United States law allows foreign nationals who have been persecuted in their country of origin, or who fear future persecution, to apply for asylum or various other forms of legal protection in order to gain certain rights and avoid removal to countries where they may be harmed. Other protections are also available to provide relief for immigrants who have been victims of crime.

Asylum
A refugee is an individual who is outside of his or her country of origin or last habitual residence and who, because of a "well-founded fear of persecution", is unable or unwilling to return to that country and/or to avail himself or herself of the protection of that country. To file an asylum claim, an individual must be physically present in the U.S. interior or at any port of entry (for example, an airport, land, or sea border). The well-founded fear of persecution must be based on actions committed either by a government or by persons a government is unable or unwilling to control.

Examples of persecution include, but are not limited to:
- Threats to life
- Confinement, detention, or imprisonment
- Torture
- Rape and sexual assault
- Forced abortion or sterilization
- Female genital cutting

The persecution must be on account of at least one of the following five protected grounds interpreted and defined by immigration courts, the Board of Immigration Appeals, and federal courts:
- Race
- Religion
- Nationality
- Political opinion
- Membership in a particular social group

While persecution on account of race, religion, nationality, or political opinion is often easy to identify, establishing the existence of a "particular social group" for asylum purposes requires more analysis.

A "particular social group" may be defined as:
- Persons of similar background, habits, or social status
- Persons who share a common, immutable characteristic
- Persons closely affiliated with one another, who share some common impulse or interest
- Persons who possess some fundamental characteristic in common that serves to distinguish them in the eyes of the persecutor or in the eyes of the outside world in general

For example, LGBT asylum applicants who have been persecuted because of their sexual orientation or gender identity are considered members of a particular social group for asylum purposes. However, definitions of particular social groups are not static, and new social groups are frequently created. For instance, immigration courts recently recognized victims of domestic violence as members of a particular social group.

Individuals who are granted asylum can remain in the U.S. and are authorized to work, sponsor immediate relatives for family reunification, file for a green card after one year, and eventually apply for U.S. citizenship.

If asylum is denied, however, the immigration judge will order removal of the individual, who is then required to leave the U.S. Applicants who are denied asylum may appeal the decision to the Board of Immigration Appeals, then to a Circuit Court of Appeals, and finally to the U.S. Supreme Court.

Related Forms of Relief
Withholding of Removal
If an asylum seeker is either statutorily ineligible for asylum or is denied asylum, they may still apply for a similar form of protection called withholding of removal. Withholding of removal prohibits the return of anyone to a country where their "life or freedom would be threatened."

In order to be granted withholding of removal status, an applicant must show that it is "more likely than not" that they would face persecution on account of one of the five protected grounds if forced to return to their country of origin. If withholding is granted, the benefits that the individual receives are limited. While someone who has been granted asylum is able to petition for family members and apply for a green card, withholding only prevents the removal of the individual to their country of origin and allows them to obtain employment authorization.

Furthermore, the U.S. government can send a withholding recipient back to their country of origin in the future if conditions in that country change and the person would no longer face persecution. The U.S.
may also send a withholding recipient to a safe third country.

Withholding of Removal under the UN Convention against Torture (CAT)

People seeking protection in the U.S. who do not qualify for asylum or withholding of removal status may still be eligible for protection under the UN Convention against Torture. The Convention prohibits moving an individual from one country to another country where they would likely be tortured. The fear of torture may be for any reason, regardless of whether it is on account of one of the five protected grounds, but the torture must be at the hands of or with the acquiescence of a government or government officials. As with withholding of removal, protection under the UN CAT only prevents the removal of the recipient to their country of origin but does not result in family reunification or a green card.

Alternative Forms of Relief

U-Visa

The Victims of Trafficking and Violence Protection Act of 2000 created special visa categories, including the U-Visa, which offers protection to immigrant victims of certain crimes committed in the U.S., including domestic violence, sexual assault, human trafficking, female genital cutting, and kidnapping.

An applicant must demonstrate that they have suffered substantial mental or physical trauma as a result of the crime, and must obtain certification from a law enforcement official that they have been, are being, or are likely to be helpful to an investigation or prosecution.

For example, a domestic violence victim whose testimony is vital to the abuser’s arrest and conviction and who has suffered severe mental or physical abuse as a result of the violence will likely be eligible for a U-Visa.

Family members of U-Visa holders may also be eligible for a U-Visa. A U-Visa entitles the recipient to remain in the U.S. for a maximum of four years, unless longer presence is necessary for investigation or prosecution. After three years, a U-Visa holder who has physically remained in the U.S. may apply for a green card, and eventually for U.S. citizenship.

T-Visa

Another special visa category created by the Victims of Trafficking and Violence Protection Act is the T-Visa. Victims of human trafficking brought into the U.S. who escape are often detained by the Department of Homeland Security because they are technically here without legal permission. The T-Visa is designed to protect victims of severe forms of human trafficking by allowing them to remain in the U.S. for a maximum of four years while they assist law enforcement officials in the investigation or prosecution of the trafficking perpetrators. The applicant must also show that they would suffer “extreme hardship involving unusual and severe harm upon removal” from the country.

Family members of T-Visa recipients may also be eligible for T-Visas. Additionally, after three years a T-Visa holder who has physically remained in the U.S. may apply for a green card and eventually for U.S. citizenship.

Violence Against Women Act (VAWA)

The VAWA of 2000 established greater legal safeguards for immigrant victims of domestic violence. Abused spouses, former spouses, and children of U.S. citizens or green card holders may apply for protection under VAWA. The applicant must prove that they:

- Currently reside in the U.S.
- Currently reside or once resided with the abuser
- Was subjected to battery or extreme cruelty during the relationship
- Has good moral character
- Entered into the marriage in good faith, if the application is based on abuse by a spouse

Additionally, an individual who is in removal proceedings may file a “cancellation of removal” claim under VAWA. To prevail on this form of relief, the applicant must additionally prove that they have resided continuously in the U.S. for three years, and that their children would face extreme hardship if the applicant were removed.

Relief granted under VAWA allows the recipient to apply for a green card, and eventually for U.S. citizenship.

Special Immigrant Juvenile Status (SIJS)

SIJS is available to unmarried immigrants under the age of 21 years who meet certain criteria. To obtain SIJS, a state court must first issue an order stating that the applicant has been abused, neglected, or abandoned, and that reunification with the parents and removal to the applicant’s country of origin are not viable options.

The applicant then files for an SIJS Visa with U.S. Citizenship and Immigration Services (USCIS). If the visa is granted, the individual may apply for a green card and eventually U.S. citizenship.

For more information, please contact PHR’s Asylum Program at asylum@phrusa.org or (646) 564-3448.