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FACT SHEET

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September 30, 2003

Conditional Grants of Asylum Based on Coercive Population Control Policies

The law limits the number of individuals who may be granted asylum or refugee status on the basis of resistance to a coercive population control (CPC) program to 1,000 per fiscal year. The Immigration Judges and the Board of Immigration Appeals (BIA) of the Executive Office for Immigration Review (EOIR) in the Department of Justice (DOJ), and the Bureau of Citizenship and Immigration Services (CIS) in the Department of Homeland Security (DHS), have the authority to grant asylum. Therefore, each year, DOJ and DHS must coordinate closely with each other to ensure that all 1,000 approvals are issued and that the 1,000 cap is not exceeded. This fact sheet provides basic information about that process.

Definition of CPC Asylum

Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 expanded the definition of "refugee" to include individuals who have been persecuted or have a well-founded fear of persecution on account of resistance to a CPC program. The expanded definition, found in section 101 (a)(42)(B) of the Immigration and Nationality Act (INA), provides that:

"...a person who has been forced to abort a pregnancy or undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion."

Conditional Grants of Asylum

Because the number of individuals who may be approved for asylum based on CPC is limited, EOIR and CIS grant asylum on a **conditional basis** until a determination is made that a final approval, with eligibility for full asylum benefits, can be made under the 1,000 cap. The number of such individuals has been greater than the 1,000 limit each year since fiscal year (FY) 1998. Therefore, a waiting list was established. During FY 2003, the list numbered more than 7,000 asylum applicants, making the waiting period more than 7 years for new conditional grantees.

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The date of the conditional grant determines a person's place on the waiting list, subject to a determination that all security checks are completed, cleared, and up-to-date. It is important to note that, if an Immigration Judge issues a conditional grant of asylum and that grant is appealed to the BIA, the Immigration Judge's decision is not final until the BIA decides the case. A conditional grant of asylum that is on appeal is not included in the waiting list for a final approval authorization number until the BIA affirms the Immigration Judge's conditional grant of asylum. The date of the conditional grant in such a case is the date that the BIA affirmed the Immigration Judge's decision, not the date of the original Immigration Judge order.

A conditional grant of asylum remains in effect as long as the individual continues to maintain asylum eligibility and until the individual is notified that he or she has been issued a final grant of asylum, or that the conditional grant is being rescinded or terminated. Although only the principal asylum applicant is counted towards the 1,000 cap, the benefits and responsibilities of conditional grant status extend to the principal's spouse and children under age 21 at the time the asylum application was filed, who are present in the United States, and who were properly included in the individual's asylum application.

Individuals with conditional grants of asylum may obtain information about their benefits and responsibilities on the CIS Web site at www.bcis.gov/graphics/services/asylum/cpc.htm.

Issuance of Final Approval Notices Granting Eligibility for Full Asylum Benefits

Each fiscal year, 1,000 conditional grants are converted to full asylum approvals, and the grantees are notified by mail. Final approval for full asylum benefits cannot be issued on an individual case until the required identity, background, and security checks have been completed for the principal applicant and all dependent family members in the United States.

Annually, EOIR publishes on its Web site at <http://www.usdoj.gov/eoir/press/press.htm> a news release that provides an estimated cut-off conditional grant date. The news release indicates that all individuals with conditional grants prior to that date - whose identity, background, and security checks were current and complete and who were still eligible for a grant of asylum - should have received a final asylum approval notice indicating eligibility for full asylum benefits. It also provides instructions for individuals who were granted conditional asylum on or before that date but have not yet received their notices of final asylum approval.

Required Actions for Individuals with Conditional Grants of Asylum

Persons who remain in conditional asylum status must promptly:

- Comply with any requests to appear for fingerprinting or other background clearance procedures, and
- Report any change of address, and
- Ensure that any change in attorney or representative for their asylum case is reported to appropriate agencies.

