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SUMMARY

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Development of the U.S. Asylum System: In Brief

The Immigration and Nationality Act (INA), as originally enacted in 1952, did not address the form of humanitarian protection known as asylum. Asylum provisions were first added to the INA by the Refugee Act of 1980, but they were not a primary focus of that act. Instead, that measure focused on the U.S. admission and resettlement of foreign nationals who had applied for refugee status and been approved abroad. Among other provisions, the Refugee Act included a definition of a "refugee" as a person who was generally outside their country of nationality and was unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

The original INA asylum provisions (INA §208) comprised three short paragraphs. The first directed the U.S. Attorney General to establish asylum application procedures for foreign nationals who were physically present in the United States or were arriving at a land border or port of entry, regardless of their immigration status, and gave the Attorney General discretionary authority to grant asylum to persons who met the newly added INA definition of a refugee. The second paragraph allowed for the termination of asylum status in certain circumstances. The third provided for the granting of asylum status to the spouse and children of a principal applicant granted asylum. The Refugee Act also provided for persons granted refugee status and asylum (asylees) to become U.S. lawful permanent residents (LPRs) through the adjustment of status process. The asylee adjustment of status provisions granted the Attorney General discretionary authority to grant LPR status to a person who had been physically present in the United States for at least one year after being granted asylum and met other requirements.

Laws enacted in the 1990s revised INA asylum-related provisions and added new provisions. The Violent Crime Control and Law Enforcement Act of 1994 added a new provision to Section 208 stating that an asylum applicant could be granted employment authorization by regulation at the Attorney General's discretion. Two years later, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 overhauled the U.S. asylum system. It amended INA Section 208 to, among other changes, add new restrictions on applying for and receiving asylum. It established a new immigration enforcement mechanism known as *expedited removal*, which required certain asylum seekers to show that they had a *credible fear of persecution* in order to pursue an asylum application—or be subject to removal without any further hearings or review. IIRIRA also added a new provision on *withholding of removal* to the INA, which provided that the Attorney General could not remove a foreign national to a country if the Attorney General decided that the person's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion, subject to specified exceptions.

Subsequent laws made further changes to the INA provisions on asylum and withholding of removal. The Real ID Act of 2005 amended Section 208's language on conditions for granting asylum to add "burden of proof" provisions and to set forth standards for making a determination about an applicant's credibility. It similarly added language on burden of proof and credibility determinations to the withholding of removal provision. Most recently, P.L. 119-21 amended INA Section 208 to mandate the imposition of fees for asylum applications and related applications and, separate from the INA, set various additional asylum-related fees.

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Introduction

Multiple bills introduced and considered in recent Congresses have proposed changes to the U.S. asylum system. The most recent legislative changes were made by the 2025 reconciliation act.[1] This act amends the asylum provisions in the Immigration and Nationality Act (INA)[2] with respect to fees for asylum applications and related applications for employment authorization and adjustment of status.

Asylum provisions first became part of the INA with the enactment of the Refugee Act of 1980.[3] Subsequent laws, particularly the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,[4] revised existing INA asylum-related provisions and added new provisions. This report traces the development of the asylum system through these statutory changes. It does not cover the Department of Justice (DOJ) immigration courts.[5]

INA Amendments of 1965

The INA, as originally enacted, did not contain provisions on asylum or the related concept of refugee status. Language on the *conditional entry* of refugees was added by the INA Amendments of 1965.[6] The 1965 act authorized the conditional entry of aliens,[7] including persons who demonstrated to the then-Immigration and Naturalization Service (INS)[8] of the Department of Justice (DOJ) that

> (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made.[9]

The 1965 act also amended an existing INA provision on *withholding of deportation* (former INA §243(h)). This provision, which was in the original INA of 1952, authorized the U.S. Attorney General to withhold the deportation of any alien in the United States to any country where the

[1] P.L. 119-21.

[2] The INA is Act of June 27, 1952, ch. 477, codified, as amended, at 8 U.S.C. Sections 1101 et seq. It is a comprehensive compilation of U.S. immigration law.

[3] P.L. 96-212.

[4] IIRIRA is Division C of P.L. 104-208.

