can get them, they may help. You may also want to contact the Transgender Law Center for information about how to obtain "country conditions" packets. These packets contain information about a country's persecution of people based on sexual orientation, gender identity, and/or HIV status.

OTHER CONSIDERATIONS

1-Year Deadline

You are supposed to apply for asylum within one year of your last entry in the U.S., so it is safest to mail your application to USCIS at least several weeks before the 1-year deadline. If you apply after the 1-year deadline without a very good reason, such as changed circumstances that materially affect your eligibility for asylum or extraordinary circumstances relating to the delay in filing, your asylum claim can be denied. Possible changed or extraordinary circumstances can include gender transition since arriving in the U.S., new dangerous legislation in your home country, a recent HIV diagnosis, or serious health problems.

If you have already been in the U.S. for more than one year since your last entry, 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.

What if I am in the United States illegally?

Even if you are here without authorization, you may seek asylum if you meet the requirements discussed above. However, it is important to remember that if you are here illegally, you are subject to removal if your claim is not granted. Therefore, it is vital that you contact an experienced immigration attorney to discuss the specifics of your case.

What should I do if I am arrested by immigration officials?

Assert your rights. Call your lawyer right away. If you will be harmed in your home country, tell the immigration officer that you are afraid to go back and that you want to apply for asylum. Let the immigration officer know that you are aware that you cannot be deported if you are applying for asylum. You have a right to a hearing.

Past Convictions for Aggravated Felonies

The USCIS 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 called "Withholding of Removal" and the "Convention Against Torture." For example, 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 cannot qualify for asylum. Be sure to ask an attorney for more information.

Questions?

Applying for asylum can be confusing and sometimes scary. If you have questions about your rights, please call Transgender Law Center (415-865-0176) or the Asylum Program (415-543-9444). Remember, everything you say to either organization is confidential.