



The One-Year Bar to U.S. Asylum

July 2020

Introduction

The “one-year bar” requires asylum seekers to apply for protection within one year of entering the United States. The bar adds an arbitrary, ineffective, and unnecessary roadblock to the already-complicated asylum process and prevents people with legitimate asylum claims from receiving protection. Indeed, a denial of asylum based on the one-year bar can mean death for those who are deported back to their countries.

Background

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) to reform several aspects of U.S. immigration law. Buried in this bill was a provision that has resulted in the denial of asylum claims for tens of thousands of people seeking protection from persecution and torture.

Commonly known as the “one-year bar,” it requires anyone seeking asylum to apply within one year of arrival in the United States. The purpose of the provision was to prevent fraud, but the result has been the denial of thousands of meritorious asylum claims simply because filing occurred after one year.

There are two exceptions to the one-year bar covering “changed circumstances which materially affect the applicant’s eligibility for asylum” and “extraordinary circumstances relating to the delay in filing” the asylum application. But it is often difficult to satisfy asylum officers, immigration judges, and Board of Immigration Appeals (BIA) personnel reviewing asylum claims filed after one year that an application meets one of these broad exceptions. Indeed, one study of 662 deadline-related cases at the BIA found that it did not recognize a circumstance that was not specifically listed in federal regulations in any of the cases studied.¹

Consequently, many applicants who would otherwise qualify for asylum are denied protection and returned to their countries to face persecution, torture, and even death. Furthermore, there is no evidence that the bar has prevented fraudulent asylum claims. Indeed, countless examples exist of applicants whose claims have been determined credible but are denied asylum based on their late filing. These applicants often go on to win Withholding of Removal, a lesser form of protection that does not provide a path to permanent immigration status or family reunification.

The one-year bar disproportionately affects people with the strongest asylum claims.

Asylum applicants have often faced horrendous persecution that leaves them both physically and mentally traumatized. After enduring lengthy, expensive, and dangerous journeys to the United States, they are expected to familiarize themselves with the asylum process and recount their stories to complete strangers within one year of arrival, assuming they are even aware that they are eligible for asylum.

Many suffer from debilitating psychological trauma, such as post-traumatic stress disorder (PTSD), that prevents them from applying for asylum within one year. The result is that those with strong potential asylum claims, and thus those who are most in need of the protection that asylum offers, are frequently prevented from obtaining asylum by the one-year bar.

One study of asylum applications found that women had a rate of untimely filing that was 13 percent higher than that of men.² The reasons for this are obvious: women are far more likely than men to have suffered sexual violence, a form of persecution that can leave them severely traumatized and that often carries an enormous social stigma that prevents them from recounting their stories to government officers. Women are also much more likely to be victims of domestic violence and other gender-based harm, such as female genital mutilation, and may be unaware that these types of harm can serve as the basis for an asylum application.

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The bar creates inefficiencies in the immigration system and wastes government resources.

In addition to reviewing the merits of each asylum claim, asylum officers must determine whether applicants have filed within one year of arrival in the United States. The Asylum Office training manual for this single issue is 32 pages long.³ If an asylum officer decides that the bar applies, the application is referred to the immigration courts, which are already severely overburdened, lacking sufficient judges to hear the hundreds of thousands of cases before them.

At that point, an asylum application that could have been quickly decided by an asylum officer now involves dozens of federal employees – not in order to decide whether the applicant was indeed persecuted, but to decide whether they had a valid excuse for filing their application more than one year after arriving in the United States

The immigration system has numerous safeguards in place to prevent and deter fraudulent asylum applications.

The asylum system contains numerous safeguards to prevent and detect fraud, rendering the one-year bar unnecessary:

- People who file fraudulent asylum applications for asylum are permanently barred from receiving any lawful immigration status in the future;
- The Department of Homeland Security (DHS) has a Forensic Document Laboratory to analyze documents submitted in support of asylum applications;
- DHS and the FBI collect biometric information from asylum applicants and check them against a series of federal databases to discover past criminal convictions, immigration violations, or potential security risks;
- Asylum officers and immigration judges are highly trained at judging applicants' credibility and determining whether their claims are valid;
- Attorneys and others who prepare and file fraudulent asylum applications can be criminally prosecuted.

Conclusion

The one-year bar adds an arbitrary, ineffective, and unnecessary roadblock to the already-complicated asylum process and prevents thousands of people with legitimate asylum claims from receiving protection from their persecutors. Indeed, a denial of asylum based on the one-year bar can mean death for those who are deported back to their countries. It's time for the United States to regain its status as a country committed to accepting and protecting victims of persecution and torture around the world by repealing the one-year bar.

Notes

1. National Immigrant Justice Center et al., "The One-Year Asylum Deadline and the BIA: No Protection, No Process," 2010, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/1YD-report-FULL.pdf>.
2. P. Schrag et al., "Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum," 2010, *William & Mary Law Review*, vol 52, 702.
3. Human Rights First, "The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency," 2010, <http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf>.



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