[5] For a discussion of asylum and the immigration courts, see CRS Report R47504, *Asylum Process in Immigration Courts and Selected Trends*. This report also does not cover protections under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was signed by the United States on April 18, 1988, and entered into force for the United States on November 20, 1994. U.S. Department of State, Office of Treaty Affairs, "Multilateral (94-1120.1) – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," November 20, 1994. For a discussion of U.S. asylum-related CAT protections, see CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

[6] P.L. 89-236, §3. As the term suggests, persons granted conditional entry were not admitted permanently. The 1965 Act separately added language to the INA to enable conditional entrants to become permanent residents.

[7] "Alien" is the term used in the INA for any person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). In this report, the terms *alien* and *foreign national* are used interchangeably.

[8] INS, which had been an agency of the Department of Justice with primary responsibility for administering and enforcing immigration laws, was abolished in 2003 in accordance with the Homeland Security Act of 2002 (P.L. 107-296). Most INS functions were transferred to the new Department of Homeland Security.

[9] P.L. 89-236, §3.

Attorney General believed the alien "would be subject to physical persecution." The 1965 act revised this language to replace "physical persecution" with "persecution on account of race, religion, or political opinion." A subsequent 1978 public law made the withholding of deportation authority inapplicable to aliens who were described in a new INA deportability ground it added that covered persons who, during the 1933-1945 period, participated in Nazi-related persecutions of others on account of race, religion, national origin, or political opinion.[10]

Refugee Act of 1980

In 1968, the United States acceded to the 1967 UN Protocol Relating to the Status of Refugees (Protocol). The Protocol incorporated the 1951 UN Convention Relating to the Status of Refugees (Convention), which the United States had not previously been a party to, and expanded the Convention's definition of a refugee.[11] The Convention, which defined a refugee in terms of events occurring before January 1951, was "essentially limited to protecting European refugees in the aftermath of the Second World War."[12] The Protocol eliminated the date restriction. It also generally provided that the refugee definition would apply without geographic limitation.[13] With these changes, a refugee came to be defined as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."[14]

The Protocol retained other elements of the Convention, including the latter's prohibition on *refoulement* (or forcible return). Specifically, the Convention prohibited contracting states from expelling or returning a refugee "to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[15]

Despite the U.S. accession to the 1967 Protocol, the INA did not include a UN-conforming definition of a refugee or a mandatory nonrefoulement provision until the enactment of the Refugee Act of 1980.[16] As noted, the 1965 conditional entry provisions incorporated a refugee definition that was limited by type of government and geography. A 1999 INS report explained that a goal of the Refugee Act was "to establish a politically and geographically neutral adjudication for both asylum status and refugee status, a standard to be applied equally to all applicants regardless of country of origin."[17]

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[10] P.L. 95-549, §103, amending INA §241(a), and §104, amending then-INA §243(h).

[11] The texts of the 1951 Convention and 1967 Protocol are available at United Nations High Commissioner for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees*, http://www.unhcr.org/en-us/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html.

[12] UNHCR, "The 1951 Refugee Convention," response to "What is the difference between the 1951 Convention and its 1967 Protocol?" https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention.

[13] 1967 Protocol Relating to the Status of Refugees, Article I.

[14] 1951 Convention Relating to the Status of Refugees, Article I(A)(2), as amended by the 1967 Protocol Relating to the Status of Refugees, Article I, paragraph (2).

[15] 1951 Convention Relating the Status of Refugees, Article 33. Under Article 33, the nonrefoulement provision is inapplicable to a refugee who poses a danger to the security or the community of the country in which they are living.

[16] P.L. 96-212.

[17] U.S. Department of Justice, Immigration and Naturalization Service Asylum Program, *History of the United States INS Asylum Officer Corps and Sources of Authority for Asylum Adjudication*, September 1999 (available to congressional staff upon request).

The main part of the INA definition of a refugee, added by the 1980 act as INA Section 101(a)(42)(A), read, as follows:

> (A) any person who is outside any country of such person's nationality ... 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, or political opinion.[18]

(This language remains in current law.)

Asylum

As explained by then-INS Acting Commissioner Doris Meissner at a 1981 Senate hearing, the primary focus of the Refugee Act of 1980 was the overseas refugee admissions process. According to Meissner's written testimony, "The asylum process [for persons in or arriving in the United States] was looked upon as a separate and considerably less significant subject."[19]

In keeping with this secondary standing, the asylum provisions added by the 1980 act to the INA (INA §208) comprised three short paragraphs. The first directed the Attorney General to establish asylum application procedures for aliens physically present in the United States or arriving at a land border or port of entry, regardless of their immigration status, and gave the Attorney General discretionary authority to grant asylum to aliens who met the newly added INA definition of a refugee. The second paragraph allowed for the termination of asylum status if the Attorney General determined that the alien no longer met the INA definition of a refugee due to "a change in circumstances" in the alien's home country. The third paragraph provided for the granting of asylum status to the spouse and children[20] of an alien granted asylum.[21]

