

SAFE THIRD COUNTRY AGREEMENT

Materials released in March 2026

Shirk, Georgette L

From: Asylum Chief
Sent: Friday, March 24, 2023 4:04 PM
To: RAIO - Asylum Field Office Staff; RAIO - Asylum Field Office Managers; RAIO - Asylum HQ
Subject: Implementation of the Expanded STCA between the US and Canada
Attachments: Asylum Memo - Expanded Safe Third Country Agreement (signed).pdf; Safe Third Country Threshold Screening Lesson Plan (rev. 3.24.2023).doc; Safe Third Country Agreement Procedures Manual (3.24.2023).docx; STCA Worksheet (rev. 3.24.2023).doc; Safe Third Country Agreement Dependent Worksheet (rev. 3.24.2023).doc; STCA Flow Chart (rev. 3.24.2023).pdf; Guidance for Updating STCA Cases in Global 3.24.2023.docx

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Asylum Division Colleagues,

The Governments of the United States and Canada have agreed to implement the *Additional Protocol* to the *U.S.-Canada Safe Third Country Agreement (STCA)* which will apply the terms of the 2002 STCA to migrants who make a claim for asylum or other protection within 14 days of crossing the land border between ports of entry, including those who cross through certain bodies of water, with limited exceptions. An attached memo provides more information.

We have created a Safe Third Country Agreement Procedures Manual (STCAPM) that contains guidance for handling all STCA cases. We have also created guidance for recording STCA cases in Global. The Safe Third Country Threshold Screening Lesson Plan, Safe Third Country Agreement Case Threshold Screening Adjudication Worksheet (STCA Worksheet), Safe Third Country Agreement Dependent Worksheet, and the STCA Flow Chart (a job aide) have also been updated to reflect the changes.

The memo, STCAPM, Lesson Plan, Worksheets, Global guidance, and Flow Chart are available in the new [STCA portfolio topic](#) on the Asylum Knowledge Center (AKC) and are attached.

If you have any questions about this guidance, please raise them up through your chain of command to the Asylum Operations Branch.

Thank you,



Chief, Asylum Division (b)(6)

Attachments (7)

1. Memo: Implementation of the Additional Protocol to the Safe Third Country Agreement (STCA) Between the Governments of the United States and Canada (March 2023) and Attachments to the Memo.
2. Safe Third Country Agreement Procedures Manual (Rev. 3/24/2023)
3. Safe Third Country Threshold Screening Lesson Plan (Rev. 3/24/2023)
4. Safe Third Country Agreement Threshold Screening Worksheet (STCA Worksheet) (Rev. 3/24/2023)
5. Safe Third Country Agreement Dependent Worksheet (Rev. 3/24/2023)
6. STCA Flow Chart (Rev. 3/24/2023)
7. Guidance for Updating STCA Cases in Global (3/24/2023)

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U.S. Citizenship
and Immigration
Services

Memorandum

(b)(6)

TO: Asylum Division Staff

FROM:
Chief, Asylum Division

SUBJECT: Implementation of the Additional Protocol to the Safe Third Country Agreement (STCA) Between the Governments of the United States and Canada

I. Purpose

This memorandum announces the implementation of the updated Implementation of the 2022 Additional Protocol to the 2002 U.S. – Canada Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries and provides guidance and procedures for the implementation of the expanded Safe Third Country Agreement (STCA) between the governments of the United States and Canada. The STCA updated regulations have been posted in the Federal Register for public inspection (available [here](#)). The final rule will be effective on Saturday, March 25, 2023, at 12:01am. The final rule is scheduled to publish in the Federal Register on Tuesday, March 28, 2023.

Under the updated regulations, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) may now refer noncitizens who cross the U.S.-Canada land border between ports of entry, including through certain bodies of water, and who express a fear of persecution or torture within 14 days of such crossing to USCIS for a STCA Threshold Screening Interviews. CBP will also continue to refer noncitizens who express a fear of persecution or torture who are apprehended at the United States – Canada land border ports of entry.

II. Background

On December 5th, 2002, the governments of the United States and Canada signed the *Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (informally referred to as the STCA). Under the STCA and its existing implementing regulations, third country nationals seeking asylum or other protection from persecution or torture must make a

claim in the first country they arrive in (United States or Canada), unless they qualify for an exception to the STCA. In its original form, the Agreement applied only to asylum seekers expressing a fear of persecution or torture at land border ports of entry or while being removed or deported from the other country.

The STCA was supplemented by the Additional Protocol, which was signed by Canada in Ottawa on March 29, 2022, and signed by the United States in Washington on April 15, 2022. The STCA continues to apply to asylum seekers who apply for admission at a land border port of entry with Canada and in transit through the U.S. while being removed from Canada. The Additional Protocol now allows the United States and Canada to apply the STCA to third country nationals who cross the U.S. – Canada border between ports of entry, including through certain bodies of water, and who express a fear of persecution or torture within 14 days of such crossing.

The *Additional Protocol* made no other changes to the STCA.

For the United States, exceptions to the STCA continue to apply if the asylum seeker establishes one of the following:

- a) They are a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada.
- b) They have in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to a noncitizen whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the United States pursuant to the Visa Waiver Program.
- c) They have in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States.
- d) They are unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States.
- e) They arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States to the noncitizen, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States.
- f) The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the noncitizen to pursue a

claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

III. Guidance

The STCA procedures, lesson plan, worksheet, and associated materials have been updated to reflect the change to include noncitizens who are apprehended between ports of entry on the United States – Canada land border. These materials are attached and are also available in the Asylum Knowledge Center (AKC) in the [AKC STCA](#) portfolio topic. Global has also been updated to reflect these changes, and guidance on recording STCA cases in Global is also attached and available in the AKC.

Attachments:

1. Safe Third Country Agreement Procedures Manual (Rev. 3/24/2023)
2. Safe Third Country Threshold Screening Lesson Plan (Rev. 3/24/2023)
3. Safe Third Country Agreement Threshold Screening Worksheet (STCA Worksheet) (Rev. 3/24/2023)
4. Safe Third Country Agreement Dependent Worksheet (Rev. 3/24/2023)
5. STCA Flow Chart (Rev. 3/24/2023)
6. Guidance for Updating STCA Cases in Global

Lesson Plan Overview

Course	Refugee, Asylum and International Operations Directorate Officer Training Asylum Division Officer Training Course
Lesson	<i>Safe Third Country Threshold Screening</i>
Rev. Date	March 24, 2023
Lesson Description	The purpose of this lesson is to explain how to determine whether a noncitizen seeking entry into the US from Canada at a land border is eligible for an exception to the Safe Third Country Agreement between the US and Canada, which would allow them to seek asylum in the United States.
Terminal Performance Objective	The Asylum Officer will be able to correctly determine whether the applicant in a “threshold screening” has established eligibility for an exception to the Safe Third Country Agreement.
Enabling Performance Objectives	<ol style="list-style-type: none">1. Identify who is subject to the Safe Third Country Agreement. (OK4)(AIL4)(ACRR10)2. Identify the exceptions to the Safe Third Country Agreement.(AIL4)3. Identify the function of the threshold screening.(AIL4)4. Identify the standard of proof required to establish eligibility for an exception to the Safe Third Country Agreement.(AIL4)5. Distinguish among the processes for apprehension at or close to the U.S.-Canada border and Removals from Canada In-Transit through the US.(OK6)(OK7)6. Identify family relationships that may prompt eligibility for an exception.7. Identify the types of lawful immigration status a qualifying family member must have to prompt eligibility for an exception.(AIL4)8. Identify when an asylum claim is pending and whether it may provide a basis for an exception.(AIL4)(OK4)9. Identify exceptions based on citizenship or statelessness with last habitual residence in Canada.(AIL4)(OK4)10. Identify process and potential bases for a public interest exception.(AIL4)
Instructional Methods	Lecture, practical exercises
Student Materials/References	INA Section 208(a)(2)(A), 235(b)(1)(B)-(F); 8 C.F.R. § 208.30; <i>Agreement for the Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries; Procedural Issues Associated with Implementing the Agreement for the Cooperation in the Examination of Refugee Status Claims from Nationals of Third</i>

Countries: Statement of Principles

Forms: **Form I-860**: Notice and Order of Expedited Removal; **Form I-867-A&B**: Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act; Safe Third Country Agreement Threshold Screening Adjudication Worksheet; **Form M-621**: Notice of Threshold Screening Interview.

