



The Ever-Evolving World of U.S. Asylum Law: Updates and Practice Pointers on Presenting Affirmative and Defensive Asylum Claims

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Eligibility for Asylum

} INA § 208(b)(1):

The Attorney General may grant asylum to an individual who has applied for asylum . . . If the Attorney General determines that the individual is a refugee within the meaning of INA § 101(a)(42)(A).

}

} INA § 101(a)(42)(A):

A refugee is “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 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 (PSG), or political opinion.

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Affirmative Asylum Updates and Changes

1. Filing Procedure Changes
 - a. New Form (8/25/2020 version),
 - b. I-589 Rejections by USCIS
2. Scheduling and Interview Procedures since Covid-19
3. Temporary Rule to Provide Telephonic Interpreter

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New Asylum EAD Rules

- EAD eligibility 365 days after filing I-589,
- End of 30-day processing requirement for initial I-765,
- Bars to employment authorization eligibility for asylum seekers:
 - Asylum seeker entered without inspection on or after 8/25/2020 (limited exceptions apply),
 - I-589 filed after one-year filing deadline and on/after 8/25/2020
 - Applicant causes any unresolved delay in processing of I-589,
 - Applicant subject to criminal bars to asylum

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But then there is *CASA de Maryland v. Wolf*

- Preliminary injunction issued by U.S. District Court of Maryland against the new asylum EAD rules on 9/11/2020,
- Only applies to members of CASA de Maryland and ASAP,
- Not limited to members of the organization at the time of the injunction:
 - For more information on how to join ASAP:
<https://asylumadvocacy.org/members/>
 - For more information on how to join CASA:
<https://wearecasa.org/membership/>

Civil Action No. 8:20-cv-02118-PX

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Mendez-Rojas Proposed Settlement

- Under current Interim Stay Agreement, DHS/EOIR required to treat I-589s filed by class members as timely even if filed after the one-year filing deadline (OYFD).
- Under Proposed Settlement Agreement:
 - Notice of OYFD to be provided in CFI process and in NTA,
 - Any I-589 or related motion to reopen or recalendar must be filed no later than 3/31/22,
 - Claims of class membership must be submitted to DHS/EOIR no later than 03/31/22,
 - Requires USCIS and EOIR to create mechanism for accepting jurisdiction over I-589s

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Also available as part of the eCourse

[2020 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the
44th Annual Conference on Immigration and Nationality Law session

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