Asylee Adjustment of Status

Separate language in the Refugee Act added a new Section 209 to the INA on refugee and asylee adjustment of status. [22] Adjustment of status is the process of applying for and acquiring lawful permanent resident (LPR) status while in the United States. In the case of asylees, the adjustment of status provisions granted the Attorney General discretionary authority to adjust the status of a foreign national who had been physically present in the United States for at least one year after being granted asylum and met other requirements, subject to an annual numerical limit of 5,000[23] (as detailed below, this cap was subsequently increased and then eliminated).

Withholding of Deportation

The Refugee Act amended then-INA Section 243(h) on withholding of deportation to make it consistent with the nonrefoulement language in the Convention. As revised, this provision

[18] INA §101(a)(42)(A), as added by §201(a) of the Refugee Act.

[19] Testimony of Doris Meissner, INS Acting Commissioner, in U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy, *How Do We Determine Who Is Entitled to Asylum in the United States and Who Is Not?* hearing, 97th Cong., 1st sess., October 14, 1981 (GPO, 1982), p. 6.

[20] The word *child*, as defined in the INA and as used in this report, refers to an unmarried person under age 21. See INA §101(b)(1) (8 U.S.C. §1101(b)(1)) for the full definition of *child*.

[21] P.L. 96-212, §201(b), adding new INA §208 (8 U.S.C. §1158).

[22] P.L. 96-212, §201(b), adding new INA §209 (8 U.S.C. §1159).

[23] P.L. 96-212, §201(b), adding new INA §209 (8 U.S.C. §1159).

prohibited the Attorney General from deporting or returning any alien to a country where the Attorney General determined the alien's life or freedom would be threatened because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.[24]

The Refugee Act also added exceptions beyond the existing one for participation in Nazi-related persecutions mentioned above. Specifically, the new provision made an alien ineligible for withholding of deportation if (1) the alien had participated in the persecution of another person based on race, religion, nationality, membership in a particular social group, or political opinion; (2) the alien had been convicted of a "particularly serious crime" and thus was a danger to the United States; (3) there existed "serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States"; or (4) there existed "reasonable grounds" for considering the alien a danger to national security.[25] (For information about the successor to this INA provision, see the "Withholding of Removal" section.)

1990, 1994, and 1996 Acts

The Immigration Act of 1990,[26] the Violent Crime Control and Law Enforcement Act of 1994,[27] and the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996[28] made several changes to the asylum-related provisions in the INA.

The 1990 act amended INA Section 209 to increase the annual numerical limitation on asylee adjustment of status from 5,000 to 10,000.[29] It added new language to INA Section 208, making an alien who had been convicted of a crime categorized as an *aggravated felony* under the INA ineligible to apply for or to be granted asylum.[30] It also added language to the INA provision on withholding of deportation to make aggravated felons ineligible for that form of relief.[31] The 1994 act amended INA Section 208 to state that an asylum applicant was not entitled to employment authorization except as may be provided at the discretion of the Attorney General by regulation.[32]

AEDPA amended INA Section 208 to prohibit the Attorney General from granting asylum to an alien described in specified INA terrorism-related grounds of exclusion or deportability.[33] It also made other changes related to the then-INA grounds of exclusion—which enumerated classes of foreign nationals who were ineligible for visas and were to be excluded from admission—that were relevant to asylum. While the concept of exclusion generally applied to persons who had not physically entered the United States, AEDPA provided that a foreign national within the United States who had not been inspected and admitted would be subject to exclusion.[34] Other provisions

[24] P.L. 96-212, §203(e), amending then-INA §243(h).

[25] P.L. 96-212, §203(e), amending then-INA §243(h).

[26] P.L. 101-649.

[27] P.L. 103-322.

[28] P.L. 104-132.

[29] P.L. 101-649, §104(a), amending INA §209(b) (8 U.S.C. §1159(b)).

[30] P.L. 101-649, §515(a)(1), adding new INA §208(d) (8 U.S.C. §1158(d)). See INA §208(b)(2)(B)(i) (8 U.S.C. §1158(b)(2)(B)(i)) for the current asylum provision on aggravated felony convictions, and INA §101(a)(43) (8 U.S.C. §1101(a)(43)) for the current definition of *aggravated felony*.

