



Current Immigration Policy Responses to Ongoing Humanitarian Crises

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Presentation Overview

- I. Forms of Protection That Lead to Permanent Status in the United States
- II. Forms of Protection That Lead to Temporary Status in the United States
- III. Current Trend: Expanded Use of Humanitarian Parole to Address Crises in Afghanistan, Ukraine, and Venezuela



Forms of Protection That Lead to Lawful Permanent Residency

- Refugee resettlement
- Asylum
- Special Immigrant Visa (SIV) for Certain Afghan Nationals



Refugees and Asylees

- U.S. refugee and asylum law derived from 1951 Refugee Convention
- Available to individuals of all nationalities
- Two pathways –
 - Refugees obtain status while outside the United States and must qualify for resettlement in the United States.
 - Refugee admissions governed by INA § 207; 8 U.S.C. § 1157.
 - Asylum process is available to individuals seeking to be classified as refugees after arriving to the United States.
 - Asylum eligibility and procedure set forth at INA § 208; 8 U.S.C. § 1158.



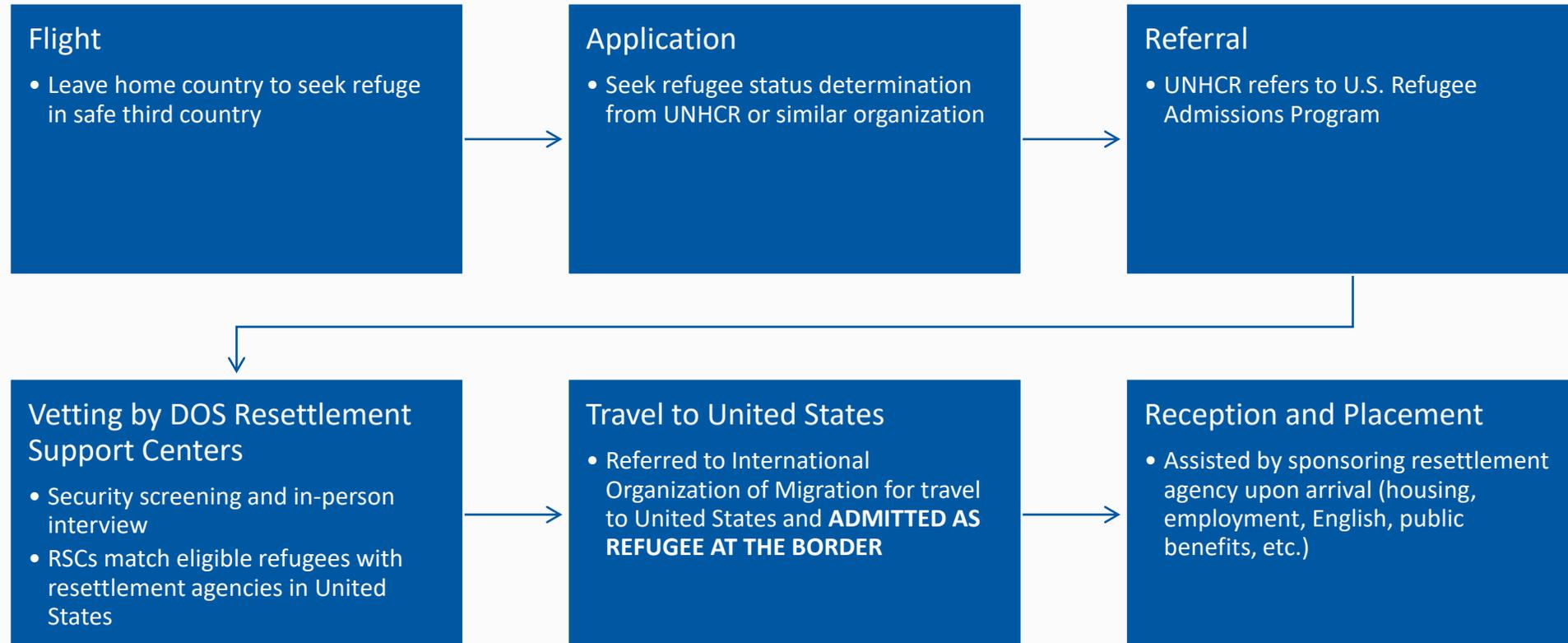
Who is a refugee?