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1. Background, Identity, and Security Check Procedures

The law requires that all asylum applicants undergo certain background, identity, and security checks before being issued a final asylum approval. This requirement also applies to their dependents (spouse and/or children), who are over the age of 14. Persons with a conditional grant of asylum should be aware that Federal Bureau of Investigation (FBI) fingerprint check results - and the results of other background, identity, and security checks - expire and must be refreshed periodically. This means that, even if conditional grantees have already been fingerprinted, they may have to present themselves again for fingerprinting or follow-up appointments related to fingerprinting before being issued a final approval with full asylum benefits. To prevent delays in processing, or termination of conditional grant status, conditional grantees and their dependents must comply with all fingerprint notices and requests for follow-up regarding background check results.

CIS monitors the clearance and expiration of fingerprint results. Conditional grantees should not take any independent actions to be fingerprinted. They should wait until they receive a notice.

2. Change of Address

Persons who move must provide any changes of address promptly in the following manner:

- *When the conditional grant of asylum was issued by an Immigration Judge*, individuals must submit to the Immigration Court that last had jurisdiction over their case a completed Form EOIR-33/IJ, "Change of Address Form," within **5 days** of any change of address. Addresses for the Immigration Courts can be found on the EOIR Web site at www.usdoj.gov/eoir/sibpages/ICadr.htm. They **also** must submit a completed Form AR-11, "Alien's Change of Address Card," within **10 days** of any change of address to the Department of Homeland Security at the address indicated in the form instructions.
- *When the conditional grant of asylum was issued by the Board of Immigration Appeals*, individuals must submit a completed Form EOIR-33/BIA, "Change of Address Form," within **5 days** of any change of address to the address below:

Board of Immigration Appeals
Clerk's Office
Post Office Box 8530
5201 Leesburg Pike, Suite 1300
Falls Church, VA 22041 Phone: 703-605-1007

They **also** must submit a completed Form AR-11, "Alien's Change of Address Card," within **10 days** of any change of address to the Department of Homeland Security at the address indicated in the form instructions.

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- *When the conditional grant of asylum was issued by a CIS Asylum Officer*, individuals must submit to the Department of Homeland Security at the address indicated in the form instructions a completed Form AR-11, "Alien's Change of

Address Card,” within **10 days** of any change of address. They **also** should send a copy of their completed Form AR-11 to the CIS Asylum Office that has jurisdiction over their residence. The CIS Web site at www.bcis.gov/graphics/fieldoffices/alphaa.htm provides the jurisdiction and addresses of the eight CIS Asylum Offices.

Change of address forms are available as follows:

- Forms EOIR-33/IJ and EOIR-33/BIA are available on the EOIR Web site at www.usdoj.gov/eoir/formslist.htm, and
- Form AR-11 is available at local post offices, CIS offices, and on the CIS Web site at www.bcis.gov/graphics/formsfee/forms/ar-11.htm.

Note: Failure to notify the Government of a change of address, as specified above, may result in ineligibility for a final grant of asylum.

3. Change in Attorney or Representative

Attorneys or representatives for persons who have conditional grants of asylum must provide any changes of attorney or representative promptly – using the appropriate forms, available as follows:

- Forms EOIR-28 and EOIR-27 are available on the EOIR Web site at www.usdoj.gov/eoir/formslist.htm.
- The Form G-28 is available on the CIS Web site at www.bcis.gov/graphics/formsfee/forms/g-28.htm.

Notification must be made in the following manner:

- *When the conditional grant of asylum was issued by an Immigration Judge,* attorneys or representatives must file a completed Form EOIR-28, “Notice of Entry of Appearance as Attorney or Representative Before Immigration Judge,” with the Immigration Court last having jurisdiction over the case. Addresses for the Immigration Courts are available on the EOIR Web site at www.usdoj.gov/eoir/sibpages/ICadr.htm.
- *When the conditional grant of asylum was issued by the Board of Immigration Appeals,* attorneys or representatives must file a completed Form EOIR-27, “Notice of Entry of Appearance as Attorney or Representative Before BIA,” to the address below:

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Board of Immigration Appeals
Clerk’s Office
Post Office Box 8530

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5201 Leesburg Pike, Suite 1300

Falls Church, VA 22041

Phone: 703-605-1007

- *When the conditional grant of asylum was issued by a CIS Asylum Officer,* attorneys or representatives must file a completed Form G-28, “Notice of Entry of Appearance as Attorney or Representative,” with the CIS asylum office that has jurisdiction over the case. If the new Form G-28 is due to a **change of address** for the attorney or representative, a cover letter noting that fact should be submitted along with the completed form. The CIS Web site at www.bcis.gov/graphics/fieldoffices/alphaa.htm provides the jurisdiction and addresses of the eight CIS Asylum Offices.