[31] P.L. 101-649, §515(a)(2), amending then-INA §243(h)(2).

[32] P.L. 103-322, §130005(b), adding new INA §208(e) (8 U.S.C. §1158(e)).

[33] P.L. 104-132, §421(a), amending INA §208(a) (8 U.S.C. §1158(a)).

[34] P.L. 104-132, §414(a), adding new INA §241(d).

in AEDPA set forth a streamlined exclusion process for certain foreign nationals seeking U.S. entry,[35] which IIRIRA would build upon in establishing the expedited removal process.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

IIRIRA significantly revised and expanded the INA's asylum provisions. It also made a number of other changes to the INA relevant to asylum policy. For the most part, the IIRIRA amendments remain in statute.

One set of changes, which had broad implications for the immigration system generally, concerned the INA grounds of exclusion, which, as noted, enumerated classes of foreign nationals who were ineligible for visas and were to be excluded from admission. IIRIRA amended these provisions and replaced the concept of an excludable alien with that of an *inadmissible* alien—inadmissibility being applicable to a person who, whether outside or inside the United States, had not been lawfully admitted to the country. In general, with the enactment of IIRIRA, foreign nationals became ineligible for visas or admission if they were described in the new INA grounds of inadmissibility.[36]

Asylum

IIRIRA added restrictions to the general policy set forth in the 1980 Refugee Act and incorporated into INA Section 208 that a foreign national who was present in the United States or who arrived in the United States, regardless of immigration status, could apply for asylum. In general, IIRIRA amended the INA to provide that a foreign national was not eligible to apply for asylum unless the alien could show that they had filed the application within one year of arriving in the United States. An alien was also generally ineligible to apply if they had previously had an asylum application denied. There was an exception to both restrictions for applicants who could show "changed circumstances which materially affect the applicant's eligibility for asylum," and an additional exception to the time-limit requirement for applicants who could show "extraordinary circumstances" related to the filing delay.[37] IIRIRA also made a foreign national ineligible to apply for asylum if the Attorney General determined that the alien could be removed, pursuant to a bilateral or multilateral agreement, to a safe third country where the individual would be considered for asylum or equivalent temporary protection.[38]

IIRIRA revised or added new INA Section 208 language on asylum application fees and processing, employment authorization, and frivolous applications. These amendments authorized, but did not require, the Attorney General to impose fees on asylum applications and related applications for employment authorization and adjustment of status[39] (see the "2025 Reconciliation Act" section for later developments). The IIRIRA amendments added asylum processing-related time frames to the INA, requiring that "in the absence of exceptional circumstances," administrative adjudication of an asylum application be completed within 180

[35] P.L. 104-132, §422(a), amending INA §235(b) (8 U.S.C. §1225(b)).

[36] The grounds of inadmissibility are codified at INA §212(a) (8 U.S.C. §1182(a)). For additional information, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

[37] P.L. 104-208, Div. C, §604(a), amending INA §208. INA §208(a)(2)(B)-(D) (8 U.S.C. §1158(a)(2)(B)-(D)).

[38] P.L. 104-208, Div. C, §604(a). INA §208(a)(2)(A) (8 U.S.C. §1158(a)(2)(A)).

[39] P.L. 104-208, Div. C, §604(a). INA §208(d)(3) (8 U.S.C. §1158(d)(3)).

days after the filing date.[40] They also required that the identity of asylum applicants be checked against "all appropriate records or databases maintained by the Attorney General and by the Secretary of State."[41] Regarding employment authorization, IIRIRA added language to the INA to prohibit the granting of employment authorization earlier than 180 days after the filing of the asylum application to an asylum applicant if the applicant was not otherwise eligible for such authorization.[42] It also permanently barred a foreign national who knowingly filed a frivolous asylum application after being notified of the consequences for doing so, from receiving any benefits under the INA.[43]

IIRIRA amended INA Section 208 to establish additional grounds for denying an asylum application. Echoing the exceptions language added to the INA withholding of deportation provision by the Refugee Act, the new IIRIRA asylum denial grounds included an applicant's participation in the persecution of another person, an applicant's conviction for a "particularly serious crime," "serious reasons for believing the alien has committed a serious nonpolitical crime outside the United States," and "reasonable grounds" for considering the alien a danger to national security.[44] Other grounds for denying asylum that IIRIRA added to the INA were an applicant's inadmissibility or removability based on certain terrorist-related grounds and an applicant's firm resettlement in another country prior to arrival in the United States.[45] IIRIRA also provided that the Attorney General could establish additional ineligibilities for asylum by regulation that were consistent with the INA's asylum provisions.[46] These IIRIRA amendments remain a part of the INA, although, as discussed below, the language on terrorist-related grounds for denying asylum has since been revised.

