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**Article: SEEKING ASYLUM: Part Two: Applying for Asylum in Court**

**By:** Christopher A. Kerosky

This is the second installment in a series about the asylum process for the many citizens of Mexico and Central America coming to our U.S. border to seek refuge from violence and persecution. That first step, covered last month, is the interview conducted by an asylum officer at the border. This article will describe the second step – the immigration court process.

In order to stay in the United States (and eventually permanent residency), asylum seekers must prove to an Immigration Judge that they have a “well founded fear” that they will be persecuted if they were forced to return to their countries of origin.

The applicant needs to demonstrate that he or she has a fear of future persecution on account of race, religion, nationality, political opinion or membership to a particular social group.

To obtain such protection from U.S. authorities, the asylum applicant should prepare an application known as I-589, and file it before an Immigration Judge. The application should include declarations from the applicant and other witnesses and other detailed information as to why the applicant fears returning to his home country. All of the information should be true; otherwise, the immigrant can be accused of presenting a “frivolous” application, which carries serious penalties.

The chances of obtaining asylum are greater if the application is filed within one year (365 days) from the applicant's entry into the United States. If this is not possible, then the applicant needs to demonstrate that the delay in the filing was due to extraordinary circumstances or that that the application was filed within a reasonable time after a change of circumstances that make the applicant eligible for asylum.

The asylum process could take approximately from six months to six years, depending on the judge's calendar and the backlog in the courts generally. I have been representing clients in asylum proceedings since 1988 and over the years, I've handled more than 1000 asylum cases. Over that time, the length of time asylum applicants wait for a hearing has steadily increased, recently averaging about 5 years. However, the Trump Administration is attempting to increase the number of judges and expedite the process, especially for new applicants.

At the end of the immigration court case, a trial is held before a judge where the applicant is able to give testimony and present evidence favorable to his or her case. After the asylum applicant presents their case, the government's attorney is given the opportunity to convince

the judge that the applicant is not eligible for asylum in the United States. Normally, the judge renders a decision at the end of such hearing.

If the judge denies the request for asylum, the applicant may appeal the decision with the Board of Immigration Appeals (BIA) and thereafter before the federal Court of Appeals. During the time the appeals are pending, the applicant can remain in the U.S. legally.

If the judge decides to grant the individual asylum, he or she can remain in the United States indefinitely. One year after being granted asylum, the applicant and their qualified relatives can apply for Permanent Residency.

The asylum process is often long, complicated and stressful. Despite some common misconceptions to the contrary, it is generally very difficult for asylum seekers to stay in this country. However, if they present their case well, asylum seekers can often succeed in convincing a judge that they deserve refuge from the growing violence and persecution in Mexico and Central America.

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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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