with the form instructions. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial if the application is denied. There is no appeal from such decision.

[76 FR 53783, Aug. 29, 2011]

§ 207.4 Approved application.

Approval of a refugee application by USCIS outside the United States authorizes CBP to admit the applicant conditionally as a refugee upon arrival at the port within four months of the date the refugee application was approved. There is no appeal from a denial of refugee status under this chapter.

[76 FR 53783, Aug. 29, 2011]

§ 207.5 Waiting lists and priority handling.

Waiting lists are maintained for each designated refugee group of special humanitarian concern. Each applicant whose application is accepted for filing by USCIS shall be registered as of the date of filing. The date of filing is the priority date for purposes of case control. Refugees or groups of refugees may be selected from these lists in a manner that will best support the policies and interests of the United States. The Secretary may adopt appropriate criteria for selecting the refugees and assignment of processing priorities for each designated group based upon such considerations as reuniting families, close association with the United States, compelling humanitarian concerns, and public interest factors.

[76 FR 53783, Aug. 29, 2011]

§ 207.6 Control over approved refugee numbers.

Current numerical accounting of approved refugees is maintained for each special group designated by the President. As refugee status is authorized for each applicant, the total count is reduced correspondingly from the appropriate group so that information is readily available to indicate how many refugee numbers remain available for issuance.

§ 207.7 Derivatives of refugees.

(a) Eligibility. A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act, shall be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months following the principal refugee’s admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee’s admission to the United States.

(b) Ineligibility. The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

(1) A spouse or child who has previously been granted asylee or refugee status;

(2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;

(3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;

(4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated (section 101(a)(35) of the Act);

(5) A husband or wife if the Secretary has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) Relationship. The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b)(1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee’s admission to the United States and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child’s subsequent admission to the United States. If the refugee proves
that the refugee is the parent of a child who was born after the refugee’s admission as a refugee, but who was in utero on the date of the refugee’s admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee. The child’s mother, if not the principal refugee, shall not be eligible to accompany or follow-to-join the principal refugee unless the child’s mother was the principal refugee’s spouse on the date of the principal refugee’s admission as a refugee.

(d) **Filing.** A refugee may request accompanying or following-to-join benefits for his or her spouse and unmarried, minor child(ren) (whether the spouse and children are inside or outside the United States) by filing a separate Request for Refugee/Asylee Relative in accordance with the form instructions for each qualifying family member. The request may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to request derivative benefits on behalf of their spouse and child(ren). A separate Request for Refugee/Asylee Relative must be filed for each qualifying family member within two years of the refugee’s admission to the United States unless USCIS determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member’s travel to the United States once the Request for Refugee/Asylee Relative is approved, provided that the relationship of spouse or child continues to exist and approval of the Request for Refugee/Asylee Relative has not been subsequently revoked. There is no fee for this benefit request.

(e) **Evidence.** Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this will consist of the documents specified in 204.2(a)(1)(i)(B), (a)(1)(ii)(B), (a)(2), (d)(2), and (d)(5) of this chapter.

(f) **Approvals.** (1) **Spouse or child in the United States.** When a spouse or child of a refugee is in the United States and the Request for Refugee/Asylee Relative is approved, USCIS will notify the refugee of such approval. Employment will be authorized incident to status.

(2) **Spouse or child outside the United States.** When a spouse or child of a refugee is outside the United States and the Request for Refugee/Asylee Relative is approved, USCIS will notify the refugee of such approval. USCIS will send the approved request to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the refugee’s spouse or child is located.

(3) **Benefits.** The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal’s status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. For a derivative inside or arriving in the United States, USCIS will issue a document reflecting the derivative’s current status as a refugee to demonstrate employment authorization, or the derivative may apply, under § 274a.12(a), for evidence of employment authorization.

(g) **Denials.** If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the principal refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the
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208.7 Employment authorization.
208.8 Limitations on travel outside the United States.
208.9 Procedure for interview before an asylum officer.
208.10 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing.
208.11 Comments from the Department of State.
208.12 Reliance on information compiled by other sources.
208.13 Establishing asylum eligibility.
208.14 Approval, denial, referral, or dismissal of application.
208.15 Definition of “firm resettlement.”
208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.
208.17 Deferral of removal under the Convention Against Torture.
208.18 Implementation of the Convention Against Torture.
208.19 Decisions.
208.20 Determining if an asylum application is frivolous.
208.21 Admission of the asylee’s spouse and children.
208.22 Effect on exclusion, deportation, and removal proceedings.
208.23 Restoration of status.
208.24 Termination of asylum or withholding of removal or deportation.
208.25–208.29 [Reserved]

Subpart B—Credible Fear of Persecution

208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.
208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.


Source: 62 FR 10337, Mar. 6, 1997, unless otherwise noted.

Subpart A—Asylum and Withholding of Removal

§ 208.1 General.

(a) Applicability. (1) General. Unless otherwise provided in this chapter I, this subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under