Method of Evaluation Written test

Background Reading Joseph E. Langlois, Director, Asylum Division, US Citizenship and Immigration Service. *APSS SAFE Screen Guidance*, Memorandum to All Asylum Officer Personnel (Washington, DC: June 5, 2006) 9 pp.
John L. Lafferty, Chief, Asylum Division, US Citizenship and Immigration Services. *Implementation of the Additional Protocol to the Safe Third Country Agreement (STCA) Between the Governments of the United States and Canada*, Memorandum to Asylum Division Staff (Camp Springs, MD: March 24, 2023) 3 pp.

CRITICAL TASKS

- Knowledge of U.S. case law that impacts RAIO (3)
- Knowledge of the Asylum Division mission, values, and goals. (3)
- Knowledge of how the Asylum Division contributes to the mission and goals of RAIO, USCIS, and DHS. (3)
- Skill in identifying information required to establish eligibility. (4)
- Knowledge of the Asylum Division jurisdictional authority. (4)
- Knowledge of forms required for exclusion/removal. (4)
- Knowledge of Safe Third Country Agreement's impact on asylum. (4)
- Skill in organizing case and research materials (4)
- Skill in analyzing complex issues to identify appropriate responses or decisions. (5)
- Skill in applying legal, policy, and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence. (5)
- Knowledge of Custom and Border Protection (CBP) functions and responsibilities, as they relate to RAIO (2)

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Presentation

I. INTRODUCTION

The purpose of this lesson is to explain how to determine whether a noncitizen is eligible for an exception to the bar on applying for asylum when the noncitizen is subject to removal to Canada by operation of the *Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (“Safe Third Country Agreement” or “Agreement”), including the Additional Protocol. *U.S. Dep’t of Homeland Sec. and U.S. Dep’t of Justice, Implementation of the Additional Protocol to the 2002 Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.*

II. BACKGROUND

Section 208(a)(1) of the Immigration and Nationality Act (“Act”) permits any noncitizen who is physically present in or who arrives at the United States to apply for asylum; however, section 208(a)(2)(A) of the Act specifically states that paragraph (1) shall not apply where, “pursuant to a bilateral or multilateral agreement, the noncitizen may be removed to a country where the noncitizen’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the noncitizen would have access to a full and fair procedure for determining a claim to asylum or equivalent protection, unless the Attorney General [now includes the Secretary of Homeland Security under the Homeland Security Act] finds that it is in the public interest for the noncitizen to receive asylum in the United States.”

On December 5th, 2002, the governments of the United States and Canada signed the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries. The Agreement allocates responsibility between the United States and Canada whereby one country or the other (but not both) will assume responsibility for processing the claims of certain asylum seekers who are traveling from Canada into the United States or from the United States into Canada. The STCA was supplemented by the Additional Protocol, signed by Canada in Ottawa on March 29, 2022 and signed by the United States in Washington on April 15, 2022. The Additional Protocol allows the United States and Canada to apply the Agreement to third country nationals who cross the U.S.-

References

See Agreement Between The Government Of The United States Of America And The Government Of Canada For Cooperation In The Examination Of Refugee Status Claims From Nationals Of Third Countries, Can.-U.S., Dec. 5, 2002, T.I.A.S. No. 04-1229, available at <https://www.state.gov/04-1229> (last visited 3/17/2023)

The official publication date of the Additional Protocol is 3/28/2023, however the document posted for public viewing on 3/24/2023.

A more detailed discussion of the background underlying the Agreement may be found in the Supplementary Information discussion that accompanied publication of the Proposed Rule to implement the Agreement, published on March 8, 2004. 69 Fed. Reg. 10620.

69 Federal Register 69480 (November 29, 2004)

In the context of the STCA, the term “asylum seeker” is synonymous with “Refugee Status Claimant” used in the Agreement “any person who makes a refugee status claim in the territory of one of the Parties.” STCA Art. 1

Canada border between ports of entry, including through certain bodies of water, and express a fear of persecution or torture within 14 days of such crossing.

Under the Agreement, including the Additional Protocol, U.S. and Canada have agreed that the “country of last presence” is obligated to accept the return of an asylum seeker from the “receiving country” under certain circumstances. Specifically, noncitizens who request protection from the “receiving country,” either

- at a U.S.-Canada land border port-of-entry;
- while being deported or removed through the “receiving country” by the government of the “country of last presence;” or
- after unlawfully crossing between ports of entry, including crossing through certain bodies of water and who make an asylum or other protection claim relating to a fear of persecution or torture within 14 days from such crossing

may generally be returned to the “country of last presence.” The “country of last presence” will then consider the noncitizen’s protection request under its legal system.

The general obligation of the “country of last presence” to accept the return of asylum seekers making protection claims was largely tempered by principles underlying the U.S. position while negotiating the Agreement: (1) to the extent practicable, the Agreement should not act to separate families; (2) the Agreement must guarantee that persons subject to it would have their protection claims adjudicated in one of the two countries; and (3) it would be applied only in circumstances where it is indisputable that the noncitizen arrived directly from the other country. Reflecting these principles, the Agreement allows asylum seekers to join certain relatives already in the “receiving country.” It also clearly stipulates that an asylum seeker subject to its terms must have their protection claim adjudicated in either Canada or the United States. And, the Agreement limits its application to three situations: those arriving at land border ports-of-entry, those transiting from the “country of last presence” through the “receiving country” during the course of deportation, and those who cross between ports of entry, including certain bodies of water, if such crossing can be determined to have occurred within 14.

In addition to these limits on the Agreement’s applicability, the Agreement also contains several exceptions allowing asylum seekers to pursue their protection claims in the “receiving country.” These exceptions are discussed in detail below.

Immigration judges will conduct a similar analysis in those cases where DHS does not apply the expedited removal process to a noncitizen subject to the Agreement and instead places the noncitizen in removal proceedings under INA § 240. 8 CFR 1240.11(g)

Finally, it is important to note that, because the Agreement is applicable only to noncitizens who may be treated as “applicants for admission” under INA § 235(a), the expedited removal process of § 235(b) is the principal implementation vehicle for the Agreement. The DHS regulations implementing the Agreement create within the expedited removal process a mechanism for making determinations about how the Agreement applies to asylum seekers. This mechanism is called the “threshold screening interview.” For cases where the Agreement applies, the “threshold screening interview” will precede (and, in some cases, preempt) the INA § 235(b)(1)(B) credible fear interview process with which asylum officers are familiar.

III. FUNCTION OF THRESHOLD SCREENING

The function of the threshold screening process is to determine whether a noncitizen is subject to the Agreement, and, if so, whether the noncitizen will be permitted to remain in the U.S. to pursue their protection claims based on the noncitizen’s qualification for one of the Agreement’s exceptions.

It is important to keep in mind that, while both the U.S. and Canada boast generous and effective protection regimens, in some individual cases, an applicant may have compelling reasons for not seeking protection in one nation, in favor of the other. Asylum officers are trained to make factual and legal determinations in the context of protection claims, so they are well-suited to the task of the threshold screening.

IV. STANDARD OF PROOF IN THRESHOLD SCREENING

The threshold screening is a fact-based determination, subject to a *preponderance of the evidence* standard of proof. Threshold screening interviews are conducted in Q&A format to ensure a complete and accurate record for supervisory and Headquarters Asylum (HQASM) review. There is no other review of the threshold screening determination.

8 CFR 208.30(e)(6)(ii)

Asylum officers will use all available evidence, including the individual's testimony, official documents, secondary forms of documentary evidence, including affidavits, as well as available DHS records, including systems records, to determine whether an exception to the Agreement applies in each noncitizen's case. Credible testimony alone may be sufficient to establish that an exception applies, if there is a satisfactory explanation of why corroborative documentation is not reasonably available. In assessing whether evidence is reasonably available, asylum officers should be sensitive to the fact that asylum seekers fleeing

Excerpt from Supplementary Information to the Proposed Rule - “What Type of Evidence Will Satisfy USCIS When Determining Whether an Individual Meets One of the Exceptions in the Agreement?” 69 FR 10623

persecution may often not have documents establishing eligibility for one of the Agreement's exceptions at the time they seek protection from persecution or torture; however, they should also consider the length of time the asylum seeker spent in Canada, and whether one could reasonably be expected to have obtained documentation while in Canada. Also, DHS records, including systems records and records from other government agencies, though helpful in verifying certain family relationships and questions concerning immigration status, may not be conclusive. Asylum officers conducting threshold screening interviews should rely upon their training and experience in evaluating credibility of testimony when there is little or no documentation in support of that testimony.

