

THE PROCEDURE BEFORE THE FRENCH OFFICE FOR PROTECTION OF REFUGEES (OFPRA)

1. The admission procedure for staying in France

1.1 *The normal procedure: admission and registration*

Further to the temporary authorization of stay issued by the prefecture, the asylum-seeker receives a receipt of his/her asylum application.

The asylum application receipt is to be delivered within a maximum of three days from the APS' expiration date (Art. R742-2 of the CESEDA¹), and is renewed until a decision on the asylum-seekers' application is has been rendered (Art. L. 742-1 of the CESEDA).

The Ministry of the Interior indicates that, with each renewal, the asylum-seeker must provide the proof of residence². An address provided by an authorized association is allowed (CE, 12 October 2000, GISTI et al., req. n°273.198).

1.2 *The fast track procedure*

The law of the 25th of July 2015 replaced the "priority procedure" with a "fast track" procedure designed to allow a faster processing of "applications manifestly groundless" (Art. L.723-3), which is within OFPRA's jurisdiction.

Thus, OFPRA issues a decision, as a priority, for the applications of persons whose temporary document of stay, pursuant to article L. 742-1 of the CESEDA, was refused or removed for one of the reasons mentioned under points 2° and 4° of article L. 741-4³, or whose renewal of said document was refused for one of these reasons (Art. L.723-1 of the CESEDA).

2. The practical points for the asylum application before OFPRA

During the submission of the asylum application, the asylum seeker is not required to clarify the kind of protection he wishes to obtain (*e.g.*, refugee status or subsidiary protection). It is a unique procedure during which the application is examined by OFPRA at first from the angle of the refugee status, and then, if it does not fall under the previous situation, from the angle of the subsidiary protection⁴.

¹ *Code de l'entrée et du séjour des étrangers et du droit d'asile* (code of the entrance and stay of foreigners and asylum law)

² Ministry of the Interior, *Le guide du demandeur d'asile*, juin 2013

³ In other words, for example if the foreigner applying for asylum is a national of a country considered to be safe, if his/her presence in France constitutes a danger to public order, public safety or security State or if the asylum claim is based on deliberate fraud or an abuse of process to asylum procedures or is submitted that in order to defeat a measure imposed or imminent removal.

⁴ See **memo 1** on asylum law for the definitions of the different status of protection.

The information contained in the asylum application is confidential and will be, in no case, passed on to the authorities of the asylum-seeker's country of origin.

The time limits provided must be respected as pursuant to the article L. 723-13 of the CEDESA, OFPRA can end the examination process, if the asylum seeker, without legitimate reason, has not filed his/her application with OFPRA.

The asylum seeker has a period of 21 days to introduce his/her complete asylum application with OFPRA (Art. R. 723-1 of the CEDESA).

2.1 *The asylum application form for OFPRA*

Once the asylum application form is obtained from the prefecture, the asylum-seeker must complete his/her application in French. (Art. R. 723-1.-A of the CEDESA).

The asylum seeker must sign and date his/her application. If he/she does not sign and date the application, OFPRA will not be able to register the asylum seeker (for a minor, the legal representative must sign the application). On the form, the asylum seeker must indicate his/her actual address, and/or the address of a third party or an association if the asylum seeker is housed by a third party or an association.

The seeker must complete the form indicating the information regarding his/her civil status, the date of departure from his origin country and the date of arrival in France, the itinerary followed from the origin country, the means of transport used, and the reasons of leaving the origin country that motivate the request of protection. The asylum seeker must pay attention to the chronological order of the facts and to mention the dates, locations and names of persons.

The asylum seeker can include any additional information that may be considered useful for the review of his/her application. Such information includes the asylum seeker's declarations and all documents in his/her possession concerning the asylum seeker's personal history, his/her family, identity and travel documents, the country or countries where he resided before, his previous asylum applications and the reasons supporting his application (Art. L. 723-4 of the CESEDA).

The Guide on entry and residence of foreigners in France ("GISTI") recommends including personal facts of persecution or threats of persecution and provide as much detail as possible⁵. Indeed, OFPRA takes into account the situation in the origin country at the time of its decision and in particular the activities the asylum seeker engaged in since leaving the origin country that would expose the asylum to persecutions or serious breaches in this country of origin. (Art. L.723-4 of the CESEDA)

2.2 *The documents to be provide to OFPRA*

The asylum seeker must provide: (Art. R. 723-1 of the CESEDA)

- 2 recent passport photographs
- copy of the asylum application certificate

⁵ GISTI, *The guide on entry and residence of foreigners in France*, Editions La Découverte, 2011.

If necessary,

- documentation of travel
- copy of the valid stay document

2.3 Proof of registration

If the application is complete and is received within the relevant periods, OFPRA will send a letter to the asylum seeker, informing him/her that his/her file is complete. This document officially confirms the registration of his/her asylum application.

If an incomplete application is received by OFPRA before the 21 day expiration period, OFPRA will return the application in full with an additional application. Then, the asylum seeker must complete the application and send it to OFPRA within an 8 day period.

2.4 Examination periods

In principle, OFPRA rules on applications within a period of 6 months, which can be extended to 9 months, because of delays attributed to the asylum seeker and new legal and factual questions that may emerge (Art. 31 of the directive 2013/32/UE of the European Parliament).

