

## **DEPORTATION/ REMOVAL DEFENSE**

Deportation or Removal Defense is a very complex issue that is emotionally draining which impacts immigrants and their loved ones on a daily basis. For those undocumented individuals, this is one of the most frightening thing a person can face if he or she gets arrested by immigration detention officials and being ordered to leave the United States, leaving behind your children, home, and job. Every year, thousands of families are torn apart because of the said removal proceedings. Indeed, to have received a notice to appear before an Immigration Court is a very serious matter. Your future is at stake.

Immigration is under the administrative law. Its rules and procedures are unique and very complicated, making it extremely important for an individual who faces deportation or removal seriously consider seeking the assistance of a highly skilled deportation defense attorney. Removal proceedings, whether base on inadmissibility or deportability, affect your ability to remain in the United States as well as your ability to come back to the United States in the future.

If you or any of your family member has been detained, it is important to remember that even undocumented immigrants have rights, too. The United States government cannot remove you without due process of law. Having said that, you will have to present yourself in a removal hearing in an Immigration Court with your trusted defense attorney to be and present the strongest defense possible.

First of all, let us begin with the process. What is the court process anyway? In a nutshell, the process goes as follows:

1. The government presents the "NTA" - The NTA is the "Notice to Appear" or notice to appear before the court, as the demand for deportation. Any civil suit (not criminal) is an opportunity to answer the allegations.
2. Attend master calendar hearing. This is a hearing to answer the allegations in the NTA. Think of it as a status hearing. Typically at this stage pleadings are taken.
3. If eligible, it is always a good idea to see if someone is eligible for bond. This is a deposit delivered to the court to ensure someone's appearance in court. Everyone is entitled to ask for a bond except for those with previous deportations or certain crimes.
4. Individual Hearing - This is a hearing on whether the immigrant can show if they are eligible for the relief requested.

Now, if we take the deportation hearing and place it into context, what could be some reasons for why the United States government desires/is mandated to remove/deport someone from the United States? Consider the following:

1. Crimes of Moral Turpitude, like: petty theft, forgery, fraud, money laundering
2. Aggravated Felonies, like: robbery, burglary, kidnapping, sexual battery
3. Drug possession & Drug trafficking
4. Domestic Violence
5. Firearms Violence
6. Violation of Status: overstaying a visa, failure to register, change of address

7. Failing to register or falsifying documents relating to entry into the United States
8. Unlawful Voting
9. Illegally reentering the country
10. Encouraging or aiding any other alien to illegally enter the United States
11. Engaging in activity endangering public safety or creating a risk of national security

**HOWEVER, THERE ARE SOME WAYS, TOO, THAT YOU CAN “AVOID” EXPULSION FROM THE UNITED STATES.**

► **ASYLUM**—you may use this strategy if you can show reasons to fear for your safety or persecution of you are to return to your country of origin. Two types of Asylum:

**1. Affirmative Asylum**

Below are the steps to obtain asylum through affirmative asylum process. But these do not apply to those asylum-seekers are already in removal proceedings before an Immigration judge.

**Step 1: Asylum-seeker arrives in the United States.** You may apply for asylum while physically present in the United States or at a port of entry, regardless of your immigration status.

**Step 2: Asylum-seeker Applies for Asylum.** You may apply for asylum with USCIS only if you are not in immigration proceedings before the immigration judge, meaning, you have not been placed in removal proceedings. Asylum applications must be filed within one year after your arrival in the United States, unless you can demonstrate changed circumstances that affect eligibility for asylum or extraordinary circumstances relating to the delay in failing to apply for asylum within one year. That said, you must apply within a reasonable time given those circumstances. To apply, you will need to complete form I-589, Application for Asylum and for Withholding of Removal, and must mail a completed application package to the Service Center that has jurisdiction over your place of residence. Once the Service Center has received your completed application, the Service Center will send the applicant a notice acknowledging receipt of application. You may also ask for a derivative asylum status for you spouse and children who are physically present in the United States. Your child or children must be under 21 years of age and not married at the time you are filing the application.

**Step 3: You are fingerprinted and your background security checks conducted.** You will need to go to an [Application Support Center](#) or authorized Designated Law Enforcement Agency to have your fingerprints taken. The fingerprints will be sent to the Federal Bureau of Investigation (FBI) for a background/security check. The FBI will send those results to USCIS. A copy of the application will be sent to the U.S. Department of State for a background/security check. Your biographical information will also be sent to the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) for a background check, and Immigration will check other law enforcement databases with the asylum-seeker's biographical information.