V. EXCEPTIONS APPLICABLE ALONG THE U.S.-CANADA BORDER

Noncitizens who request asylum, withholding of removal, or protection under the Convention Against Torture at a U.S. port-of-entry located on the shared U.S.-Canada land border or who crossed illegally into the U.S. from Canada and express a fear to DHS within 14 days of such crossing (including crossing through certain bodies of water), are ineligible to pursue their claims in the U.S. unless they qualify for one of the Agreement's exceptions. A noncitizen qualifies for an exception to the Agreement under these circumstances if they:

8 CFR 208.30(e)(6)(iii)

- a.) Are a citizen of Canada or, not having a country of nationality, are habitual residents of Canada;
- b.) Have in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to a noncitizen whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the United States pursuant to the Visa Waiver Program;
- c.) Have in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;

- d.) Are unmarried, under 18 years of age, and do not have a parent or legal guardian in either Canada or the United States;
- e.) Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States to the noncitizen, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or
- f.) The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the noncitizen to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

A. Citizen or habitual resident of Canada

Agreement, art. 2

8 CFR 208.30(e)(6)(iii)(A)

Applications made by individuals claiming to be citizens of Canada must be referred to HQASM prior to a determination. A passport may generally be considered presumptive proof of citizenship.

Noncitizens claiming citizenship in multiple countries may be admitted under this exception if they establish Canadian citizenship by a preponderance of the evidence.

Stateless individuals who last resided in Canada must establish both statelessness and habitual residence in Canada.

The UN has defined “stateless person” as “a person who is not considered as a national by any State under the operation of its law.” The INA defines “national” as a person owing permanent allegiance to a State. Both definitions should be considered when determining whether an individual is stateless. Even if the applicant believes they owe allegiance to a State, if the State does not consider the noncitizen to be a national of that State, they should be considered stateless. Asylum Officers may need to research relevant nationality laws to help identify statelessness.

Convention Relating to the Status of Stateless Persons, opened for signature Sept. 28, 1954, art. 1(1), 360 U.N.T.S. 117 (entered into force June 6, 1960)

Whether the noncitizen maintained a habitual residence in Canada is a question of fact that should be assessed based on their testimony and any documentation that establishes they, in fact, resided in Canada. Asylum Pre-Screening Officers (APSOs) should elicit specific information establishing place of residence and duration to determine whether the noncitizen habitually resided in Canada.

INA § 101(a)(21)

B. Family member in lawful status

Agreement, art. 4, ¶ 2(a)

1. Qualifying family members with lawful immigration status in the United States, other than visitor (B-1, B-2, or visa waiver program), may serve as anchor relatives upon whom the noncitizen may base their request for exception to return under the Safe Third Country Agreement.

8 CFR 208.30(e)(6)(iii)(B)

Proof of relationship may be based on specific documentary evidence (such as a birth certificate establishing a parent-child relationship), on affidavits from people having direct knowledge of the event described, or, on the credible testimony of the noncitizen.

Additional supporting evidence may include a affidavit executed by the anchor relative, or by the anchor relative's representative (not necessarily a legal representative) if the anchor relative is incapable of executing an affidavit. Affidavits by anchor relatives should identify the anchor by full name, date of birth, current address and Alien Registration Number (if the anchor relative has an Alien Registration Number and the anchor is not a US citizen).

To facilitate submission of documents by the anchor relative, the noncitizen should be afforded access to telecommunications equipment to contact the anchor, and to receive communication from the anchor.

The noncitizen's credible testimony alone may also be sufficient to establish a qualifying relationship, if obtaining documentary evidence is unreasonable. The testimony must establish that it is more likely than not that the relationship exists. To establish a relationship through credible testimony alone, the APSO must elicit information relating to the anchor relative's basic biographic information, such as birth date, age, place of residence, length of time in the U.S., or other information that confirms familiarity with the relative.

Matter of Dass, 20 I&N Dec. 120 (BIA 1989); *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) *Matter of B-B-*, Int. Dec. 3367 (BIA 1998)

The following family members may serve as anchor relatives:

- a. The applicant's spouse, as defined in INA § 101(a)(35). The relationship must be based on a non-polygamous marriage valid under the laws of the place where the marriage took place, and does not include unions precluded by U.S. law or regulations. Proof of a spousal relationship could

69 Fed. Reg. 69480

Matter of H-, 9 I&N Dec. 640, 641 (BIA 1962)

include a marriage certificate or an affidavit from the spouse, which includes why the affiant cannot produce a marriage certificate.

- b. Son, meaning the male child of the applicant, including those born either in or out of wedlock, step-sons, and those adopted prior to the age of 18. Proof of a parent-son relationship may include a birth certificate or adoption decree showing the noncitizen's name as one of the son's parents, or a sworn statement by the son (if 18 or over) or by the son's representative (if under 18).
- c. Daughter, meaning the female child of the applicant, including those born either in or out of wedlock, step-daughters, and those adopted prior to the age of 18. Proof of a parent-daughter relationship may include a birth certificate or adoption decree showing the noncitizen's name as one of the daughter's parents, or a statement affidavit by the daughter (if 18 or over) or by the daughter's representative (if under 18).
- d. Parent, meaning the father or mother of the noncitizen, either through birth or adoption prior to the age of 18, or a step-father or step-mother, meaning a person married to the father or mother of the applicant prior to the noncitizen's eighteenth birthday. Proof of parental relationship could include a birth certificate or adoption decree showing the noncitizen as the child of the named parent, or a statement affidavit by the parent.
- e. Legal guardian, meaning a person currently vested with legal custody of the noncitizen or vested with legal authority to act on behalf of the noncitizen, provided that the noncitizen is unmarried and under age 18. Proof of guardianship may include a court-issued guardianship order or an affidavit by the guardian.
- f. Sibling, meaning the brother or sister of the applicant, as a result of having the same mother or father through birth or adoption prior to the age of 18. This term also includes a step-sibling, meaning a person with a parent married to a parent of the

The terms, "son" and "daughter," as they are used in the Agreement, are equivalent to the "child" definition of INA § 101(b), with the exception that 101(b)(1)'s requirement that the "son" or "daughter" be "an unmarried person under twenty-one years of age" does not apply to analysis under the Agreement's exceptions.

Id.

INA Section 101(b)(2)

8 CFR 208.30(e)(6)(iv)

applicant. Proof of sibling relationship may include birth certificates or adoption decrees for the sibling and the noncitizen showing shared parentage, or an affidavit by the sibling (if 18 or over), parent, or representative, or any combination of the above.

- g. Grandparent, meaning the parent of the applicant's parent, as the term "parent" is defined above. Proof of grandparent relationship to the applicant may include birth certificates or adoption decrees of the noncitizen's parent and the noncitizen, or by affidavit from the grandparent or the noncitizen's parent, or their representative, or any combination of the above.
- h. Grandchild, meaning the son or daughter of the noncitizen's son or daughter as the terms "son" and "daughter" are defined above. Proof of grandchild relationship may include birth certificates or adoption decrees for the grandchild and the grandchild's parent (noncitizen's son or daughter), affidavits from the grandchild (if 18 or over) or their parents or representative, or any combination of the above.
- i. Aunt or uncle, meaning the sibling of the noncitizen's parent, or the spouse of a noncitizen's parent's sibling, as the terms "sibling," "parent," and "spouse" are defined above. Proof of relationship to an aunt or uncle may include birth certificates or adoption decrees showing common parentage of the aunt and the noncitizen's parent, or marriage certificate showing union with the noncitizen's parent's sibling, or affidavit from the aunt or uncle (if 18 or over), or their sibling, parent, or representative, or any combination of the above.
- j. Niece, meaning the daughter of the noncitizen's sibling, as the terms "daughter" and "sibling" are defined above. Proof of aunt/uncle relationship to a niece may include birth certificates or adoption decrees of the noncitizen, the niece's parent (noncitizen's sibling), and the niece, affidavits from the niece (if 18 or over), their parents, or their representative, or any combination of the above.

k. Nephew, meaning the son of the noncitizen’s sibling, as the terms “son” and “sibling” are defined above. Proof of aunt/uncle relationship to a nephew may include birth certificates or adoption decrees of the noncitizen, the nephew’s parent (applicant’s sibling), and the nephew, sworn statements from the nephew (if 18 or over), their parents, or their representative, or any combination of the above.

