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**Applying for Asylum or Withholding of Deportation
for Individuals Fearing Cartels in Mexico
or Gangs in Central America**

By Christopher A. Kerosky

One of the most developing areas in immigration law today concerns applications for asylum or withholding of deportation based on fear of persecution by the powerful drug cartels in Mexico or gangs in Honduras, Guatemala and El Salvador. Immigration judges across the country are deciding these cases very differently, but a few are granting asylum in these cases. For people who have cases in deportation court, it could be their only chance to avoid being deported.

You should see a qualified immigration attorney before proceeding with an asylum case, withholding of deportation application, or any other type of application to Citizenship and Immigration Services (“CIS”) because you risk removal from the U.S. if you lose your case.

The U.S. gives asylum to people already in the U.S. who have experienced past persecution or have a “well-founded fear” of future persecution because of their race, religion, nationality, political opinion or “membership in a particular social group.” Withholding of deportation is a similar status which like asylum, gives you the right to stay here. However, to qualify for asylum you need to prove you are more likely than not to be persecuted in your home country.

U.S. law requires individuals to file for asylum within one year of entering the country. If you do not file on time or show an exception explaining why you filed more than a year after your arrival, you will not be able to receive asylum. Withholding of deportation has no deadline, so if you are applying after more than one year in the U.S., it is important to apply for this status too.

A person who is already in the United States and fears persecution if sent back to his or her home country may apply for asylum in the U.S. by filing an application with the Immigration & Naturalization Service. An asylum applicant must prove that he or she has a “well-founded” fear of persecution based on the same grounds, that is: race; religion; membership in a social group; political opinion; or national origin. In most cases, an individual must apply for asylum within one year of arriving in the U.S.

In cases based on fear of carrels or gangs, you could try to show that your refusal to join a gang was a political opinion that caused you to be followed, threatened, beaten up and tortured. Since this is a relatively new area of law, it is *very* important to work with your attorney to make as many credible arguments as possible.

Also, you must show that the authorities in your country are not willing or not able to protect you. The Mexico, Salvadoran and Honduran governments have passed strict laws against gangs recently, but those laws have not seriously addressed the problem. You need to show that the police and other government officials have not and will not help you.

It is difficult to prove a case for asylum due to fear of persecution from a gang or drug cartel because judges are afraid that giving one person asylum or withholding of deportation for this reason means that they will have to give asylum to thousands and thousands of people. So it is really important to show why your case is specific and unique. For the same reason, it is also important to try and provide as many documents as possible backing up your story.

Obtaining asylum based on fear of persecution from drug cartels and gangs is difficult. However, for people in deportation proceedings, it could be their only chance to avoid being deported. Anyone in deportation proceedings with a legitimate fear of persecution should consider this option.

In that case, the application is submitted directly to the judge in immigration court. A series of hearings are held and you must prove your entitlement to asylum before a judge.

If you are not already in deportation proceedings and still wish to apply, the process starts with an application sent to the CIS office in Nebraska, which is the central receiving location for asylum applications. If the applicant lives in the Bay Area, the file is then sent to the CIS asylum office at 75 Hawthorne St., San Francisco. Within approximately two months after applying, the applicant is usually given an interview. The interviews are

held at the Hawthorne St. office and typically last about one hour. The CIS has a well-trained staff who only conduct asylum interviews. The confidential interviews are conducted by one CIS officer, who then makes a recommendation to his superior to either approve or deny the application. Usually, a decision is made on applications two weeks after the interview.

If the application is approved, the immigrant is entitled to stay in the U.S. and obtain similar “asylee” status for their spouse and minor children. In one year, the successful applicant can apply for permanent residence.

If an asylum application is denied, the case is “referred” to Immigration Court. That process can take from two months to 18 months, depending upon the judge’s caseload and other factors. There will be a final court hearing where the applicant will be allowed to present evidence and testimony again in support of their case. The immigration judge usually makes a decision at the conclusion of the hearing. If the judge denies the case, the applicant can appeal to the Board of Immigration Appeals, and then to the U.S. Court of Appeals for the Ninth Circuit.

The appeal process can take up to five years or even more. During this process, the applicant is permitted to remain legally in the U.S. and their time waiting is not considered time “out of status” for purposes of the law penalizing persons out of status in the U.S.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last five years by San Francisco Magazine “Super Lawyers” edition (2006-2010). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had an office in San Francisco for 20 years, but recently opened a Santa Rosa office and lives in West Sonoma County.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento) or (707) 433-2060.