

Department of State
Bureau of Population, Refugees, and Migration
Office of Admissions

ACCESS TO THE U.S. REFUGEE ADMISSIONS PROGRAM

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Introduction

The Department of State, Bureau of Population, Refugees, and Migration (PRM) is responsible for coordinating and managing the U.S. Refugee Admissions Program (USRAP). A critical part of this responsibility is determining which individuals or groups from among the millions of people termed “refugees” will have access to the USRAP, thereby allowing them to seek refugee resettlement in the United States. PRM coordinates within the Department of State, as well as with the Department of Homeland Security’s U.S. Citizenship and Immigration Services (DHS/USCIS) and other agencies in carrying out this responsibility.

This paper provides an overview of how potential applicants obtain access to the USRAP. It defines the worldwide priority system and discusses how cases in each priority should be prepared for referral. The priority system establishes access categories that allow for the orderly management and processing of refugee applications for admission to the United States.

Section 207(a)(3) of the *Immigration and Nationality Act* (INA) states that the USRAP shall allocate admissions among refugees “...of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.” The first question which must be addressed when considering which individuals should have access to the USRAP is how certain refugees are determined to be “of special humanitarian concern” to the United States for the purpose of resettlement consideration. The USRAP priority system creates a structure to answer this question. There are currently three priorities or categories of cases that have access to the USRAP:

1. **Priority 1** – Individual cases referred to the program by virtue of their circumstances and apparent need for resettlement;
2. **Priority 2** – Groups of cases designated as having access to the program by virtue of their circumstances and apparent need for resettlement;
3. **Priority 3** – Individual cases granted access because they have immediate family members in the United States who were resettled as refugees or granted asylum in the United States and whose nationality is currently eligible for processing as refugees to allow family reunification.

(Note: Immediate family members of refugees resettled in the United States may also seek access to the program through filing a “Following to Join” petition. This option is discussed in more detail in Section IV.)

For each priority, the determination of special humanitarian concern is made in a different way. For Priority 1, the referring entity identifies individuals known to it who meet the

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Priority 1 referral criteria set out by the USRAP, as described in the “Priority 1 -- Individual Referrals” section of this document. The Regional Refugee Coordinators (State Department officials posted at select Embassies who focus on the USRAP) or Program Officers within the PRM Admissions Office generally review Priority 1 referrals to ensure that they conform to existing U.S. policy concerning what constitutes a case of special humanitarian concern. For Priority 2, the PRM Assistant Secretary makes the determination that a group is of special humanitarian concern to the United States when he or she designates the group as eligible for processing. For Priority 3, the PRM Assistant Secretary determines which nationalities are of special humanitarian concern to the United States and should therefore have access to refugee admissions processing for family reunification purposes.

Access to the program under one of the above-listed processing priorities does not mean an applicant is legally admissible to the United States or meets the U.S. statutory "refugee" definition. While access to the USRAP is governed by the question of which individuals are of special humanitarian concern to the United States, the ultimate determination that a case is eligible for admission to the United States must include a finding that the applicant has experienced or has a well-founded fear of persecution, which has been interpreted to mean “serious harm.” (This concept is discussed in greater detail below, particularly in the context of Priority 1 referrals). Applicants who are eligible for access within the established priorities are presented to USCIS officers for interview. There are a variety of issues that are examined by USCIS at the adjudication interview to determine whether a person may be admitted to the United States as a refugee under U.S. law. During this interview, USCIS adjudicates each case and determines whether or not the applicant meets the U.S. refugee definition found at Section 101(a)(42)¹ of the INA (the part of the adjudication in which “serious harm” is considered), whether the applicant is firmly resettled, and whether he or she is otherwise admissible to the United States (i.e. if there are excludability issues). The adjudicator also evaluates whether an applicant is of special humanitarian concern to the United States. This requirement is generally met by a review of the casefile prepared by the USG processing organization that documents how access was granted to the program under one of the three processing priorities.

¹ Sec. 101(a)(42) of the Immigration and Nationality Act (INA): The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, 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, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to 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.