2. In-law and cousin relationships are not considered qualifying family members.
3. For purposes of this exception, there is no age restriction on the anchor family member in lawful immigration status.
4. Lawful immigration status for the purpose of exception to the Safe Third Agreement does not include family members in non-immigrant status under INA 101(a)(15)(B) or pursuant to the Visa Waiver Program. Proof of lawful immigrant status may include verification through DHS or EOIR systems, copies of documents that form the basis for such status (e.g. a U.S. birth certificate for citizenship based on birth in the U.S.; Court Order granting withholding of removal, etc.). Examples of eligible anchor status includes the following:
 - a. U.S. Citizens
 - b. U.S. Lawful Permanent Residents (LPRs), including conditional LPRs
 - c. Asylees
 - d. Refugees
 - e. Noncitizens granted Temporary Protected Status
 - f. Noncitizens granted withholding of removal
 - g. Noncitizens with valid student and employment-related non-immigrant visas

The VWP is outlined in INA § 217 and implemented at 8 CFR part 217.

C. Family Member 18 years of age or over who has a pending asylum application

Agreement, art. 4, ¶ 2(b)

8 CFR 208.30(e)(6)(iii)(C)

1. This exception includes qualifying family members as defined in B.1.a-1, above.
2. Unlike the previous category, this exception places an age restriction on the anchor family member.

The anchor family member must be 18 or over, according to information contained in the asylum application, on the date of the threshold screening determination. This age

restriction applies to all family members in this category, including spouses.

3. A “family member” should be regarded as having an asylum application pending if they are a principal applicant or included as derivative on a Form I-589, or is in the U.S. and is the beneficiary of a pending Refugee/Asylee Relative Petition (Form I-730).

- a. Pending applications include the following:

- (i) Applications awaiting interview;
- (ii) Applications that have been interviewed, but are awaiting decision;
- (iii) Applications in which a Notice of Intent to Deny has been issued, but which have not been denied;
- (iv) Applications that have been referred to an IJ and are pending before EOIR;
- (v) Applications that have been denied, but have an appeal pending with the BIA;
- (vi) Applications that have been denied but have a Petition for Review pending with a U.S. Court of Appeals.

HQASM can be contacted to help determine if a family member’s asylum application is pending review by a U.S. Court of Appeals.

- b. The following application will not be considered “pending:”

- (i) Applications that have been administratively closed;
- (ii) Applications that have been dismissed;
- (iii) Applications that have been terminated;
- (iv) Applications that have been withdrawn.

- c. The application must be pending on the date of the threshold screening determination.

- d. Proof of filing of I-589 must be confirmed in Global and/or EOIR Automated Case Information: <https://acis.eoir.justice.gov/en/> or proof of receipt (either through communication received from DHS or DOJ, or proof of docketing before a federal court).

- e. Whether the pending asylum application is likely to succeed is irrelevant to the determination:

- (i) Neither the asylum filing bars of INA § 208(a)(2), nor the eligibility bars of § 208(b)(2)(A) are relevant to the threshold

-
- screening determination.
- (ii) Likelihood of approval is not relevant to the threshold screening determination.

D. Unaccompanied Minors

Agreement, art. 4, ¶ 2(c)

The Agreement defines “unaccompanied minors” as:

8 CFR 208.30(e)(6)(iii)(D)

1. Unmarried and under age 18 (age may be established through valid identity documents, dental and/or wrist bone examination, which is a process usually coordinated by the Public Health Service, or other evidence that establishes that it is more like than not that the noncitizen is under age 18); and
2. Have no parent or legal guardian in either the United States or Canada.

**8 CFR 1208.4(a)(6);
1240.11(g)(1)**

**69 Fed. Reg. 10623; 10630;
69483**

Under CBP practices, unaccompanied minors are generally not subject to Expedited Removal. As such, most noncitizens who might qualify for the agreement’s “unaccompanied minor” exception will not undergo threshold screening interviews by asylum officers. Immigration judges, in removal proceedings under INA § 240, will determine whether unaccompanied minors are excepted from the Agreement by applying the Agreement’s definition of “unaccompanied minor,” which differs from that customarily used by CBP officers.

E. Individuals with a validly issued U.S. visa, or Visa Waiver nationals required to have a visa in Canada

Agreement, art. 4, ¶ 2(d); art. 5

8 CFR 208.30(e)(6)(iii)(E)

An applicant for admission at a U.S.-Canada land border port of entry may be denied admission by CBP and referred to an asylum officer for a threshold screening interview, even though they have a passport that contains a U.S.-issued visa. Noncitizens referred in this fashion may include those presenting currently genuine (not counterfeit) non-immigrant U.S. visa indicating an intention to apply for asylum and determined by CBP to be an intending immigrant during the inspection process. Noncitizens found to possess genuine visas will meet an exception to the Agreement, even if they are an intending immigrant, and the officer will continue with consideration of the credible fear claim.

An example of validly issued, genuine visas, for purposes of this exception is a non-immigrant visa that was properly issued by a designated State Department official to an individual using a properly issued passport, but the individual was found

ineligible for admission into the U.S. because CBP determined the noncitizen to be an intending immigrant.

Examples of visas that will not be considered validly issued for purposes of this exception to the Agreement are counterfeit visas not issued by the U.S. Government. Additionally, visas in passports that were obtained through identity fraud and visas in photo-subbed passports will not be considered validly issued. However, where a noncitizen has made a material misrepresentation to a consular officer for purposes of concealing their intent in order to apply for asylum in the U.S., a visa issued by the State Department in reliance on such a misrepresentation may be regarded as validly-issued.

Noncitizens from countries participating in the U.S. Visa Waiver Program who are not exempt from Canadian visa requirements also qualify for an exception to the Agreement. However, currently, all nationals of each U.S. VWP participating country are also visa exempt in Canada. Thus, this exception will not presently apply to any asylum seekers. VWP applicants who indicate an intention to apply for asylum will be referred to an asylum officer, who will conduct a threshold screening interview to determine the applicability of other Agreement exceptions.

A list of U.S. VWP participating countries and visa exempt Canadian nationalities may be found, respectively, at <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/entry-requirements-country.html> (scroll down to “Visa-exempt (eTA eligible) travellers)

F. USCIS Director or designee determines it is in the Public Interest to allow the individual to seek asylum in the U.S.

Agreement, art. 6

8 CFR 208.30(e)(6)(iii)(F)

For purposes of the public interest exception to the Agreement, an APSO will conduct the threshold screening interview and may recommend such a determination, but the final decision on affirmative public interest findings is made by the USCIS director or their designee.

Each public interest exception should be evaluated on an individualized, case-by-case basis, applying a “totality of the circumstances” analysis.

69 FR 69483-84

VI. EXCEPTIONS APPLICABLE TO INDIVIDUALS IN-TRANSIT THROUGH THE UNITED STATES, WHILE BEING REMOVED BY THE GOVERNMENT OF CANADA

Parole status granted to a noncitizen for the purpose of allowing them to transit through the U.S. during removal by the Canadian government will be revoked upon the noncitizen’s indication of intention to seek asylum. The noncitizen will then be immediately referred for a Threshold Screening Interview. For threshold screening of in-transit referrals, the only exceptions to the

Agreement are the following:

- Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada; or Described in greater detail at Section V.(A) above.
- The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the noncitizen to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States Described in greater detail at Section V.(F) above.

VII. SUMMARY

A. Function of the threshold screening

The function of the threshold screening process is to determine whether a noncitizen is subject to the Agreement, and, if so, whether they will be permitted to remain in the U.S. to pursue their protection claims based on the noncitizen's qualification for one of the Agreement's exceptions.

B. Standard of proof in threshold screening

The threshold screening is a fact-based determination and is subject to a *preponderance of the evidence* standard of proof.

C. Exceptions applicable at, or close to the U.S.-Canada border

Noncitizens who request asylum, withholding of removal, or protection under the Convention Against Torture at a U.S. port-of-entry located on the shared U.S.-Canada land border, or a noncitizen who crossed into the U.S. between ports of entry, including through certain bodies of water, and expresses a fear of persecution or torture to DHS within 14 days of such entry, is ineligible to pursue their claims in the U.S. unless they qualify for one of the Agreement's exceptions.

