

My CFI or RFI Was Denied!

How to Ask for Review of Your Credible or Reasonable Fear Proceedings



The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: www.firrp.org.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

- **Asylum Officer:** This person works for the government of the United States and will speak with you about your fear of return to your country. The interview will happen shortly after you enter the United States and is the first step in the process of asking for asylum or similar protection.
- **Credible Fear Interview (CFI):** If you ask for asylum in the U.S. and **have not been ordered deported in the past**, an asylum officer will ask you many questions to figure out if you have a “credible fear” of returning to your home country. A “credible fear” means a “significant possibility” that you could win your asylum, withholding of removal, or Convention Against Torture case. This is a lower requirement than in a Reasonable Fear Interview.
- **Reasonable Fear Interview (RFI):** If you ask for asylum in the U.S. and **have been ordered deported in the past**, an asylum officer will ask you many questions to

figure out if you have a “reasonable fear” of returning to their home country. Reasonable fear means a “reasonable possibility” that you would win your asylum or withholding of removal case or a “reasonable possibility” that you could be tortured in your home country. This is a higher requirement than in a credible fear interview.

- **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.



- **Immigration Judge (*judge*):** The person who will review the Asylum Officer’s decision. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



Who Should Read this Guide?

This guide from the Florence Project will help you if:

- You are in the United States without permission, and
- You have received a denial of your Credible Fear or Reasonable Fear Interview.

We recommend that you read the Florence Project's guide on how to ask for a Credible or Reasonable Fear Interview *before* reading this guide to have as much information about the process as possible.

In this guide, you will find information about:

- What to do if you have received a negative determination on your Credible Fear (CFI) or Reasonable Fear Interview (RFI)
- How to ask an Immigration Judge to review a negative determination
- Your options if the Immigration Judge agrees with the denial of your Credible Fear or Reasonable Fear Interview.

They denied my Credible Fear Interview or Reasonable Fear Interview. Now what can I do to keep fighting for protection under the law and stop my deportation?

Ask for a review hearing!

You will not receive your decision the same day as your interview with the Asylum Officer. When you receive it a few weeks after the interview, you will find that officer's notes and summary of your interview as well as a decision. The officer will either decide that you have shown that you have a credible or reasonable fear, or that you do not.

Included in the paperwork is a form to ask an immigration judge to review whether or not the Asylum Officer's decision in your CFI or RFI interview was correct.

If you disagree with the Asylum Officer's decision, check the appropriate box stating that you want an Immigration Judge to review the Officer's decision that you do not have a credible fear of persecution or torture or that you do not have a reasonable fear of

persecution or torture. This form is required if you want to ask the immigration judge to review the denial. Once the immigration court receives this paper, they will schedule your review hearing.

2. To be completed by the alien:

- Yes, I request Immigration Judge review** of the decisions that I do not have a credible fear of persecution or torture and that I do not have a reasonable fear of persecution or torture.
- No, I do not request Immigration Judge review** of the decisions that I do not have a credible fear of persecution or torture and that I do not have a reasonable fear of persecution or torture.

If you decide not to ask for a review before the judge, ICE will arrange for your deportation to your country of citizenship.

How do you prepare for your review hearing before the immigration judge? Start as soon as you learn that you have a negative determination.

As you prepare, remember the requirements of asylum, withholding of removal, and protection under the Convention Against Torture:

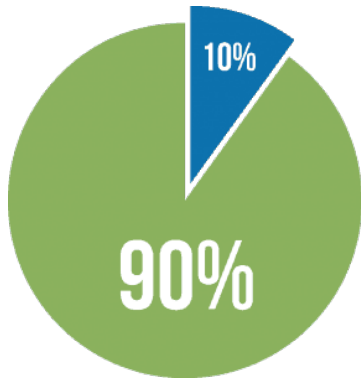
Below is a short explanation, but for more information you can review Florence Project’s guide on asylum, withholding, and protection under the Convention Against Torture, available at <https://firrp.org/resources/prose/>.