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Although the access categories to the USRAP are referred to as processing priorities, it is important to note that assignment to a certain priority does not necessarily establish precedence in the order in which cases will be processed. Once cases are established as eligible for access under one of the three processing priorities, they all undergo the same processing.

I. Priority 1 -- Individual Referrals

Priority 1 allows consideration of refugee claims from persons of any nationality for whom resettlement appears to be the appropriate durable solution. Priority 1 individual referrals are accepted by the program for any nationality² and in any location. In general, Priority 1 cases involve compelling humanitarian concerns that cause the referring entity to single out individuals as in particular need of this durable solution. Priority 1 cases are identified and referred to the program by UNHCR, a U.S. Embassy, or a designated nongovernmental organization (NGO). UNHCR, which has the international mandate worldwide to provide protection to refugees, has historically referred the vast majority of cases under this priority. NGOs that have undergone referrals training may be designated by PRM to provide referrals. Referring entities should apply the following standard in deciding whether to refer the case.

A. Standard for Referral

An appropriate Priority 1 individual referral should be based upon, and must include:

- The presence of compelling humanitarian reasons why the applicant should be granted access to the program, and
- The applicant's claim to have suffered or to fear serious harm **in the country of nationality, or if stateless, the country of last habitual residence.**

Compelling Humanitarian Reasons

The first factor (the presence of compelling humanitarian reasons why the applicant should be referred for resettlement, including access to a USCIS interview) is generally the fundamental reason for considering a case for possible Priority 1 referral. Referring entities will likely consider putting forward for resettlement cases that have become known to them as a result of particular vulnerability or protection problems. The possible list of factors that could lead to a resettlement referral could include: the inability of the local government or UNHCR to ensure the safety of a certain individual due to ethnic or other tensions in the temporary asylum location; conditions in a refugee camp or wherever the person has temporary asylum; any personal situation, such as medical or mental health issues that affect the person's security or well-being; or the fact that there is no durable solution other than resettlement, particularly after an extended period in temporary refuge.

² Referrals of North Koreans and Palestinians require State Department and DHS concurrence before they are accepted for access.

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Claim to Have Suffered or Fear of Serious Harm

The second factor relates to the applicant's refugee claim. While the adjudication of refugee cases involves complex legal analysis that should be addressed by a USCIS officer, referring entities considering a Priority 1 referral must evaluate whether the person being considered for referral **has suffered or fears serious harm in his or her country of nationality, or if stateless, in the country of last habitual residence.** This is a requirement to meet the definition of refugee under U.S. law. The words "serious harm" in the context of refugee adjudications have a specific meaning linked to the concept of persecution. The following examples illustrate the meaning of serious harm in the refugee context:

- Threats to life or freedom,
- Cumulative instances of harassment or discrimination,
- Severe physical abuse,
- Violation of an individual's fundamental beliefs,
- Substantial economic harm,
- Rape or sexual abuse, or
- Psychological harm based on serious harm to a family member or another third party.

Refugee status is granted based on harm or fear of harm in the applicant's country of nationality, or, if the applicant is stateless, in the applicant's country of last habitual residence. While events or experiences in the country of first asylum might in some cases figure into a claim of persecution in the home country, **harm or fear of harm in the first asylum location will not generally render an individual a refugee under U.S. law.**

Often there may be a relationship between the first and second factors for referral consideration. For example, a very compelling refugee claim could mean that repatriation is not going to be an appropriate option (either because severe past persecution makes it inhumane to expect the person to return to the place where he suffered, or because the level and depth of a future fear is so great that the person could never really feel secure there). Trauma related to a very strong refugee claim could also result in the kind of mental and emotional vulnerability that would justify giving the case priority. In any case where the primary reason for the referral is humanitarian, however, it is important to note that the candidate for referral still must claim to fear or to have suffered serious harm in the country of origin. Compelling humanitarian reasons for access alone are not enough to support a referral.

