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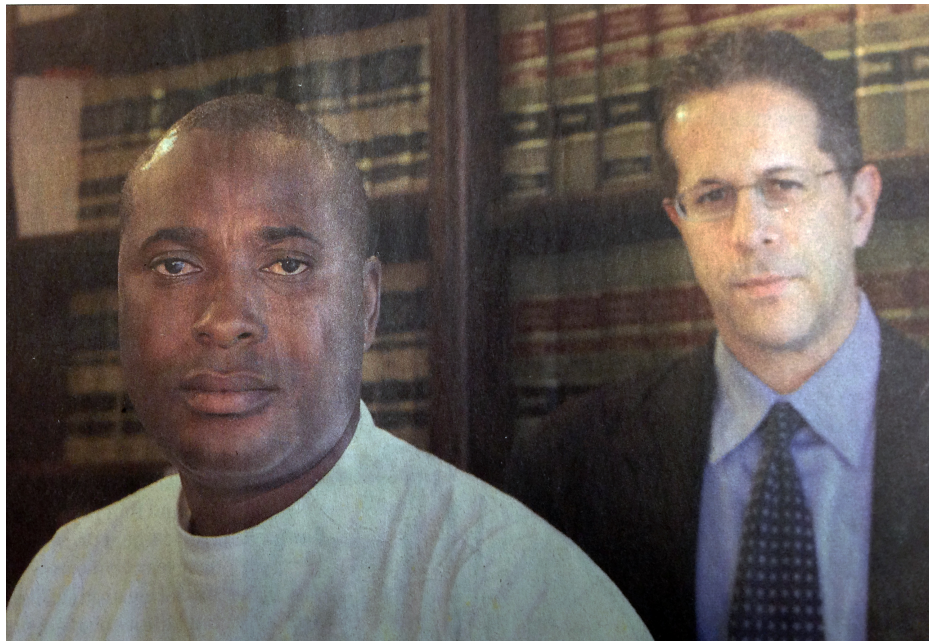
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Afraid to Go Home, Reaching Out to America

Q&A | APPLYING FOR ASYLUM

Foreign nationals fearing persecution in their native lands have two ways to apply to stay in the U.S. Both can take months or even years.

April 28, 2005 | Ann M. Simmons | Times Staff Writer



SEEKING ASYLUM: Dan Bala Dabo, left, with his Beverly Hills lawyer, Edward W. Pilot, is seeking asylum in the United States, alleging religious persecution in his homeland of Nigeria. Dabo converted to Christianity from Islam.

Every year, thousands of foreign nationals seek asylum in the United States because they fear persecution in their home country.

Some say they fear rape and torture. Others fear imprisonment. Many petitioners describe their application as a matter of life and death.

Question: What is asylum?

Answer: Asylum is a form of protection that allows foreign nationals to remain in the United States if they can prove it would be dangerous for them to return to their home country.

Last week, a federal appeals court in San Francisco ruled that the family of a disabled Russian child was eligible for political asylum because he was persecuted in his homeland in connection with his condition.

Q: Who is eligible to seek asylum?

A: Applicants for asylum must prove a well-founded fear of persecution by their home government or agents of the state on account of their race, religion, nationality, political opinion or membership in a particular social group.

Grounds for asylum might also exist if the authorities in an applicant's country are unable or unwilling to provide protection when the persecution is by nongovernmental persons.

People who have participated in the persecution of others, or who have engaged in acts of terrorism, are barred from seeking asylum in the United States.

Q: How does the process work?

A: There are two main ways of obtaining asylum in the United States, according to officials at the U.S. Citizenship and Immigration Services: the "affirmative" process and the "defensive" process.

The distinction is important.

Asylum-seekers who are already physically in the United States, and who have not been ordered deported, can submit an asylum application to the government, regardless of how they came to the country and regardless of their immigration status.

They must apply within one year of entering the country, unless they can prove that extraordinary circumstances prevented them from doing so. This is the affirmative process.

Applicants are typically interviewed at one of the country's eight asylum offices, two of which are in Anaheim and San Francisco.

The defensive process is used by people who request asylum after a U.S. court has deemed them eligible for removal from the country. In such cases, immigration judges, who serve at the discretion of the U.S. attorney general, determine whether the applicants are eligible for asylum. If the application fails, petitioners are either ordered deported or allowed to leave on their own.

All unsuccessful asylum-seekers can appeal their cases to the Board of Immigration Appeals, and if that fails, they can take the matter to the federal appellate courts. The 9th Circuit Court of Appeals covers California.

Q: How long does the process take?

A: Affirmative asylum applicants are usually given a decision within 60 days of their initial application. If the petition is denied, they are referred to an immigration judge for further consideration. The process then is supposed to be completed within 180 days, but it can take longer.

Defensive asylum applications also can take months to resolve but sometimes drag on for years, particularly if the petitioner decides to appeal to a federal court.

Q: How do asylum-seekers prove they have been persecuted?

A: Asylum officers, immigration judges and officials on the Board of Immigration Appeals evaluate the applicant's oral and written testimony to determine the credibility of the claim.

Most successful asylum applications include hundreds of pages of supporting documents, such as affidavits from people who know the petitioner, reports from government and human rights organizations, statements from experts on the home country and newspaper articles.

It is not always easy for asylum-seekers to convince immigration officials that they have a valid case.

Dan Bala Dabo, for example, is a Nigerian seeking to remain in the United States because, he says, his conversion from Islam to Christianity places him at risk of persecution in his hometown of Kaduna, which follows Sharia, or Islamic law.

"I've been persecuted and tortured," said Dabo, 30, who entered the U.S. illegally through Mexico in November 2002 and now lives in the Los Angeles area. "I have cuts all over my body.

"My life is in danger. Right now I know that if I go back to Nigeria, I will be killed."

His attorney, Edward W. Pilot, said, "He satisfies the legal test of actual past persecution based on religion, and a well-founded fear of persecution if he were compelled to return to Nigeria."

An immigration judge, however, found procedural and substantive faults with Dabo's application. The Board of Immigration Appeals agreed and denied his appeal. Dabo plans to appeal to the 9th Circuit.

Q: How do cultural or political considerations affect asylum decisions?

A: Some immigration advocates believe that asylum officers and immigration judges are sometimes inadequately trained and lacking in resources, and say their decisions often stem from political bias.

"The federal authorities are far more likely to approve a claim filed by an asylum-seeker from a country that the U.S. administration is publicly and clearly at odds with," said Peter Schey, executive director of the Center for Human Rights & Constitutional Law.

Bill Strassberger, Citizenship and Immigration Services spokesman, countered, "I think we have a very strong interest and willingness to grant asylum to people who are eligible for the benefit, just as we are not willing to grant asylum to those who are not eligible. Asylum is granted on a case-by-case basis."

He added: "The asylum process has nothing to do with our relations with another country. The analysis is, does someone meet the requirement of a refugee, and is he or she eligible for asylum?"

Q: Who typically gets asylum?

A: Nationals from any country are allowed to apply for asylum in the U.S. Refugees from Haiti, Colombia, China, Ethiopia and Venezuela were among the most common petitioners who obtained asylum through the affirmative process last year.

Citizens of Albania, Indonesia and India were among those granted asylum that year through the defensive process.