To win asylum or withholding of removal, you must show that:

- You have suffered past serious physical or psychological harm, or have a serious risk of suffering that harm in the future. The law calls serious physical or psychological harm “persecution.” This can include harm to your family, and even threats in certain cases.
- The persecution or harm is caused by the government of your home country, or by people who the government is unwilling or unable to control

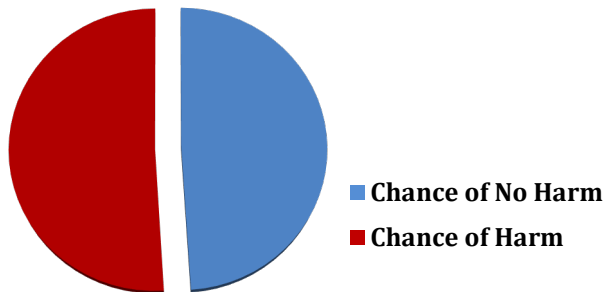
- The person who is harming you is doing it because of your the race, religion, nationality, political opinion, or membership of a particular social group. A particular social group is a characteristic that you cannot or should not change, that is specific to that group, and that is recognizable by others in your society.



Take a look at the chart. Asylum requires you to establish 10% probability of persecution. In other words, you must show that there is serious chance that you will be harmed, but you do not need to show that it will surely happen.

Withholding of removal requires to establish that the harm is more like than not. That means that you have to show a 51% chance of persecution to win withholding of removal. Look at the chart. The red area represents the risk of harm you must show the judge. The red area here is much bigger than it is for an asylum application — 51%. That means that you must show the judge that you will probably be harmed in your home country.

To win Withholding of Removal, you must show a great risk that you will be harmed



The Convention Against Torture requires that:

- You must show that it is more likely than not (51%) that you will suffer physical or mental torture if you are deported to your country of origin.
- You must show that government, or someone the government is unable or unwilling to control, will carry out the torture.

Common Errors in CFI or RFI Interviews

Below are some of the common mistakes that asylum officers make in CFI or RFI interviews. If any of these happened in your case, prepare to explain them to the judge in as much detail as possible.

- Was the interview conducted in your preferred language?
- Did you understand the asylum officer's questions? If not, did you state that you did not understand the interpreter or ask for clarification on the questions?
- At any time during the interview, did the asylum officer misunderstand something that you explained that was important, but you did not have the chance to fix the misunderstanding?
- Did the asylum officer ask questions to help you share all the important information about your fear of returning to your country of origin or any other you have fled? What information did you not share with the officer? If this happened, briefly explain to the judge.
- Is there a good reason why you were not able to share this information with the asylum officer? For example, did you feel unsafe at the time of the interview? Did the officer make you feel distrustful or unsafe? Were you in a detention setting that made you feel unsafe? Remember to always be honest and credibly justify what you tell the judge.
- Did you have access to food and water during your time in detention? Were you without food or water for a long time before you interview, and did that affect you during the interview?
- If there is something you said but the officer did not consider, explain what the important element is and that it was not considered in the interview decision.

Make a list of all the errors above that happened in your case. Be prepared to tell the judge about each of the reasons why you think that there was an error in your interview.

This means that you'll need to have very specific examples about these errors and be prepared to tell the judge what you would have said if these errors had not happened.

Review your interview notes for errors

Keep the questions above in mind as you review your interview notes to spot errors.

Your interview paperwork is likely in English. If you do not read English fluently, we strongly recommend asking the Florence Project or a trusted friend who speaks English for help reviewing those documents. Understanding what those papers say is key to finding errors that could help your case.

We have listed the most important parts of the interview notes below so that you can spend time reviewing those pages.

First, at the end of the interview notes, the officer wrote a summary of your testimony. It is in a section called 'Summarize testimony.' Review it carefully to see if an important part of your story is missing or incorrectly summarized.

Officer	Applicant
I'm now going to read you a summary of your testimony. Since this is only a summary, it will not include everything that you've told me today. But I have a record of everything you told me in my notes. Please let me read the entire summary, and then you'll have a chance to make any corrections or changes at the end.	
Summary of Testimony	

After that summary, you will see about two pages titled 'Credible Fear Determination Checklist' or 'Reasonable Fear Determination Checklist.' These are charts with a checklist where the asylum officer marked whether you provided enough evidence for each part of an asylum or withholding of removal claim. They look like this:

CREDIBLE FEAR DETERMINATION CHECKLIST

FILE#: [REDACTED] OFFICER: [REDACTED] DATE: [REDACTED]	
<ul style="list-style-type: none"> The <i>factual summary</i> (required by 8 CFR § 208.30) must be included at the end of the Q/A notes for each interview. <i>Notes:</i> If there is a significant possibility of torture, complete Part A and Part C. <i>Credibility:</i> If there is no significant possibility assertions could be found credible, complete Part A and Part D. 	
A. Harm	
1. Has the applicant testified to past harm or mistreatment in his or her country? <i>If yes, identify Persecutor / Torturer / Other Individual:</i> [REDACTED] Past Harm: [REDACTED]	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Has the applicant testified that he or she fears future harm if returned to his or her country? <i>If yes, identify Persecutor / Torturer / Other Individual:</i> [REDACTED] Feared Future Harm: death	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. If no to A.1 and A.2, STOP HERE and complete Form I-870. If yes, continue.	
B. Persecution	
1. Is there a significant possibility that the applicant could establish in a full hearing that the claimed past or future harm is on account of one of the five protected grounds? <input checked="" type="checkbox"/> Race <input type="checkbox"/> Religion <input type="checkbox"/> Nationality <input type="checkbox"/> Political Opinion <input checked="" type="checkbox"/> Membership in a Particular Social Group <i>If yes, check applicable ground(s) above and specify: The applicant was threatened to be killed by unknown drug traffickers for being a family member of her mother who had been kidnapped by them for unknown reason.</i> <i>If no, specify motive of alleged persecutor, explain why a protected ground does not apply, and move to Part C.</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Is there a significant possibility that the applicant could establish in a full hearing that the claimed past or future harm did or would rise to the level of persecution? <i>If no, explain, and move to Part C:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Is there a significant possibility that the applicant could establish in a full hearing that the entity that harmed or would harm the applicant is either an agent of the government or an entity that the government is unable or unwilling to control? <i>If no, explain, and move to Part C:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4. Is there a significant possibility that the applicant could establish in a full hearing that the applicant was persecuted or that his or her fear of future persecution is well-founded? <i>If no, explain, and move to Part C:</i> <i>If yes, STOP HERE and complete Form I-870</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

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In general, the “yes” marks will help your case, but it is not necessary for all the “yes” boxes to be marked. Some may be left blank or even marked “no” and you can still get a decision in your favor.

You can see that the boxes have sections marked with letters and subtitles that indicate the part of the claim that is being considered.

Below is a short explanation of what each box means. You can use this list as a guide to find out what information the Asylum Officer thought was missing and prepare for the review hearing with that in mind.

Section A: Harm

1. Indicates if you suffered harm in your country of origin.
2. Asks about future harm you might suffer if returned to your home country.

Section B. Persecution

1. Did you show that past or future harm appears to have been motivated under any of the protected grounds under asylum law: race, religion, nationality, political opinion, membership in a particular social group?
2. Did you show whether the harm was serious enough to meet the definition of persecution?
3. Did you show that the harm was or would be caused or permitted by the government of your home country, or someone that government could not control?
4. Did you show that there is good reason to believe that you would be persecuted if deported to your country of origin?

Section C. Torture

1. Did you show that you were or will be seriously harmed physically or mentally if you are deported to your home country?
2. Did you show that your government would not or could not protect you from serious harm or torture?

Section D. Credibility

1. Is there a good reason to think that you lied about your story?
2. Explain what proof there is to doubt your story.
3. Explain why you said that the officer should believe your story.
4. Does that explanation seem reasonable?

What will happen at the review hearing before the judge?

Your review hearing is an opportunity to explain why the denial was wrong and answer the judge's questions.

If you are asking for review of a credible fear interview, the hearing must be held within 7 days of the Asylum Officer's decision.

If you are asking for review of a reasonable fear interview, the hearing must occur within 10 days of the referral of the case to the immigration court unless there are exceptional circumstances.



At this hearing, you may tell the judge in your own words why the Asylum Officer’s decision was wrong. You may also give the judge a written statement about the errors in your case. The judge will decide if you can present any evidence beyond that. The judge may not have questions for you, or may only ask you one or two short questions.

The hearing will be short, usually about 20 or 30 minutes. The judge will have the Asylum Officer’s notes from your interview just like you do. The judge will usually give a short summary of your case and then ask you what errors you see in the interview. This is your chance to list the errors that you found. Write them down on a piece of paper and practice stating them so you are well prepared. If the judge does not ask you questions to help you point out the errors in the Asylum Officer’s decision, you can tell the judge that you have something to add and then directly explain those errors.