A referring entity need not try to determine for certain that a potential case has a solid refugee claim before referring the case to the USRAP, but should use the discussion above to consider the likelihood that the potential Priority 1 case will be able to present a claim that will meet the U.S. refugee definition. **In doing so, the referring entity must always bear in mind that the serious harm at issue must have taken place or be feared in the applicant's country of nationality or, if the applicant is stateless, in his country of last habitual residence.**

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B. Process for Priority 1 Individual Referral Applications

Priority 1 referrals (from all sources except Embassies) are submitted to the appropriate Regional Refugee Coordinator, who reviews the submissions for completeness and to determine whether they meet the standard of being of special humanitarian concern to the United States. If they meet these requirements, the Refugee Coordinator then forwards them to the appropriate Overseas Processing Entity (OPE) for case processing and scheduling of the USCIS interview. The Refugee Coordinator may also provide additional information pertinent to the case to USCIS prior to the interview to assist in the proper processing and adjudication of the case.

UNHCR Referrals

Referrals from UNHCR are generally conveyed on the “Resettlement Registration Form” (RRF). UNHCR has recently developed a new version of the RRF which the USRAP welcomes as the standard format for UNHCR referrals. The USRAP will continue to accept the older versions of the RRF as well as a variety of other forms devised *ad hoc* in various locations until UNHCR has fully standardized the new format. However the *ad hoc* formats require prior approval by PRM and USCIS to ensure that they contain all of the information required for the USRAP.

Embassy Referrals

U.S. Embassy referrals are generally made through the State Department cable system. Embassies are regularly provided with updated guidance concerning the procedures for making Priority 1 Embassy referrals into the program. PRM’s Office of Admissions reviews Embassy referrals for completeness and to ensure that the cases are of special humanitarian concern to the United States and may consult with DHS in considering these referrals.

A Priority 1 referral is also possible for certain individuals who are known to the Embassy and still in their country of origin. A U.S. Ambassador may make a Priority 1 referral for in-country processing if the Embassy determines that a case meets the general referral criteria and that there are extraordinary reasons why third country resettlement is necessary. Such an in-country Embassy referral can be made from any location in the world, with the understanding that significant public benefit parole (SPBP – a program administered by the Department of Homeland Security) will continue to be the solution to most such cases and that individuals will only be given access to the USRAP following concurrence by PRM and DHS officers in Washington, D.C.

NGO Referrals

Assistance NGOs working in the field sometimes have knowledge of particularly vulnerable individuals for whom resettlement may be appropriate. Assistance NGOs in various locations where there are large concentrations of refugees have been invited in recent years to participate in workshops to learn how to identify and refer particularly vulnerable cases for

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possible resettlement in the United States. Those NGOs that have participated in this training have been provided referral forms that they may use in preparing submissions. Other NGOs may contact the Regional Refugee Coordinator to explore participation in the process.

Priority 1 Referral Formats

A Priority 1 referral must be in a standardized format (UNHCR RRF or an approved ad hoc format, State Department cable format, or approved NGO format) and must include the following information about the case:

- Principal applicant – full name, date and place of birth, nationality, gender, marital status, ethnic origin, current location;
- Other case member(s) -- full name, date and place of birth, nationality, gender, marital status, ethnic origin, current location, relationship to the principal applicant;
- A description of the principal applicant’s claim to have suffered or to fear serious harm in the home country;
- A description of the compelling humanitarian reasons why the applicant should be given priority for resettlement;
- If appropriate, discussion of facts known by the referring entity that could potentially affect the excludability or admissibility of the applicant (for example, information indicating that the applicant has a criminal record or possible association to a terrorist group or activity, as defined under the INA).

II. Priority 2 – Group Referrals

Priority 2 is designed for groups that are designated by the PRM Assistant Secretary as eligible for resettlement processing. It includes specific groups (within certain nationalities, clans or ethnic groups, sometimes in specified locations) identified by the Department of State in consultation with USCIS, NGOs, UNHCR and other experts. Some Priority 2 groups are processed in their country of origin. Certain Priority 2 designations are announced each year in the annual *Report to Congress*. Others are announced during the course of the year as circumstances dictate and the need for resettlement arises.