A noncitizen qualifies for an exception to the Agreement under these circumstances if they:

- a. Are a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;
- b. Have in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted

asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to a noncitizen whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the United States pursuant to the Visa Waiver Program;

- c. Have in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;
- d. Are unmarried, under 18 years of age, and do not have a parent or legal guardian in either Canada or the United States;
- e. Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States to the noncitizen, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or
- f. The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the noncitizen to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

D. Exceptions applicable to individuals in-transit through the United States while being removed by the Government of Canada

For threshold screening of in-transit referrals, the only exceptions to the Agreement are the following:

- a.) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada; or
- b.) The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the noncitizen to pursue a claim for asylum, withholding of removal, or protection

under the Convention Against Torture, in the United States.

Safe Third Country Agreement (STCA) Procedures Manual

Overview

This Procedures Manual provides information on how to proceed when a noncitizen expresses a fear or concern of persecution or torture after crossing or attempting to cross into the United States from Canada, and the Safe Third Country Agreement (“STCA” or “Agreement”) applies. For purposes of this Manual, noncitizens seeking protection from persecution (asylum and withholding of removal) and protection under the Convention against Torture are referred to as “asylum seekers.”

The STCA, as implemented by regulation at 8 CFR 208.30(e), prohibits certain asylum seekers from pursuing a request for protection in the U.S. and allows the U.S. to return them to Canada to seek protection “in the country of last presence.” Similarly, the STCA allows the Canadian government to return certain asylum seekers to the U.S. to pursue their protection claims.

This Manual is divided into five sections.

- **I. Background Information:** Provides context to the determination of a protection from persecution or torture claim where the STCA is a factor.
- **II. Initiating the Process:** Describes how an asylum office receives an STCA referral and how to conduct an interview.
- **III. Determining Exceptions to the Agreement:** Describes what the asylum office needs to consider toward determining if the STCA applies and, if it applies, whether the asylum seeker is eligible for an exception.
- **IV. Determination and Service:** Describes the types of determinations, how to serve a determination, and what happens once the determination is made.
- **V. Expanded Topics:** Covers how to process certain situations, including dissolutions and unavailability of a contract interpreter.

I. Background Information

The Agreement applies to three groups of asylum seekers:

1. Noncitizens who arrive at a U.S. – Canada land border port-of-entry and apply for admission.
2. Noncitizens who are being removed from the U.S. or Canada through the other country and seek asylum while in transit in that other country.

3. Noncitizens who cross the U.S. – Canada border between ports of entry, including those who cross through certain bodies of water, and who make an asylum or other protection claim relating to a fear of persecution or torture within 14 days after such crossing.

Originally, the Agreement applied only to the first two groups listed above. On March 25, 2023, the Agreement was expanded to apply to a third group: asylum seekers who cross the United States – Canada border between ports of entry, including crossing through certain bodies of water, and who make an asylum or other protection claim relating to a fear of persecution or torture within 14 days after such crossing.

Unless an asylum seeker who falls into one of these three groups is either exempt from the Agreement or eligible for one of its exceptions, the U.S. will return the asylum seeker to Canada without further determination of their protection claim.

On December 5, 2002, the U.S. and Canada entered into a bilateral agreement that affects a noncitizen’s ability to request asylum or other protection claims relating to fear of persecution and torture (referred to as a “refugee status claim”) in one of these two countries after traveling through the other (generally, “asylum seekers”).¹ The agreement took effect on December 29, 2004, after promulgation of implementing regulations and exchange of diplomatic notes. This “safe third country” agreement acknowledges that the U.S. and Canada consider each other “safe” countries in which to seek protection under the Convention or Protocol relating to the Status of Refugees and the Convention Against Torture.²

The STCA allocates responsibility between the United States and Canada whereby one country or the other (but not both) assumes responsibility for processing the claims of certain third country national asylum seekers who are traveling from Canada into the United States or from the United States into Canada. The STCA provides for a threshold determination to be made concerning which country will consider the merits of a noncitizen’s asylum and other protection claims relating to persecution or torture. This process enhances the two nations’ ability to manage, in an orderly fashion, asylum and other protection claims brought by persons crossing the U.S.-Canada common border.

The Department of Homeland Security (DHS) regulation implementing the STCA under 8 CFR 208.30(e)(6) provides a mechanism within the expedited removal process for determining whether the STCA or its exceptions apply.

Immigration judges make the STCA determination for asylum seekers who are subject to the provisions of the STCA in INA section 240 removal proceedings. Immigration judges can grant

¹ The term “asylum seeker” is used to be synonymous with the term “Refugee Status Claimant” used in the STCA, which is defined as “any person who makes a refugee status claim in the territory of one of the Parties.” STCA Art.

² 69 Federal Register 69480 (November 29, 2004)

any one of the available exceptions, except for the “In the Public Interest” exception, which can only be granted by the Director of USCIS or their designee.

The Agreement provides numerous exceptions, adopted by regulation at 8 CFR 208.30(e)(6)(iii), for asylum seekers encountered:

- at a land border port of entry with Canada,
- within 14 days of crossing the U.S. land border with Canada, including through certain bodies of water, and
- anywhere in the U.S. while being removed or deported from Canada³.

Meeting the eligibility requirements for any one of the exceptions available, allows the asylum seeker to pursue their protection claims in the U.S.

II. Initiating the Process

Asylum seekers subject to the agreement, except for most unaccompanied minors, are referred to an asylum officer for a “threshold screening determination,” the primary purpose of which is to determine whether the asylum seeker must be returned to Canada or is exempt from the agreement because of the applicability of an exception. Generally, the process is initiated by a Customs and Border Protection (CBP) officer who will prepare and transmit to the asylum office having geographical jurisdiction the following expedited removal referral documents:

- Form I-860, Notice and Order of Expedited Removal;
- Form I-867 A&B, Sworn Statement and Jurat;
- Form M-621, Notice of Threshold Screening Interview (TSI);
- List of free legal services providers

1. Consultation Period

As part of the Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry final rule, DHS clarified that the same safeguards accorded to noncitizens

³ There are only two exceptions available to noncitizens who make their protection from persecution or torture claim in the U.S. while being removed from Canada. The two available exceptions are: 1) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada; or The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States. 8 CFR 208.30(e)(6)(iii).

who are eligible for credible fear determinations will be accorded to those who receive threshold screening interviews under STCA.⁴ Therefore, the Asylum Division allows for a minimum of 48 hours between the arrival of a noncitizen at a detention site and an STCA interview, reflecting what is provided in the credible fear screening process. This 48-hour period allows the asylum seeker to rest, collect their thoughts and to contact a relative, representative, or friend whom the noncitizen may want to use as a consultant during the TSI.

If the asylum seeker is transferred to a new detention facility after the initial TSI referral, the 48-hour consultation period begins anew from the noncitizen's arrival at the new location.

2. Interview Scheduling and Notification

Procedurally, scheduling a TSI is identical to scheduling a credible fear screening interview. Please refer to CFPM at III.D.2.

III. Interview, Note-Taking and Documentation of Determination

The threshold-screening interview is only required to determine if the asylum seeker is barred from applying for asylum.⁵ There may be instances when the record supports a determination that the bar does not apply. In such instance, the interview may not be necessary. In most instances the interview enables an Asylum Officer (AO) to determine whether an asylum seeker qualifies for an exception to the Agreement.

During the TSI, the AO has an affirmative duty to elicit from the asylum seeker all relevant information bearing on whether the asylum seeker is subject to the STCA and, if subject, whether the noncitizen qualifies for an exception.

The AO must elicit all relevant testimony and evaluate it with other available evidence, including information in relevant DHS databases, to determine whether the noncitizen qualifies for an exception. During the interview, the AO shall advise the asylum seeker of the Agreement's exceptions and question the noncitizen as to the applicability of any of these exceptions to the asylum seeker's case.⁶

The asylum seeker bears the burden to establish by a preponderance of the evidence that an exception applies. For specific examples of evidence to consider in evaluating whether an exception applies and further guidance on the substantive aspects of the threshold screening, see the Asylum Division Safe Third Country Threshold Screening Lesson Plan.

⁴ <https://www.federalregister.gov/documents/2004/11/29/04-26239/implementation-of-the-agreement-between-the-government-of-the-united-states-of-america-and-the>

⁵ 8 CFR 208.30(e)(6)

⁶ 8 CFR 208.30(e)(6)

Generally, the TSI will take place by telephone while the asylum seeker is detained, either in a CBP or in an ICE facility. As in a credible fear interview, the AO must coordinate with personnel of the agency that is detaining the asylum seeker.

The TSI is a non-adversarial interview.