IIRIRA amended the INA Section 208 language on termination of asylum to state that the granting of asylum "does not convey a right to remain permanently in the United States."[47] It also added new grounds for terminating asylum. These included a determination by the Attorney General that the asylee met one of the grounds for denying asylum noted in the preceding paragraph. Among IIRIRA's other new termination grounds was a determination by the Attorney General, analogous to the "safe third country" determination described above, that the alien could be removed, pursuant to a bilateral or multilateral agreement, to a safe third country where the alien would be eligible for asylum or equivalent temporary protection.[48]

Definition of a Refugee

IIRIRA amended the INA definition of a "refugee" to cover individuals subject to "coercive population control."[49] It provided that for purposes of meeting the definition of a refugee, an individual who had been forced to have an abortion or undergo sterilization or had been

[40] P.L. 104-208, Div. C, §604(a). INA §208(d)(5)(A)(iii) (8 U.S.C. §1158(d)(5)(A)(iii)).

[41] P.L. 104-208, Div. C, §604(a). INA §208(d)(5)(A)(i) (8 U.S.C. §1158(d)(5)(A)(i)).

[42] P.L. 104-208, Div. C, §604(a). INA §208(d)(2) (8 U.S.C. §1158(d)(2)).

[43] P.L. 104-208, Div. C, §604(a). INA §208(d)(6) (8 U.S.C. §1158(d)(6)).

[44] P.L. 104-208, Div. C, §604(a). INA §208(b)(2)(A)(i)-(iv) (8 U.S.C. §1158(b)(2)(A)(i)-(iv)). IIRIRA also provided that an alien who had been convicted of an aggravated felony would be considered to have been convicted of a particularly serious crime. INA §208(b)(2)(B)(i) (8 U.S.C. §1158 (b)(2)(B)(i)).

[45] P.L. 104-208, Div. C, §604(a). INA §208(b)(2)(A)(v)-(vi) (8 U.S.C. §1158 (b)(2)(A)(v)-(vi)).

[46] P.L. 104-208, Div. C, §604(a). INA §208(b)(2)(C) (8 U.S.C. §1158(b)(2)(C)).

[47] P.L. 104-208, Div. C, §604(a). INA §208(c)(2) (8 U.S.C. §1158(c)(2)).

[48] P.L. 104-208, Div. C, §604(a). INA §208(c)(2) (8 U.S.C. §1158(c)(2)).

[49] P.L. 104-208, Div. C, §601(a)(1), amending INA §101(a)(42) (8 U.S.C. §1101(a)(42)). This amendment did not make changes to INA §101(a)(42)(A).

persecuted for resistance to a coercive population control program would be considered to have been persecuted on the basis of political opinion. Similarly, an individual with a well-founded fear that they would be forced to undergo such a procedure or would be persecuted for resistance to a coercive population control program would be considered to have a well-founded fear of persecution on the basis of political opinion.

Expedited Removal

IIRIRA amended the provisions on the inspection of aliens by immigration officers in INA Section 235 to establish a new immigration enforcement mechanism known as *expedited removal*. In general, under expedited removal, if an immigration officer determines that an arriving foreign national is inadmissible to the United States because the individual lacks proper entry documents or attempted to procure U.S. admission through fraud or misrepresentation, the individual may be removed from the United States without any further hearings or review, unless the alien indicates either an intention to apply for asylum or a fear of persecution.[50]

Under the INA, as amended by IIRIRA, this expedited removal procedure applies to *arriving aliens*, a term defined in regulations to include aliens who arrive at a U.S. port of entry.[51] Expedited removal also can be applied to any other alien, as designated by the Attorney General (now the Secretary of the Department of Homeland Security [DHS][52]), if that person has not been admitted or paroled into the United States and "has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility."[53] Using this statutory authority, expedited removal has been applied to classes of foreign nationals beyond arriving aliens in the years since the enactment of IIRIRA.[54]

Under the IIRIRA amendments to INA Section 235(b)(1), which remain in law, a foreign national who is subject to expedited removal and expresses an intent to apply for asylum or a fear of persecution is to be interviewed by an asylum officer to determine if the individual has a *credible fear of persecution*.[55] "Credible fear of persecution" is defined to mean that "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish

[50] P.L. 104-208, Div. C, §302(a), amending INA §235 (8 U.S.C. §1225). For additional discussion, see CRS Report R45314, *Expedited Removal of Aliens: Legal Framework*.