Any person who is **outside any country** of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is **unable or unwilling to return to**, and is unable or unwilling to avail himself or herself of the protection of, that country because of **persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion**.

INA § 101(a)(42)(A)



Refugee Processing and Resettlement



Limits of refugee resettlement process

- Annual cap on refugee admissions set by Executive branch (FY 2023: 125,000)
 - Politicized
 - Cap is upper limit but that is rarely, if ever, reached
- Takes a long time
 - Many individuals spend years living in refugee camps before they are resettled to the United States



Asylum - Application Process

Affirmative Process

- File application with Asylum Office
- Attend interview with specially trained Asylum Officer
- If application is approved - asylee status granted
- If application is not approved – referred to immigration judge and placed into deportation proceeding (unless applicant has a valid status)

Defensive Process

- File asylum application as defense to deportation
- Case is heard by an immigration judge in an adversarial process (ICE attorney represents government)

Appeal Pathway

Board of Immigration Appeals → U.S. Circuit Court of Appeals → U.S. Supreme Court



Limits of asylum process

- **Filing deadline:** applicant must file within one year of last arrival in the United States or prove either changed or exceptional circumstances to qualify for an exception to the one-year filing deadline, *see* INA § 208(a)(1)(2)(B); 8 U.S.C. § 1158(a)(1)(2)(B)
- Lengthy processing times
- Burden of proof is on the applicant – difficult to meet
- Law has evolved to exclude certain types of claims, particularly the types of claims arising from Central America



Refugee v. Asylee Status

REFUGEE

- Obtain abroad
- Eligible to work upon arrival
- Eligible for public benefits (resettlement assistance) upon arrival
- Eligible to apply for lawful permanent residency (i.e. green card) after one year of arrival in the United States
- Ability to help certain relatives

ASYLEE

- Request at the U.S. border or apply within one year of arrival in the United States
- Eligible to work after asylum application has been pending for 180 days
- Eligible for resettlement assistance once application is approved (access to public benefits is limited while application is pending)
- If application is approved, eligible to apply for lawful permanent residency after one year in asylee status
- Ability to help certain relatives



Special Immigrant Visa (SIV) for Certain Afghan Nationals

- Program that grants permanent residence to Afghan nationals who were employed by, or on behalf of, the U.S. government, the International Security Assistance Force (ISAF), or a successor mission in Afghanistan between 10/7/2001-12/31/23 for a minimum of 1 year and have:
 - Provided faithful and valuable service to the U.S. government, ISAF, or a successor mission as documented in a positive letter of recommendation; and
 - Experienced or are experiencing an ongoing threat because of employment.



SIV Application Process

- Prior to 7/20/22, two-step process:
 - Apply for Chief of Mission (COM) approval with Department of State using Form DS-157; and
 - If Form DS-157 approved, then file SIV petition (Form I-360) with U.S. Citizenship and Immigration Services
- After 7/20/22, Department of State is processing Form DS-157 both for COM approval and as an SIV petition in single step to streamline the application process



Benefits of SIV Status

- SIV beneficiaries has lawful permanent resident status upon arrival in the United States
- Principal SIV applicant can bring spouse and unmarried minor children under age 21
- SIV beneficiaries are eligible for the same public benefits available to refugees upon arrival in the United States



Temporary Forms of Humanitarian Protection

- Temporary Protected Status - INA § 244; 8 U.S.C. § 1254a
- Humanitarian Parole – INA § 212(d)(5)



Temporary Protected Status ("TPS")

- Executive branch can designate certain countries based on armed conflict, natural/environmental disaster, epidemic, etc.
- TPS only available to nationals from designated countries who were already in the United States as of date of designation
- Current TPS countries: Afghanistan, Burma, Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, Syria, Somalia, Sudan, South Sudan, Ukraine, Venezuela, Yemen



Eligibility for TPS

- National of country designated for TPS or, if stateless, last habitual residence in country designated for TPS
- Apply during initial registration period (or meet criteria for late filing)
- Continuously physically present in the United States since the effective date of the most recent designation
- Continuous residence in the United States since the date specified for your country
- Admissible to the United States (or eligible for inadmissibility waiver)
- Not eligible if convicted of a felony or two or more misdemeanors
- Not subject to any mandatory bars to asylum



TPS

- Benefits

- Temporary protection in the United States
- Permission to work
- Ability to travel abroad with advance permission

- Limitations

- Country designation lasts for up to 18 months after which it can be extended or terminated – must re-register each time designated is extended to maintain TPS
- Arbitrary cut-off dates that are not always responsive to situation on the ground
 - Afghanistan – 3/15/2022
 - Ukraine – 4/11/2022
 - Venezuela – 3/8/2021
- No pathway to permanent status in the United States



What is Humanitarian Parole?