Generally, each interview will proceed in the following manner:

1. Administering an Oath

Before beginning the TSI, the AO must follow the oath-administration and interpreter procedures described in the sections III.E.3 and III.E.6 of the Credible Fear Procedures Manual (CFPM).

2. STCA Orientation

The AO must confirm that the asylum seeker received the Form M-621, Notice of Threshold Screening Interview, and understood the content. If the noncitizen did not receive or did not understand Form M-621, the AO will orient the asylum seeker pursuant to guidance in a manner like the one described in section III.D.1.b of the CFPM. The noncitizen must sign and date Form M-621.

Upon confirming that the noncitizen received and understood Form M-621, the AO must notify the asylum seeker that, if they have a relative in the U.S., that relative may need to produce supporting documentation, such as birth, marriage certificates; or an affidavit attesting to facts material to the determination that may help establish a relationship to the asylum seeker. Notifying the noncitizen that this information may be required, at this stage of the process, could save time in completing the threshold screening adjudication.

3. Note-Taking

Notes must be taken in Q&A format, but they need not be a verbatim record of everything said during the interview. The interview notes must reflect accurately the communication between the noncitizen and the AO, including specific questions that the AO asked and the answers the noncitizen provided regarding each possible exception to the Agreement. The notes must show that the AO inquired into every inconsistency and lack of detail, allowing the noncitizen to offer reasonable explanations and to provide additional details having a bearing on the eligibility to an exception.

The interview notes must be written in such a way as to enable a reviewer to reconstruct what transpired during the interview and they must substantiate the AO's determination. The AO must create a summary of the material facts as stated by the noncitizen. At the conclusion of the interview, the Asylum Officer must review the summary with the noncitizen to confirm accuracy and make requested corrections.

At the end of the interview, the AO must determine 1) if the STCA applies, and 2) if it does apply, whether the noncitizen is eligible for an exception.

If the STCA does not apply, as in the case of a noncitizen who is not properly in expedited removal, the AO must document the facts in a memorandum to the A file and consult with a supervisor who, in turn, will consult with CBP or ICE to determine the best way forward.

If, based on the interview and all evidence available, the AO concludes that the asylum seeker is subject to the STCA, the AO must prepare an STCA Worksheet, to document the interview and assist in the determination of whether an exception to the agreement applies. The worksheet should be fully completed, including section IV, which documents the AO's "Conclusion/Finding" concerning agreement applicability.

If the AO determines that the noncitizen is exempt from the Agreement because an exception (other than the public-interest exception) applies, the AO proceeds with a credible fear interview following completion of the STCA Worksheet. In circumstances where it appears that the noncitizen is eligible for a public interest exception, the AO must wait for supervisory asylum officer concurrence and guidance from HQ Quality Assurance Branch (HQ-QA), as explained in section IV.1.iv (Discretionary: In the Public Interest exception) below, before beginning the credible fear interview.

IV. Determination, and Service

1. *The Exceptions*

A main focus of the exceptions⁷ is to allow an asylum seeker to ask for protection in the country where the noncitizen has family that can be supportive, recognizing the importance of a support network to an asylum seeker. In contrast to most immigration benefits, the qualifying family relationships recognized by the STCA are extensive and very generous: they are not limited to the "nuclear family," but recognize the extended family as a source of support for the asylum seeker.

i. Citizen or habitual resident, if stateless, of Canada

A citizen of Canada, or a stateless noncitizen who is a habitual resident of Canada, is exempt from the provisions of the Agreement and may seek protection from persecution or torture in the U.S.⁸

If this exception applies, the AO indicates this in the STCA Worksheet. The STCA Worksheet and any documentation supporting the noncitizen's claim of citizenship or statelessness and habitual

⁷ 8 CFR 208.30(e)(6)(iii)(A)-(F)

⁸ 8 CFR 208.30(e)(6)(iii)(A)

residence, including any documentation received from Canadian authorities, are included in Global and on the record-side of the A-file.

ii. Family-based exceptions

The Agreement and the regulations provide two distinct family-based exceptions. These exceptions allow asylum seekers who are otherwise subject to the Agreement to seek protection in the U.S. if they have a “family member” in the U.S. where the “family member” either: (i) has lawful immigration status in the U.S. (other than that of nonimmigrant visitor); or (ii) where the “family member” is at least 18 years old with a pending asylum application in the United States. “Family member” is defined, for purposes of these exceptions, as: spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew.

If the noncitizen establishes a relationship to a “family member” who is in the U.S and that the “family member” has the requisite status, the AO notes on the STCA Worksheet the type of evidence the noncitizen provided to establish this relationship. Before making a final determination, the AO attempts to verify this information by searching the applicable U.S. Government database (for example: CIS2, Global, PCQS). The AO may email CBP or ICE-ERO digital copies of the relevant database information about the family member in the U.S. to be placed in the non-record side of the A-file. The copies should also be included in Global.

Recognizing the difficulty an asylum seeker may have to engage with family members while in detention, the AO can help facilitate contact between the asylum seeker and the family member, but it would not be appropriate for the AO to contact the “family member” directly as that may constitute a confidentiality violation. In the absence of documentary evidence establishing the family relationship (birth, death, marriage certificate), the AO may accept secondary evidence, such as school, vaccination, religious records, as well as a sworn statement by the family member that includes their name, date of birth and, if applicable, Alien Registration Number explaining the nature of their relationship to the asylum seeker.

The following is the complete list of exceptions. Note that the complete list of exceptions is only available to asylum seekers who ask to be admitted at a land border port of entry and those who crossed into the U.S. between ports of entry and make a protection claim within 14 days of such crossing.

Asylum seekers who raise their claim for protection from persecution or torture while being removed or deported from Canada are only eligible for two exceptions: 1) stateless, habitually residing in Canada; and 2) discretionary in the public interest.

a. Lawful status, other than as visitor

This exception relates to “family members” who have asylum or refugee status, who have been granted withholding or deferral of removal under the Convention Against Torture, or hold other lawful status in the United States, except for visitor. This exception does not cover family members with nonimmigrant visitor (B-1 or B-2) visas or those who arrived under the Visa Waiver Permanent Program. If the noncitizen establishes by a preponderance of the evidence that they have a “family member” with the requisite lawful status in the U.S., they qualify for an exception to the Agreement. The AO completes the STCA Worksheet and notes on the worksheet the type of evidence that establishes this relationship and status.

b. Pending asylum claim in the U.S.

Under the Agreement and its implementing regulations, a noncitizen otherwise subject to return to Canada may apply for protection from persecution or torture in the U.S. where they have a family member in the U.S. who is at least 18 years old and has an asylum application pending in the U.S.

For purposes of the threshold screening, the family member must have a pending asylum application either with USCIS, EOIR, or on appeal in federal court on the date of the Threshold Screening Determination.

The AO should not try to ascertain whether the family member’s application is approvable, or if it would be barred because of the 1-year filing deadline or based on prior denials. The application just needs to be pending.

An asylum application is pending if it is:

- Awaiting an interview,
- Awaiting a decision post-interview,
- Pending a final denial,
- Referred to an immigration judge and there is no final decision,
- On appeal to the Board of Immigration Appeals, or
- Denied and have a Petition to Review pending with a U.S. Court of Appeals.

An asylum application is NOT pending if it is:

- Administratively closed for any reason,
- Dismissed,
- Terminated, or
- Withdrawn.

If the AO determines the qualifying relative STCA Worksheet and note the type of evidence that establishes the family relationship and the fact that there's an asylum application pending.

iii. Arrived with a validly issued Visa or with no Visa if none is required

In most circumstances, CBP does not place into the expedited removal process noncitizens arriving with valid admission documents at land border ports-of-entry, or noncitizens from visa-waiver countries. However, there may be some circumstances where such noncitizens are found inadmissible by a CBP officer and referred to an asylum officer for a threshold screening.

a. *Validly issued Visa*

The AO must determine the validity of the visa by evaluating the totality of the credible evidence, including the asylum seeker's testimony, after reviewing the CBP's conclusions as noted in the documentation prepared at the port of entry. A Visa is considered validly issued if it is "genuine (i.e., not counterfeit) and issued by the U.S. government." If the noncitizen admits to obtaining the Visa by fraudulent means, the AO must ensure that this testimony is documented in the Q&A sworn statement. The SAO then will contact HQ-QA for further guidance. For purposes of this threshold screening, if the noncitizen testifies that their intention was to use a validly issued B-2 Visa to seek asylum, not to travel as a tourist, the Visa is considered valid for purposes of the threshold screening. If this exception applies, the AO indicates so on the STCA Worksheet and notes the type of evidence that establishes the validity of the visa.

b. *No Visa is required (Visa Waiver Program cases)*

Pursuant to the Agreement and implementing regulation, Visa Waiver Program (VWP) asylum seekers qualify for an exception only if they are required to have a Visa to enter Canada. The U.S. Department of State publishes the list of Visa Waiver countries here:

<https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>.