Can I have an attorney represent me at my hearing?

You may hire an attorney for a *credible fear* review hearing. The attorney may be able to help you prepare before the hearing, but will **not** be able to represent you during the hearing. However, the judge may allow the attorney to be present at the hearing. However, that attorney cannot represent you or speak for you. In this type of hearing, you will be the one to speak.

In a *reasonable fear* interview review, the judge may allow an attorney to represent you and speak for you at the hearing.

A government attorney does not participate in *credible fear* or *reasonable fear* review hearings, so only the judge will ask you questions and review your interview.

What types of decisions can the judge make, and how will that affect my case?

The judge can reverse the conclusion of the Asylum Officer and issue a positive determination of your credible fear or reasonable fear, in which case, you will begin your process to apply and fight your case for asylum, withholding of removal, or Convention Against Torture protection. You will be given your Notice to Appear (NTA) before an immigration judge for your first hearing to begin applying for that form of protection.

If this happens, you can contact the Florence Project so that we can send you information on the remaining stages of the process. Also, make sure to review the Florence Project's asylum, withholding of removal, and Convention Against Torture guide, available at <https://firrp.org/resources/prose/>.

The judge can affirm the Asylum Officer's negative determination, which means the judge will issue a deportation order against you.

If you believe that both the asylum officer and the immigration judge made mistakes in their decisions, there are other possibilities to continue trying to achieve a positive determination of your credible fear or reasonable fear. You can ask the Asylum Office to interview you again or reconsider their decision.

How do I request a new credible or reasonable fear interview?

To request a new interview with the Asylum Office, you must send a letter and explain why another interview is necessary.

If you have any new information, or if something important to your case has changed since you had your first interview, you can include it as a reason for a new interview. For example, if you just found out that a family member was threatened or killed in your home country, or if you have a new psychological diagnosis that you did not have at the time of the interview, include it in your letter. Explain why you did not have this information at the time of the interview and how you were able to obtain it now.

Remember that the letter to the Asylum Office must be **very clear and convincing** to make the Asylum Officers question their previous conclusion and think that an additional interview is necessary.

In the letter, you must show that **the first interview did not allow you to fully and fairly present your case.**

For example, perhaps the interview was too short and you couldn't explain everything you wanted to say, or it was so long that you were too tired at the end. Perhaps the officer did not investigate the important facts of your case or forgot to consider them the decision. Maybe the officer did or said something that made you feel uncomfortable and you felt you could not provide more information at the interview.

Where do I send my request for another interview?

The Asylum Office that provides interviews for Arizona is in Virginia. However, the office assigned to Arizona may change. You can call this toll-free number 1.800.375.5283 with questions or ask the Florence Project to confirm which Asylum Office hears Arizona cases. This is the address where you can send the envelope (using USPS, do not use private couriers):

U.S. Citizenship and Immigration Services Arlington Asylum Office 1525 Wilson Boulevard, Suite 300 Mailstop 2500 Arlington, VA 20598-2500	Phone number: (703) 235-4100 Fax number: (703) 812-8455 E-mail (preferred method): ZAR- APSO.ZAR-APSO@uscis.dhs.gov
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Can I ask ICE not to remove me while I wait for a decision on my request for a new interview?

Yes. You can also file a request for a stay of deportation with ICE officials by filing a Form I-246, Application for Stay of Removal or Deportation. The form is available at this website. <https://www.ice.gov/doclib/forms/i246.pdf>

ICE often denies requests for a stay of removal. If you do not have an attorney, you can contact our offices and will do our best to provide additional guidance and useful materials.

Is there any other court that can review the judge's decision? Perhaps.

If there are very serious errors with the judge's decision affirming the negative finding in your credible or reasonable fear interview and you believe that the decision was fundamentally unfair, you may be able to appeal that decision through a Petition for Review before the Ninth Circuit Court of Appeals. You can ask that the court order ICE not to deport you while you wait for their decision through a Motion for Stay of Removal. This is a separate process from requesting a re-interview and requires very detailed guidance because the court may say that it does not have the power to consider your case. Speak with the Florence Project as soon as possible if you would like to pursue this path.