[51] INA §235(b)(1)(A)(i) (8 U.S.C. §1225(b)(1)(A)(i)). Under 8 C.F.R. §1.2, "*Arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."

[52] As noted, in accordance with the Homeland Security Act of 2002 (P.L. 107-296), most functions of the former INS were transferred to the new Department of Homeland Security in 2003.

[53] P.L. 104-208, Div. C, §302(a). INA §235(b)(1)(A)(iii) (8 U.S.C. §1225(b)(1)(A)(iii)).

[54] For additional information, see CRS Legal Sidebar LSB10336, *The Department of Homeland Security's Authority to Expand Expedited Removal*.

[55] P.L. 104-208, Div. C, §302(a). INA §235(b)(1)(B)(i), (ii) (8 U.S.C. §1225(b)(1)(B)(i), (ii)). Special procedures apply to aliens arriving in the United States at the U.S.-Canada border in accordance with the U.S.-Canada Safe Third Country Agreement. For additional information, see "United States and Canada Announce Efforts to Expand Lawful Migration Processes and Reduce Irregular Migration," March 24, 2023 (archived content), https://www.dhs.gov/archive/news/2023/03/24/united-states-and-canada-announce-efforts-expand-lawful-migration-processes-and.

eligibility for asylum."[56] If found to have a credible fear, the alien is typically placed in formal removal proceedings and may pursue asylum and related protections during those proceedings.[57]

IIRIRA also provided for the detention of foreign nationals who were placed in expedited removal and were seeking asylum. It added a "mandatory detention" provision to INA Section 235(b)(1) that stated that such persons "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."[58] Regarding asylum seekers who were found to have a credible fear, IIRIRA added language to INA Section 235(b) providing that such individuals "shall be detained for further consideration of the application for asylum."[59]

Withholding of Removal

As part of a larger set of changes to the INA replacing the concept of deportation with the concept of removal, IIRIRA added a provision to replace the existing INA provision on withholding of deportation.[60] The IIRIRA language, which provided for what is known as *withholding of removal* and which remains in current law, stated that, in general, "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."[61] It included the same four exceptions that were added to the withholding of deportation provision by the Refugee Act of 1980 (see the "Withholding of Deportation" section). As noted, the withholding of deportation provision was also inapplicable to aliens who were described in the INA deportability ground that covered participation in Nazi-related persecutions. IIRIRA's withholding of removal provision similarly included an exception for persons covered by this deportability ground; at the time of IIRIRA's enactment, this ground covered participation in both Nazi-related persecutions and genocide.[62] (As discussed below, the REAL ID Act of 2005 further amended the INA withholding of removal provision.)

Post-1996 Statutory Changes

The basic structure of the U.S. asylum system, as revised by IIRIRA, remains in place. Subsequent laws, however, have made further changes to the INA provisions on asylum and withholding of removal. The changes described below remain part of current law, unless otherwise noted.

[56] P.L. 104-208, Div. C, §302(a). INA §235(b)(1)(B)(v) (8 U.S.C. §1225(b)(1)(B)(v)).

[57] For additional information, see CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

[58] P.L. 104-208, Div. C, §302(a). INA §235(b)(1)(B)(iii)(IV) (8 U.S.C. §1225(b)(1)(B)(iii)(IV)).

[59] P.L. 104-208, Div. C, §302(a). INA §235(b)(1)(B)(ii) (8 U.S.C. §1225(b)(1)(B)(ii)). For further discussion of these provisions, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*.

[60] P.L. 104-208, Div. C, §305(a)(3), adding a new INA §241(b)(3) (8 U.S.C. §1231(b)(3)).

[61] INA §241(b)(3)(A) (8 U.S.C. §1231(b)(3)(A)).

[62] The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5501(a)) subsequently expanded this ground of deportability to also cover the commission of torture or extrajudicial killings, thereby making persons who participated in these acts ineligible for withholding of removal.

