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Article: SEEKING ASYLUM: PART 1 - The Credible Fear Process at the U.S. Border.

By: Christopher A. Kerosky

The asylum process has received increased attention lately with the Trump Administration's decision to separate parents from their children at the border. But now that Donald Trump has reversed his policy, once again the spotlight has moved away from the many refugees at our border seeking asylum.

Meanwhile, this humanitarian tragedy continues. A large number of those pursuing asylum eventually come to California and the North Bay specifically. Beginning in the first days at the border, the Department of Homeland Security starts a lengthy process to consider any arguments and evidence the asylum applicant might have to support their claim of asylum.

I felt it would be useful to describe the process for those in the public who are interested and to provide some guidance to persons going through it. This segment covers the first step of the process, known as the "Credible Fear Interview" (CFI).

Credible Fear Process.

A person detained at the border without proper documents to enter generally does not have the right to stay in the United States or file an application for immigration benefits. The only exception is if that individual has "a well-founded fear of persecution based on race, religion, nationality, political opinion or social group". The person also needs to prove that the persecution was by the government or that the government could not stop it.

If a person at the border declares they are afraid to return, ICE will ask them some preliminary questions to determine if they are afraid and then the US asylum office will conduct a formal interview to determine if they have "credible fear" of returning to their country.

The purpose of the credible fear interview is to determine if there is a significant possibility that the immigrant could be eligible for asylum. During the credible fear interview, the officer will ask the asylum applicant many questions about their fear, who they are afraid of and why.

The interview is typically conducted by an asylum officer, often by video. A lawyer can be participated, typically by telephone.

If the asylum officer finds that there is not a sufficient credible fear of harm based on one of the five statutory grounds, the applicant can ask for the opportunity to appeal the ruling before an immigration court. However, the asylum seeker will remain in custody while he or she goes through further appeals of the denial of asylum. Typically, future courts affirm the denial of credible fear and the person is ultimately deported.

Even if the applicant is successful and convinces the asylum officer that he or she has a credible fear of persecution during the CFI interview, they are still placed in deportation proceedings before an immigration court, where they must convince a judge that their “credible fear” rises to the level of a “well-founded fear”, a higher standard of proof. If they fail to do so, they are also deported.

Part Two of this series will cover the asylum process before an immigration judge

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About the author:

Christopher A. Kerosky of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine “Super Lawyers” edition (2006-2012). 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.

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