**Step 4: You will receive an Interview Notice.** You will then be scheduled for an interview with an Asylum officer, either at one of the eight asylum offices or at a district office, depending on

your residence. Generally, you will receive the interview notice within 21 days after filing the application.

**Step 5: You will be interviewed by an Asylum Officer.** You have the right to bring your attorney or accredited representative to the interview. You must bring your spouse and/ or children who are included as dependents in the asylum decision. The interview will generally last about an hour. The time, however, may vary depending on the case. You will be asked to take an oath promising to tell the truth during the interview. The asylum officer will ask you about your reason in applying for asylum and at the same time, the asylum officer will ask you questions to determine if you meet the definition of a refugee and whether bars apply to being granted asylum. Regulations protect the confidentiality of all of your information that you have provided the Asylum officer. A decision is not made at the asylum interview.

**Step 6: Asylum officer makes determination on eligibility and supervisory asylum officer reviews the decision.** In certain cases, such as those involving possible persecutors are referred to the Asylum Division Headquarters for review.

**Step 7: You will receive the decision.** In most cases, you are required to return to the asylum office two weeks after the interview to receive a decision on your application. If you are eligible for asylum, you will either be given a final approval letter depending on whether the asylum office has received the information from the FBI background or security check. Once information has been received and all other background security checks are completed, the Asylum officer will issue a final approval of the asylum application. If you are not eligible for asylum, you will either be referred to an Immigration Court or will receive a Notice of Intent to Deny asylum. This depends on whether you appear to be in the United States illegally. If you are not in lawful status in the United States, the asylum office will issue you a charging document that would place you in removal proceedings in Immigration Court. The asylum office will also refer the asylum application to the Immigration Court for an Immigration Judge to decide during the removal proceedings. You will be given the date, time, and place of the hearing when you return to the asylum office to receive the asylum decision. If you are in lawful status, the asylum office will not refer you to the Immigration Court. Instead, the asylum office will send you a Notice of Intent to Deny explaining the reasons you have been found ineligible for asylum. You will be given 16 days to provide a response before the final decision is made. After reviewing your response, if one is sent, the asylum office will either approve the asylum application (based on the response) or deny it (if the response does not overcome the reasons you were found ineligible for asylum).

## 2. **Defensive Asylum**

This is when your asylum is denied and is referred to an immigration judge. If you can establish that you have been a victim of past persecution or has a well founded fear of future persecution based on race, religion, nationality, political opinion, or membership in a particular social group, the immigration judge may grant relief in the form of asylum and allow you to remain in the United States.

► **CANCELLATION OF REMOVAL**—this is another avenue to avoid deportation. This is one great form of relief that is available to those who are permanent residents, nonpermanent residents, and to those who are in the country unlawfully. If the court grants you cancellation of removal, then your deportation proceeding will be canceled and you will now be allowed to live in the United States as a green card holder. The cancellation of removal may be granted to the following individuals:

- **NON-PERMANENT RESIDENTS-** If you have been present in the United States continuously for at least 10 years and can establish that your removal would subject a U.S. citizen immediate family member to exceptional and extremely unusual hardship, you may be granted cancellation of removal.
- **PERMANENT RESIDENTS-** If you have been present in the United States continuously for at least 7 years and were not arrested and convicted of a crime within your first five years of residency, you may be granted cancellation of removal.

**BUT REMEMBER!** The essence of a good cancellation case is the preparation of a case showing the requisite hardship to a qualifying relative.

► **ADJUSTMENT OF STATUS**— This mechanism can be used as a defense in a removal proceeding. If you are in a removal proceedings, you may be eligible to remain in the country through an immediate relative, such like spouse, children, parent/s who are U.S. citizens. You must have entered the U.S. legally to be eligible for such relief unless covered by section 245(i) of the Act. When an application for adjustment is filed in removal proceedings, the Immigration Judge and not the USCIS will decide whether or not to grant adjustment of status. If the Immigration Judge approves the adjustment, then you will become a lawful permanent resident and the deportation proceedings will be terminated.

► **VOLUNTARY DEPARTURE**—This type of relief allows you to leave the United States on your own, rather than under a removal order. Voluntary departure allows you to leave the U.S. without a removal order being issued by the Immigration Judge.

Always remember that if you face a removal proceeding, it is most important to contact a deportation lawyer **AS SOON AS POSSIBLE**. The Gambacorta Law office's goal is to make defenses quickly and precisely in these delicate situations. We will help you look for ways to avoid removal or at least, minimize the consequences.

To find out more about the procedural steps involved and an estimate of fees, call or email us today for your free in-depth consultation!