

Filing a Frivolous Asylum Claim Could Lead to Permanent Loss of Immigration Benefits

Chen v. Mukasy

The immigration laws of the United States provide refuge to those who are feeling from oppression and persecution in their home countries on account of race, gender, religion, membership in a social group, or political opinion. For many immigrants, applying for asylum is the only way in which they may qualify to stay and live in the U.S. permanently. For this reason, many file fraudulent asylum claims. This course of conduct, however, is dangerous because it leads to the permanent loss of any and all immigration benefits.

In this case, a woman came to the U.S. from China on a special cultural visa in 2001. Instead of returning to China when the duration of her stay expired, she remained in the U.S. and filed an asylum petition. She claimed she was forced by the Chinese government to undergo sterilization because she violated China's one child policy. In her petition, she claimed she had to hide from Chinese authorities for months, and endured separation from her family, because she did not want to be sterilized. Forced sterilization, if true, is a basis for a grant of asylum for Chinese nationals, who are in the U.S.

On the asylum petition, there is a clause that warns that making false statements in the asylum petition is a basis for denial of the asylum claim, as well as a complete bar to any other immigration benefits. Despite this warning, the woman signed the form under the penalty of perjury. She was interviewed by an asylum officer, where she repeated her assertions while under oath. She appeared in front of an Immigration Judge ("IJ"), who gave her a verbal warning about the consequences of filing a false (or frivolous) asylum application. Despite this warning, she submitted her papers to the court.

Several months later, in an apparent change of heart, she withdrew her application. She had met and married a U.S. citizen, who had petitioned to sponsor her as an immediate relative. Her marriage to a U.S. citizen offered her a legitimate basis to apply for permanent residence in the U.S. However, the government had determined her asylum petition, even though it had been withdrawn, contained numerous false statements. When asked by the IJ, she admitted she lied in her written application, to the government asylum officers, and to the IJ. The IJ made a factual finding that she had filed a frivolous asylum claim, which precluded her from ever receiving any immigration benefits. On this basis, the IJ denied her husband's petition to sponsor her. She would have been entitled to this immigration benefit, except for the fact that she filed a fraudulent asylum petition. The fact that she withdrew her application before it was decided was of no consequence because her application was completely fraudulent.