The Government of Canada publishes its list of "Visa-exempt (eTA Eligible) Travellers" here:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/entry-requirements-country.html>.

Currently, there are no countries participating in the U.S. Visa Waiver Program that are not also exempt from Canadian Visa requirements, though some countries may be exempt from Canadian Visa requirements but not U.S. visa requirements. In effect, this means that no VWP noncitizen will be exempt from the Agreement under this section alone, unless the U.S. or Canada modify current practices in such a way that a country participating in the U.S. Visa Waiver Program is not exempt from Canadian visa requirements.

However, VWP applicants who are subject to the Agreement must nevertheless be interviewed to determine eligibility for any other exception. The AO must indicate on the STCA Worksheet

the reason the noncitizen is not required to hold a visa and continues with the threshold-screening interview.

If the AO determines that a VWP asylum seeker qualifies for any of the remaining exceptions to the Agreement, the AO completes the STCA Worksheet and prepares Form I-863 to bring the case to the immigration court for an “asylum-only” hearing. In these cases, the AO will not conduct a credible fear interview, because applicants for admission pursuant to VWP are not subject to expedited removal.

If the AO concludes that the VWP applicant does not qualify for any exception to the Agreement, the case is forwarded to ICE, which, in cooperation with CBP, will arrange to return the noncitizen to Canada.

iv. Discretionary: In the Public Interest exception

The Agreement provides that either Canada or the U.S. may decide, “at its own discretion [to] examine any refugee status claim made ... where it determines that it is in the public interest to do so.” The pertinent section of the Immigration and Nationality Act (INA) states, in part, that the noncitizen asylum seeker would be barred from seeking asylum “unless the Attorney General [read: Attorney General or DHS Secretary] finds that it is in the public interest for the [noncitizen] to receive asylum in the United States.”⁹

Consistent with the INA and the enacting regulation, if no other exception applies, the AO must ask the asylum seeker why they wish to pursue a protection claim in the U.S., as opposed to Canada, and document the response (including material information derived from follow-up questions) in section II.D of the STCA Worksheet. The existence of U.S. relatives who are minors in the United States, past torture, special health needs, and other humanitarian concerns are not necessarily determinative, but are factors to consider in determining whether an asylum seeker qualifies for a public-interest exception.

The Director of USCIS or the Director’s designee determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the noncitizen to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.¹⁰

The Asylum Officer must consider all relevant evidence and make a recommendation using the STCA Worksheet, which will be reviewed by HQ-QA. HQ-QA will coordinate the final determination and relay that determination to the SAO reviewing the case. Copies of the HQ-QA decision must be added to the non-record side of the A-file and Global.

⁹ Immigration and Nationality Act, sec. 208.(a)(2)(A)

¹⁰ 8 CFR 208.30(e)(6)(iii)(F)

2. *Exceptions for In-Transit Arrivals*¹¹

An asylum seeker being removed from Canada through the U.S. is eligible for only two exceptions to the Agreement:

- Stateless, habitually residing in Canada; and
- Discretionary: In the public Interest.

In either case, the AO must indicate “Yes” in section III of the STCA Worksheet if one of these exceptions applies and follow all related procedures outlined in the applicable sections above.

3. *Review of Determination*

Consistent with 8 CFR 208.30(e)(6)(i), all threshold screening determinations must be reviewed by a supervisory asylum officer before issuance of the decision. After reviewing the determination, the SAO must submit it to HQ-QA for review. Additionally, regardless of the decision, the SAO must refer the case to HQ-QA for review and concurrence, before serving the final decision. In addition to the required documents listed in that section, the AO must email the signed and dated M-621 and the completed STCA Worksheet, with all relevant documentary evidence to the HQ-QA Credible Fear Mailbox: ASYLUM-QA-CREDIBLE-(b) (6)

4. *Process for Cases Where an Exception Applies*

Except for VWP and public interest exception cases, once the AO concludes the threshold screening interview and determines that an exception applies, the AO must:

- Note the exception in the appropriate portion(s) of the STCA Worksheet and submit it for SAO review.
- Inform the asylum seeker that while the determination is being reviewed, the AO will proceed with the credible fear interview.
- Complete the appropriate credible fear documentation and Global updates as indicated in sections III.H and IV.J of the CFPM.
- Submit the STCA Worksheet, relevant databases digital copies, any other evidence that was relied on for the decision, the Q&A Sworn Statement and Form I-860 for SAO review.
- Once HQ-QA concurs, serve the determination.

After receiving HQ-QA concurrence, the AO must explain to the asylum seeker the threshold screening decision and the exception that applied in their case, as well as the credible fear decision. The documentation that the noncitizen receives, listed at section III.J of the CFPM, depends on whether the AO has made a negative or positive credible fear finding. The noncitizen also must receive a copy of the STCA Worksheet, which constitutes a written

¹¹ 8 CFR 208.30(e)(6)(iii)

summary of findings. Copies of these documents are maintained in the A-file and the work folder. Appropriate documents also must be filed with the Immigration Court, if a credible fear is established, as indicated at section III.K of the CFPM.

5. Process for Cases Where an Exception Does Not Apply

If the AO concludes at the end of the threshold screening interview that an exception does not apply, the AO must:

- Complete the appropriate portions of the STCA Worksheet.
- Prepare the order portion of Form I-860, Notice and Order of Expedited Removal, unless it's a VWP case.
- Submit for SAO review and concurrence, along with a HQ-QA packet.
- Once HQ-QA concurs, serve the determination.

After HQ-QA concurrence is received, the AO must explain to the noncitizen the threshold screening decision and that no exception applied in their case. The asylum office provides the noncitizen a copy of the STCA Worksheet, the Q&A sworn statement, and the Form I-860. Copies of these documents are maintained in the A-file and Global. Because immigration judges cannot not review negative threshold screening determinations made by USCIS, asylum office staff will not file any negative threshold screening documentation with the immigration court.

For noncitizens in expedited removal, after receiving concurrence from HQ-QA and serving the decision on the noncitizen, the SAO notifies the ICE that the noncitizen must be returned to Canada under the terms of the Safe Third Country Agreement. Asylum office staff will provide ICE with a copy of the STCA Worksheet, to forward to Canadian authorities when the noncitizen is removed.

6. VWP Cases

For VWP applicants who are not found to qualify for an exception, the AO will provide them a copy of the STCA Worksheet and the Q&A. The SAO then contacts ICE, which will work with CBP to complete the case processing required for VWP refusals.

V. Expanded Topics

1. Dissolution

Should a noncitizen who is in the threshold screening process choose to dissolve the request for protection in the U.S., the AO will prepare dissolution documents in accordance with section IV.D of the CFPM. Additionally, the AO will indicate on the STCA Worksheet's first page and in section IV, that the noncitizen chose to dissolve the protection claim. The AO then will make appropriate updates to Global.

2. Language Access in the STCA Context

If the AO is unable to communicate effectively with the asylum seeker because of a lack of Contract Interpreter, the AO will follow the guidance in section III.E.3 of the CFPM. EOIR will adjudicate the STCA.

If the asylum seeker is a VWP applicant, the AO will inform the SAO and the SAO, in turn, will seek guidance from HQ.

3. Family Members Arriving Concurrently

If the AO can find an exception for one member of a family group (consisting of spouses and any unmarried children under age 21), that finding will constitute an exception for the other family group members arriving concurrently.

After one family member is found to qualify for an exception to the Agreement:

- No separate threshold screening adjudication is made for the other immediate family group members.
- The STCA Worksheet is updated at section V. with information about the other family group members.
- The AO includes copies of the exempt family member's STCA Worksheet and places copies into the file(s) of the other family group members.
- The AO prepares a memo to the file and attaches it to the copies of the STCA Worksheet that will be placed into the other family group members' file(s).

Note that an asylum seeker may qualify for an STCA exception, have that exception form the basis for other family group members' exceptions and continue to be treated as a "dependent" in the credible fear context.