Status Inquiries

Before requesting the status of a CPC case, individuals should read the most recent EOIR news release regarding the issuance of full asylum benefits based on CPC (<http://www.usdoj.gov/eoir/press/press.htm>). To determine their eligibility for final approval, they should check the conditional grant cut-off date, the approximate waiting period, and the other requirements to obtain full asylum benefits. If, after consulting the news release, a status inquiry is desired, individuals may check on the status of their final asylum approval by sending a letter to the appropriate address specified below. The letter should include:

- Full name of the person who filed the asylum application and has been granted conditional asylum,
- His or her date of birth,
- His or her alien number,
- His or her current address, and
- A copy of the order or letter granting conditional asylum.

When the conditional grant of asylum was issued by an Immigration Judge, status inquiries must be sent to:

Office of the Chief Immigration Judge

Attn: CPC Status Inquiry

5107 Leesburg Pike, Suite 2500

Falls Church, VA 22041

When the conditional grant of asylum was issued by the Board of Immigration Appeals, status inquiries must be sent to:

Board of Immigration Appeals

Clerk’s Office

Attn: CPC Status Inquiry

Post Office Box 8530

5201 Leesburg Pike, Suite 1300

Falls Church, VA 22041

Phone: 703-605-1007

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When the conditional grant of asylum was issued by a CIS Asylum Officer, status inquiries must be sent to the CIS Asylum Office that has jurisdiction over the conditional grantee’s residence. The Web

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site at www.bcis.gov/graphics/fieldoffices/alphaa.htm provides the jurisdiction and addresses of the eight CIS Asylum Offices.

Children Who Turn 21 Years of Age Before Approval for Full Asylum Benefits

On August 6, 2002, the President signed into law the Child Status Protection Act (CSPA), Public Law 107-208, 116 Stat. 927, which provides that a dependent child – who was under 21 years of age at the time the parent filed an application for asylum – will continue to be treated as a child even if he or she turns 21 years of age while the application is pending. This applies to all applications that were pending on or after August 6, 2002, the effective date of the CSPA. Conditional grants of asylum are considered pending until an approval notice for full asylum benefits is issued. The application of this law affects certain CPC cases, as follows:

A child who was under 21 years of age at the time the parent's asylum application was filed and was included on a parent's asylum application, and is in the United States at the time of the asylum approval:

- The child will continue to be eligible for asylum status as a dependent, provided that the asylum application was pending on or after August 6, 2002.

*A child who was under 21 years of age at the time the parent's asylum application was filed but was **not** included on a parent's asylum application, or not in the United States:*

- If the parent receives final approval of asylum ON OR AFTER August 6, 2002, the child may be eligible for asylum status as a dependent if the parent files a Form I-730, "Refugee/Asylee Relative Petition," on behalf of this child and follows all the regulatory filing requirements as indicated on the form – including the requirement for the parent to file the form within 2 years after receiving a final asylum approval, or establish the required humanitarian exception.
- If the parent received final asylum approval BEFORE August 6, 2002, and the child turned 21 before August 6, 2002, the child may be eligible for asylum status as a dependent if the parent had already filed a Form I-730, "Refugee/Asylee Relative Petition," on behalf of this child and that application was still pending on August 6, 2002.

For More Information

Additional information about CPC and asylum is available on the CIS Web site at www.bcis.gov/graphics/services/asylum/cpc.htm. News releases and a fact sheet regarding the annual issuance of full asylum benefits based on CPC are available on EOIR's Web site at www.usdoj.gov/eoir/press/press.htm.

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Individuals who have received final asylum approval notices may obtain information about their benefits and responsibilities on the CIS Web site at www.bcis.gov/graphics/services/asylum/types.htm#grant.

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