USA PATRIOT Act of 2001

The USA PATRIOT Act,[63] which was enacted in the aftermath of the 9/11 terrorist attacks, amended the INA terrorism-related grounds of inadmissibility, including grounds applicable to asylum applicants. It established a new terrorism-related ground for foreign nationals who used their position within any country "to endorse or espouse terrorist activity," or persuade others to do so, "in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities"[64] and added it to the list of grounds for denying asylum in INA Section 208(b).[65] (This inadmissibility ground was later revised.[66])

Child Status Protection Act

Since being added to the INA in 1980, the Section 208 asylum provisions have authorized the granting of asylum to the derivative spouse or child of a person granted asylum; "child," as noted, refers to an unmarried person under age 21. Prior to the 2002 enactment of the Child Status Protection Act (CSPA),[67] a person who applied for asylum as the child of a principal applicant had to continue to meet the definition of a child to receive asylum. If the child turned 21 before being approved for asylum (known as "aging out"), that person could not receive asylum based on their parent's application.[68] The CSPA addressed this issue by amending INA Section 208 to provide that a person who was under age 21 on the date their parent applied for asylum "shall continue to be classified as a child ... if the alien attained 21 years of age ... while [the application] was pending."[69]

Real ID Act of 2005

The Real ID Act of 2005[70] amended INA provisions related to asylum, withholding of removal, and asylee adjustment of status. It expanded the INA terrorism-related grounds of inadmissibility and deportability, some of which were applicable to asylum applicants under Section 208.[71] It added "burden of proof" provisions to Section 208's language on conditions for granting asylum. These provisions required an asylum applicant to show that "race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant" in order to meet the definition of a refugee. They also set forth standards for making a determination about an applicant's credibility.[72] Likewise, the REAL ID Act added language to the INA withholding of removal provision to require DOJ immigration judges to determine whether an applicant for withholding had sustained their burden of proof and

[63] P.L. 107-56.

[64] P.L. 107-56, §411(a)(1)(A)(iii), amending INA §212(a)(3)(B)(i) (8 U.S.C. §1182(a)(3)(B)(i)).

[65] P.L. 107-56, §411(b)(2), amending INA §208(b)(2)(A)(v) (8 U.S.C. §1158 (b)(2)(A)(v)).

[66] The current text is codified at INA §212(a)(3)(B)(i)(VII) (8 U.S.C. §1182(a)(3)(B)(i)(VII)).

[67] P.L. 107-208.

[68] For additional information, see DHS, U.S. Citizenship and Immigration Services (USCIS), "Child Status Protection Act (CSPA)," August 15, 2025.

[69] P.L. 107-208, §4, amending INA §208(b)(3) (8 U.S.C. §1158(b)(3)).

[70] The Real ID Act is Division B of P.L. 109-13.

[71] P.L. 109-13, Div. B, §103, amending INA §212(a)(3)(B) (8 U.S.C. §1182(a)(3)(B)), and §105(a), amending INA §237(a)(4)(B) (8 U.S.C. §1227(a)(4)(B)).

[72] P.L. 109-13, Div. B, §101(a)(3), amending INA §208(b)(1) (8 U.S.C. §1158(b)(1)).

to make credibility determinations as described in Section 208.[73] In addition, this act eliminated the annual caps on asylee adjustment of status.[74]

Consolidated Natural Resources Act of 2008

The Consolidated Natural Resources Act of 2008[75] generally provided for U.S. immigration laws to be extended to the Commonwealth of the Northern Mariana Islands (Commonwealth; CNMI), a U.S. territory. Section 702(a) of the act authorized a transition period during which the DHS Secretary, in consultation with other U.S. officials, would administer "a transition program to regulate immigration to the Commonwealth." Regarding asylum, this section stated that INA Section 208 "shall not apply during the transition period to persons physically present in the Commonwealth or arriving in the Commonwealth (whether or not at a designated port of arrival)." The act also amended the INA. It added a new Section 208(e) that provided that Section 208 and Section 209(b) on asylee adjustment of status would apply to persons physically present in or arriving in the CNMI "only on or after January 1, 2014."[76] It added a similar new provision to INA Section 235(b) that stated, "Nothing in this subsection shall be construed to authorize or require any person described in section 208(e) to be permitted to apply for asylum under section 208 at any time before January 1, 2014."[77]

Trafficking Victims Protection Reauthorization Act of 2008

The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008[78] amended the INA to address asylum applications by *unaccompanied alien children* in the United States.[79] It made certain statutory restrictions on applying for asylum, such as the one-year time limit, inapplicable to these children.[80] It further provided that an asylum officer would have initial jurisdiction over any asylum application filed by an unaccompanied child.[81]

[73] P.L. 109-13, Div. B, §101(c), amending INA §241(b)(3) (8 U.S.C. §1231(b)(3)).