Priority 2 group referrals can be developed by UNHCR, Refugee Coordinators, NGOs, PRM program officers, or other State Department officials. PRM plays the coordinating role for all group referrals to the USRAP, and the PRM Assistant Secretary makes the final determination that a group should be designated for processing. There is no minimum or maximum number of applicants required for either model of group referral. The process of identifying the group and its characteristics includes consideration of whether the group is of special humanitarian concern to the United States and whether members of the group will likely be able to present claims at adjudication that meet the U.S. refugee definition (see discussion of “serious harm” in Section I above).

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There are two distinct models of Priority 2 access to the program: open access and predefined group access. Under both models, Priority 2 designations are made based on shared characteristics that define the group. In general, the possession of these characteristics is the reason the group has been harmed in the past or faces harm in the future. Examples might include: a group of refugees who fled a certain village at the same time because they were all facing the same harm; members of a certain persecuted political party who fled their country during a defined period; families that involve mixed-marriage that renders them unable to live free of discrimination.

A. Open Access Groups Defined

The open access model for Priority 2 group referrals allows individuals to seek access to the program on the basis of meeting designated criteria. To establish an open access Priority 2 group, PRM, in consultation as appropriate with UNHCR, DHS/USCIS and others, defines the specific criteria for access and submits a designation document to the PRM Assistant Secretary for approval. Once the designation is in place, applicants may approach the program at any of the processing locations specified as available for the group to begin the application process. Applicants must demonstrate that they possess the required characteristic(s) to establish eligibility for inclusion.

The open access model has functioned well in the in-country programs including the long-standing programs in the former Soviet Union, Cuba and Vietnam. It was also used successfully for Bosnian refugees during the 1990s and is now in use for Iranian religious minorities.

The OPE(s) responsible for handling open access Priority 2 applications, working under the direction of PRM, make a preliminary determination as to whether the applicants qualify for access and should therefore be presented to USCIS for interview. Applicants who clearly do not meet the access requirements are “screened out” prior to USCIS interview.

B. Predefined Groups Defined

A Predefined Group is clearly identified both in number and location and linked to a specific list of eligible refugee applicants. The Predefined Group model is often described as a group of persons around whom a circle can be drawn. The designation document signed by the PRM Assistant Secretary establishes the access eligibility criteria for the group, and subsequently the referring entity provides a list of eligible refugee applicants for processing under the designation. This type of group referral is advantageous in situations in which the intensive labor required to generate individual referrals would be impracticable, potentially harmful, or counter-productive. Often Predefined Groups are composed of persons with similar persecution claims. The Predefined Group referral process is a step-saver and can conserve scarce resources, particularly for UNHCR. It can also speed the resettlement process in cases where immediate protection concerns are present.

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C. Process for Priority 2 Group Referral Applications

Once an Open Access Priority 2 designation is in place, applicants may approach any of the locations specified for case processing. The OPE will need the following information:

- Principal applicant – full name, date and place of birth, nationality, gender, marital status, ethnic origin, current location;
- Other case member(s) -- full name, date and place of birth, nationality, gender, marital status, ethnic origin, current location, relationship to the principal applicant;
- A description of the principal applicant’s claim to have suffered or to fear serious harm in the home country;
- Required documentation or other proof that demonstrates group membership (varies for each program)

Once a Predefined Group Priority 2 designation is in place, the actual referral list must include the following information:

- The full name, date and place of birth, nationality, gender, marital status, ethnic origin, current location, and relationship to the principal applicant for all case members;
- A photo of each case member (U.S. passport style), if available; and
- Other predetermined program/group-specific documentation (social surveys, registration lists, ration cards, etc.).