- Parole authority at INA § 212(d)(5)
- Permission for an otherwise inadmissible individual to enter the United States temporarily due to urgent humanitarian or significant public benefits reasons
- Benefits: temporary protection, work authorization, public benefits in certain cases
- Limitations: time-limited, no pathway to permanent status

Application Process for Humanitarian Parole

- Generally, apply from abroad
 - Submit application with evidence of a financial sponsor, proof of compelling humanitarian reason (including medical reasons), and reasons why you are not eligible to enter the United States through other pathways



Expansion of Humanitarian Parole

- Operation Allies Refuge Program for Afghans
- Uniting for Ukraine
- Process for Venezuelans



Humanitarian Parole for Afghans

- File application with U.S. Citizenship and Immigration Services
- Favorable factors:
 - Immediate family of a U.S. citizens or permanent residents
 - Locally employed staff of the U.S. Embassy Kabul and their immediate family
 - SIV applicants whose applications have received Chief of Mission approval and immediate family members (spouse and unmarried children under 21) included on their case
 - Immediate relatives of Afghan nationals previously relocated to the United States through Operation Allies Welcome (spouse, unmarried children under 21, and, in the case of unaccompanied children, their primary caregiver, including but not limited to a parent or legal guardian, and the spouse and dependent children under 21 of the primary caregiver); and
 - Certain individuals who have already been referred to U.S. Refugee Admissions Program
- If approved, application is referred to U.S. Embassy for additional processing (security and medical clearance)
 - Afghan nationals must get to U.S. Embassy outside of Afghanistan to complete this step



Uniting for Ukraine Program (began 4/21/2022)

- Eligibility

- Outside the United States;
- Resided in Ukraine immediately before the Russian invasion (through Feb. 11, 2022) and were displaced as a result of the invasion;
- Ukrainian citizen and possess a valid Ukrainian passport (or are a child included on a parent's passport);
 - If not a Ukrainian citizen, they must be an immediate family member of a Ukrainian citizen beneficiary of Uniting for Ukraine with a valid passport;
- Have a U.S. based financial supporter with income/assets that U.S. Citizenship and Immigration Services has vetted and confirmed as sufficient; and
- Clear biographic and biometric security checks;



Uniting for Ukraine

- Process

- U.S. based supporter e-files Declaration of Financial Support (Form I-134) with U.S. Citizenship and Immigration Services
- Ukrainian beneficiary submits biographic information and completes vaccination requirements abroad
- U.S. Citizenship and Immigration Services issues travel authorization
- Paroled in at the border



Venezuelan Parole (began 10/12/2022)

Eligibility:

- National of Venezuela or an immediate family member (spouse, common-law partner, or unmarried child under the age of 21) of an eligible Venezuelan and traveling with them;
- Possess a passport valid for international travel;
- Outside the United States;
- Have a U.S.-based financial supporter who filed a Declaration of Financial Support (Form I-134) on their behalf that USCIS has vetted and confirmed;
- Provide for their own commercial travel to a U.S. airport and final U.S. destination;
- Undergo and clear required screening and vetting;
- Not a permanent resident or dual national of any country other than Venezuela, and not currently hold refugee status in any country;
- Not be an unaccompanied child;
- Not have been ordered removed from the United States within the past 5 years or be subject to a bar based on a prior removal order;
- Not have crossed irregularly into the United States, between ports of entry, after Oct. 19, 2022;
- Not have unlawfully crossed the Mexican or Panamanian borders after Oct. 19, 2022; and
- Comply with all additional requirements, including vaccination requirements and other public health guidelines.



Humanitarian Parole Programs

- Benefits

- Parolee status valid for two years
- Work authorization
- Eligible for generous benefits
- Applications processed relatively quickly

- Limitations

- Need financial sponsor
- No direct pathway to permanent status
- No process to renew or extend status – must reapply for parole after initial two-year grant



Questions?



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