[74] P.L. 109-13, Div. B, §101(g)(1)(B), amending INA §209(b) (8 U.S.C. §1159(b)).

[75] P.L. 110-229, §702(a).

[76] P.L. 110-229, §702(j)(4), amending INA §208 (8 U.S.C. §1158).

[77] P.L. 110-229, §702(j)(5), amending INA §235(b) (8 U.S.C. §1225(b)). As of the cover date of this report, the transition period is scheduled to end on December 31, 2029. 48 U.S.C. §1806(a)(2). According to DHS, the "bar [on asylum eligibility for foreign nationals in or arriving in the CNMI] will be lifted on Jan. 1, 2030." DHS, USCIS, "U.S. Immigration Law in the Commonwealth of the Northern Mariana Islands (CNMI)," January 24, 2025.

[78] P.L. 110-457.

[79] An "unaccompanied alien child" is defined as a person who is under age 18, does not have lawful immigration status in the United States, and does not have a parent or legal guardian in the United States who is available to provide care and physical custody. 6 U.S.C. §279(g)(2). The asylum process for unaccompanied alien children is not covered in this report. For related information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

[80] P.L. 110-457, §235(d)(7)(A), amending INA §208(a)(2) (8 U.S.C. §1158(a)(2)).

[81] P.L. 110-457, §235(d)(7)(B), amending INA §208(b)(3) (8 U.S.C. §1158(b)(3)).

Laken Riley Act

As discussed, INA Section 235(b)(1), as amended by IIRIRA, includes language on the detention of foreign nationals who are placed in expedited removal and are seeking asylum. For example, it calls for the "mandatory detention" of such asylum seekers until it is determined whether they have a "credible fear of persecution"; those found to have a credible fear typically can pursue an asylum claim in immigration court (see the "Expedited Removal" section). The Laken Riley Act[82] adds language to Section 235(b) to grant state attorneys general the right to sue the Secretary of Homeland Security in U.S. district court for alleged violations of the Section 235(b) "detention and removal requirements" that harm their states. These detention and removal provisions include the "mandatory detention" language described above as well as other provisions that pertain to persons who are placed in expedited removal and are seeking asylum.

2025 Reconciliation Act

The 2025 reconciliation act amends INA Section 208 to mandate the imposition of fees on asylum applications and related applications for employment authorization and adjustment of status.[83] The prior language, enacted as part of IIRIRA, authorized, but did not require, the imposition of fees on these types of applications. The reconciliation act also sets various asylum-related fee amounts for FY2025, provides for their annual adjustment for inflation in subsequent years, and prescribes the disposition of the fee proceeds. These fees are in addition to any other existing fees and cannot be reduced or waived. The act requires an individual to pay a fee for filing an asylum application and a separate fee for each calendar year that the application remains pending.[84] It imposes a fee on an initial employment authorization application and each renewal application filed by an asylum applicant.[85] In addition, the act imposes other fees that are not asylum-specific but may impact asylum applicants. For example, it requires the payment of a fee "by any alien at the time such alien files an appeal from a decision of an immigration judge" or "an appeal of a decision of an officer of the Department of Homeland Security."[86]

Conclusion

There continues to be active debate about the meaning of existing asylum-related statutory provisions and the types of policies they authorize. There also continues to be congressional interest in legislating further changes to the asylum system, as evidenced by the enactment of the two 2025 asylum-related measures discussed in this report. In addition, in recent years, Congress has considered other measures that proposed fundamental changes to the U.S. asylum system. In the 118th Congress, for example, the House and Senate, respectively, considered the Secure the Border Act of 2023 (H.R. 2) and the Border Act of 2024 (S. 4361), with the former gaining House passage. It has been 30 years since IIRIRA overhauled the INA's asylum-related provisions. It remains to be seen if and when there may be new large-scale statutory changes.

[82] P.L. 119-1, §3(a), amending INA §235(b) (8 U.S.C. §1225(b)).

[83] P.L. 119-21, Title X, §100018, amending INA §208(d)(3) (8 U.S.C. §1158(d)(3)).

[84] P.L. 119-21, Title X, §100002, §100009.

[85] P.L. 119-21, Title X, §100003(a), §100011.

[86] P.L. 119-21, Title X, §100013(d), (e).

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