When OFPRA examines an asylum application in the fast track procedure it issues a decision within a fifteen-day period from the filing of the application. (Art. R. 723-4 of the CEDESA)

3. The interview

The OFPRA invites the asylum seeker to an in person interview.

Pursuant to the article L. 723-6 of the CESEDA, the asylum seeker may be excused from an interview if it appears that:

- The current elements in the file are sufficient for the OFPRA to grant him/her asylum;
- Medical reasons that are sustained out of the asylum seeker's control, which prevent the asylum seeker from attending an interview.

OFPRA indicates that the interview serves the purpose of allowing the asylum-seeker to complete or rectify his/her written story and to clarify potential grey areas. The questions asked to the asylum seeker are aimed to create a complete picture of the events that have occurred to the asylum seeker and the reasons for his/her fears.

The article L. 723-6 of the CEDESA states that « *each adult asylum seeker is heard individually* ». OFPRA may hear a minor individually, if there is reason to believe that the minor could have suffered from serious persecutions, which the family members may be unaware of. The asylum seeker is interviewed by an agent of OFPRA in the language of his choice provided that the minor does not speak another language sufficiently (Art. L.723-6 of the CEDESA).

Pursuant to article L. 723-13 of the CESEDA, OFPRA can make a decision terminating the review of an application if the asylum seeker does not attend the interview at OFPRA. Article L. 723-6 of the

CEDESA clarifies that the absence of the asylum seeker, without a legitimate reason, does not prevent the OFPRA from issuing a decision on the asylum seeker's application.

One of the major provisions of the law of the 19th of July 2015 concerning the asylum law reform relates to the possibility for the asylum seeker to be accompanied by a third party during the personal interview. Thus, the asylum seeker may present himself with a lawyer, a human rights association representative, a foreign law defense or asylum seekers association, a women or children defense association or an association against persecutions based on sex or sexual orientation. The authorization conditions for associations are set by order from the State Council (Art. L.723-7 of the CESEDA).

The personal interview is recorded (Art. R. 723-8 of the CESEDA).

The record of the interview is included in the file of the asylum seeker. A record of the interview may be communicated, upon request, to the asylum seeker's lawyer or representative of the association before a decision is taken on the asylum application (Art. L.723-7 of the CESEDA).

4. The investigation

During the investigation, the protection officer identifies the relevant elements of the asylum seeker's application, examines the asylum seeker's declarations, the elements potentially indicated in the file, and the legal classification of the relevant facts.

During the asylum proceedings, OFPRA considers serious harm or threat of serious harm because of the authorities of the State, parties or organizations controlling the state or a substantial part of the territory or non-state actors where the state authorities are not able to offer protection, or when they do not take appropriate measures to prevent persecution (Art. L. 713-2 of the CESEDA).

A person who would have access to protection on part of the territory of his/her country of origin without fear of persecution there and could get there safely will be denied his/her asylum application. (Art. L. 713-4 of the CESEDA)

5. OFPRA's decision

Under Article L723-4 of the CESEDA, following the investigation of the case, the officer shall decide on the application taking into account the situation prevailing in the country of origin, the personal circumstances of the applicant and statements, evidence and information the asylum seeker submitted and, where appropriate, activities engaged in since leaving his/her home country that would expose the asylum seeker to persecution or serious breaches in his/her home country.

When OFPRA issues a decision, it informs the asylum-seeker:

- **If the asylum seeker is accepted as a refugee by OFPRA**, a recommended letter with record of delivery would be send informing the asylum seeker of the decision of refugee status admission.

- **If the asylum seeker is accepted for the subsidiary protection**, OFPRA will send the asylum seeker, by recommended letter with record of delivery, a decision of subsidiary protection⁶.
- **If the asylum application is rejected**, OFPRA will send a rejection decision written in French and a document translated in a language that may be reasonably assumed to be spoken by the asylum seeker, explaining to the asylum seeker the meaning of the decision. The rejection decision is accompanied by a copy of the interview report that the asylum seeker had with OFPRA.

The seeker may contest OFPRA's decision rejecting the asylum application, before the CNDA⁷. If the asylum seeker does not appeal OFPRA's decision before the CNDA, he must leave the French territory.

6. The re-examination

The dismissed persons, whose application was definitively rejected, can request a new examination by OFPRA and potentially by the CNDA (art. L.723-15 of the CESEDA), if they present a new element, in other words after the date of the definitive rejection decision (or an old element which was known after this decision). A new proof concerning an element already known is not considered a new element.

To submit a new application to OFPRA, the asylum-seeker must present himself/herself to the prefecture and request an admission to stay in France. The prefecture must give, in case of a normal procedure, the same APS as the one during the first application and OFPRA form. The application must, this time, reach OFPRA within eight days.

N.B.: IN CASE OF REJECTION OF THE APPLICATION BEFORE OFPRA, IT IS POSSIBLE TO APPEAL SAID DECISION BEFORE THE **COUR NATIONALE DU DROIT D'ASILE (CNDA)**⁸.

⁶ See the **memo 1** on asylum law for the definitions of the different status of protection.

⁷ See **memo 4**

⁸ Ibid.