III. Priority 3 – Family Reunification

A. Criteria for Priority 3 Eligibility

The Priority 3 category is family-based and only open to designated nationalities. At the beginning of each fiscal year, the Department of State, in consultation with DHS/USCIS, establishes the list of nationalities eligible for processing under this priority and lists these nationalities in the *Report to Congress* on proposed refugee admissions for the fiscal year. The list may be modified by the PRM Assistant Secretary at any time, but additions or deletions are generally made to coincide with the fiscal year. Fundamentally, inclusion on the Priority 3 list represents a finding by PRM that the nationality is of special humanitarian concern to the United States for the purpose of family-reunification refugee processing. PRM considers a variety of factors in making additions to or deletions from the list, including the volume of other referrals (under Priorities 1 and 2) to the program; whether refugees are continuing to flee the country; and whether repatriation is planned, underway or largely completed.

To qualify for access under Priority 3, an applicant must be outside of his or her country of origin, have an Affidavit of Relationship (AOR) filed on his or her behalf by an eligible “anchor” relative in the United States during a period in which the nationality was included on

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the eligibility list, and be cleared for onward processing by the USCIS Refugee Access Verification Unit (RAVU).

Only the following relatives of the U.S.-based anchor relative are eligible for inclusion on the case: spouses, unmarried children under 21, or parents. Qualifying anchors are persons who were admitted to the United States as refugees or were granted asylum, including persons who are lawful permanent residents or U.S. citizens who were initially admitted to the United States as refugees or granted asylum.

After the anchor relative files the AOR, the RAVU compares the information contained in the AOR with the information contained in the anchor relative's alien file and other DHS records. If significant inconsistencies exist in relationships claimed on the AOR and other DHS records, RAVU will "screen off" those individuals, and they will not be given access to the USRAP. RAVU conveys the results of its screening to the Refugee Processing Center (RPC), PRM's contracted database management center for the USRAP. The RPC then forwards AORs that include applicants deemed eligible for interview to the appropriate OPE for processing.

B. Process for Priority 3 Applications

Priority 3 applications for access must include:

- An Affidavit of Relationship (AOR) filed by an eligible relative in the United States, submitted to the Refugee Processing Center through a participating Reception and Placement agency.
- As noted above, all AORs are subject to review by USCIS/RAVU and only those case members on AORs who are cleared by USCIS/RAVU to proceed to interview are granted access.

IV. Visas 93 – Family Reunification Following to Join Petitions

Under 8 CFR Section 207, a refugee admitted to the United States may request following-to-join benefits for his or her spouse and unmarried children under the age of 21 if the family has become separated. Once in the United States and within two years of admission, the refugee may file an I-730 Refugee/Asylee Relative Petition³ for each eligible family member with the DHS/USCIS. If the I-730 is approved by DHS/USCIS (signifying adequate proof of a qualifying family relationship), the petition is then forwarded for processing via the National Visa Center to the Embassy or Consulate nearest to the location of the beneficiaries of the petition. (Note: In locations where the USRAP has a significant processing operation, these cases are processed by the OPE rather than the Consular Section within the Embassy.)

³ This petition is used to file for the relatives of refugees and asylees – known as visas 93 and visas 92 cases respectively. The Refugee Admissions Program handles only Visas 93 cases, which are counted within the annual refugee admissions ceiling. Visas 92 cases are not considered to be refugee admissions cases and are not counted in the number of refugees admitted annually.

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Cases gaining access to the USRAP through an approved I-730 petition are interviewed by USCIS or Consular officers to verify the relationships claimed in the petition, as well as examine any applicable bars to status and admissibility to the United States. These interviews are not refugee adjudications. The applicants are not required to demonstrate a persecution claim, as they derive their status from the refugee (or asylee) relative in the United States who filed the petition. Beneficiaries of I-730 petitions may be processed within their country of origin or in other locations.

Anchor relatives in the United States may file an I-730 Refugee/Asylee Relative Petition and seek Priority 3 access (if eligible) simultaneously. In some cases, the I-730 will be the only option as the family members are still in their country of origin. It is also important to note that the I-730, or “follow-to-join” process is more limited than Priority 3 in that it does not allow the relative in the United States to petition for parents.