If one family member is found ineligible for a credible fear interview because they did not meet an exception, the AO determines if any of the other immediate family group members may qualify for an exception. If any member of the immediate family is found to qualify for an exception to the Agreement, the rest of the family group members may be included in the determination and will not require a separate threshold screening determination. The AO then proceeds in accordance with the guidance outlined in the paragraph above. If no immediate family group member is found eligible for an exception, the AO must complete a separate threshold screening determination and separate worksheet for each noncitizen.

4. Timeliness of Decisions

Pursuant to paragraph 8 of the Procedural Issues Associated with Implementing the Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries -

Statement of Principles, “[r]eturns to the country of last presence under the Agreement must take place within 90 days after the original refugee status claim is made.”

It is important to process all negative determinations quickly.

5. *Dispute Resolution Process*

i. Reopening Ineligibility Determinations

Pursuant to paragraph 6 of the Procedural Issues Associated with Implementing the Agreement for Cooperation in the Examination of refugee Status Claims from Nationals of Third Countries - Statement of Principles, Canadian immigration officials may contact an asylum office directly, or through CBP, if they believe that there is new material evidence, which was not considered at the time of the initial interview, about a noncitizen who was returned to Canada after a negative threshold screening adjudication in the U.S. The asylum office has the discretion to reopen a decision and initiate follow-up contact with the noncitizen. The Asylum Office Director will make a determination based on new evidence that was not previously reasonably available and will convey that decision, in writing, to the Canadian immigration official who requested that the case be reopened. The SAO will summarize the circumstances of the reopened case and submit a report to HQASM when the adjudication is completed.

ii. Other Issues Regarding Agreement Implementation

Canadian and U.S. immigration officers will resolve issues concerning the application of the Agreement at the local level whenever possible. However, if a problem appears to be systemic and cannot be resolved at the local level, a DHS manager (USCIS, CBP, or ICE) will notify the Asylum Division Director, who will investigate the matter with the Canadian counterpart.

**Safe Third Country Agreement Case
Threshold Screening Adjudication Worksheet**
(Rev. 3/24/2023)

A-Number:	Asylum Office:
Last Name:	APSO Name:
First Name:	Date Asylum Office Notified:
Country of Citizenship:	Date of Encounter:
Date of Birth:	Place of Encounter: <input type="checkbox"/> POE: [name of POE] <input type="checkbox"/> INL: [locality]
Gender:	Place of Detention:
	Date of Interview:
Dependents? <input type="checkbox"/> Yes <input type="checkbox"/> No	Place of Interview:
<p>The purpose of the threshold screening adjudication is to determine whether a noncitizen subject to the Safe Third Country Agreement between the United States and Canada is eligible for an Exception to the Agreement to allow them to seek asylum in the U.S., rather than in Canada. The asylum seeker bears the burden of proof to establish eligibility by a preponderance of the evidence.</p>	

Decision Information
Decision:
<input type="checkbox"/> Exception <input type="checkbox"/> No Exception <input type="checkbox"/> Dissolve <input type="checkbox"/> I-863
Date of Decision:
APSO Supervisor:
Date submitted to HQQA:
Date of HQQA concurrence:

I. Citizen or habitual resident of Canada

1. Is the noncitizen a citizen of Canada OR stateless and a habitual resident of Canada?
 Yes No (Go to **Section II. Exceptions to the Agreement**)

2. Evidence provided to support the claim of (a) Canadian citizenship, or (b) statelessness and Canadian habitual residence (describe the evidence and/or credible testimony below):

Evidence (describe)

Credible testimony (describe)

3. Attach relevant documentary evidence to this worksheet and go to **Section IV. Finding**.

**Safe Third Country Agreement Case
Threshold Screening Adjudication Worksheet**
(Rev. 3/22/2023)

II. Exceptions to the Agreement for noncitizens arriving from Canada at a land-border port of entry, or who express a fear within 14 days of having crossed illegally from Canada, including through certain bodies of water.

A. Family member with lawful status other than visitor (family member may be any age) or pending asylum application (family member must be 18 or older)

1. Did the noncitizen establish they have a qualifying *family member*¹
- (a) with lawful immigration status other than visitor in the United States, OR
- (b) who is 18 years of age or older and has a pending asylum application in the United States?
- Yes No (Go to **Section II.B.**)

2. Identity of family member
Name:
Relationship to applicant:
Date of birth/age:
Lawful status or forum (USCIS or EOIR) where asylum application is pending:
A-number (if known and applicable):

3. Evidence of family relationship:
Describe documentation and/or credible testimony:

4. Evidence of family member's status in U.S.:
Include documentation (attach copies from DHS databases, as appropriate):

5. Go to **Section IV. Finding.**

B. Arrived with a validly issued Visa or was not required to have a Visa (POE only)

1. Did the noncitizen establish that they arrived with a validly issued U.S. Visa or other valid U.S. admission document, other than for transit?

Yes No (Go to **Section III.**)

2. What type of valid document did the noncitizen use?

3. Was the noncitizen required to obtain a Visa to enter the U.S.?

Yes (Go to **Section III.**) No

4. Was the noncitizen required to obtain a Visa to enter Canada²?

Yes No (Go to **Section III.**)

Explain:

5. Prepare I-863 and go to **Section IV. Finding.**

¹ "Family member" is defined under 8 CFR 208.30(e)(6)(iii)(B) and (C), for purposes of threshold screening interviews, to include "a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew."

² Note that the list of U.S. Visa Waiver Program participating countries is identical to that of Canada. The U.S. Department of State's list can be found here: <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>. The Government of Canada's list can be found here: <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/entry-requirements-country.html>.

**Safe Third Country Agreement Case
Threshold Screening Adjudication Worksheet**
(Rev. 3/24/2023)

III. Public Interest Exception

Note: HQASM must be consulted before making this determination.

1. Why does the noncitizen wish to seek protection in the U.S. instead of Canada?

2. Does the noncitizen, who has been found not to qualify for any other Exception, present compelling circumstances such that the asylum officer recommends that the noncitizen be permitted to pursue a protection claim in the United States under the Public Interest Exception?

No. Go to **Section IV.**

Yes. Describe the circumstances in detail below and submit to HQASM for review. Complete the rest of the worksheet upon receipt of response from HQASM. Attach additional pages as necessary.

3. Did the Director of U.S. Citizenship and Immigration Services or their designee, in their unreviewable discretion, determine that it is in the public interest to allow the noncitizen to pursue a request for asylum in the United States?

No. Go to **Section IV.**

Yes. Attach memo from HQASM reflecting decision. The noncitizen is eligible for a credible fear screening (or, for VWP cases, for issuance of Form I-863). Go to **Section IV.**

**Safe Third Country Agreement Case
Threshold Screening Adjudication Worksheet**
(Rev. 3/22/2023)

IV. Finding

- The noncitizen established eligibility for an Exception to the Safe Third Country Agreement under section I, II, or III, above.
 - The noncitizen is eligible for a credible fear interview in the United States. (APSO conducts credible fear interview and completes Form I-870).
 - The noncitizen is not eligible for a credible fear interview in the United States. Issue a Form I-863 (for VWP/applicant or VWP/violator).
- The noncitizen was being removed from Canada, in-transit through the United States and established eligibility for an Exception to the Safe Third Country Agreement under section I or III, above. The noncitizen is eligible for a credible fear interview in the United States. (APSO conducts credible fear interview and completes Form I-870).
- The noncitizen did not establish eligibility for an Exception to the Safe Third Country Agreement and is not eligible for a credible fear interview in the United States.
- The noncitizen dissolved the request for protection and has asked to be returned to Canada (dissolution form is attached).

V. Dependents

Complete this section only for cases in which the noncitizen is found eligible for a credible fear interview.

If not found eligible, each immediate family member arriving concurrently (spouse and any unmarried children under age 21 who are traveling with the principal) must receive a separate threshold screening determination.

The following family group members are included in this threshold screening:

A Number:	A Number:
Last Name:	Last Name:
First Name:	First Name:
Relationship to Principal: <input type="checkbox"/> Spouse <input type="checkbox"/> Child	Relationship to Principal: <input type="checkbox"/> Spouse <input type="checkbox"/> Child

(Attach extra sheets, as necessary)

**Safe-Third Country Agreement Case
Threshold Screening Adjudication Worksheet
Dependent Addendum
(Rev. 3.24.2023)**

The following dependent (spouse or any unmarried child under age 21) is traveling with the principal noncitizen and is included in this threshold screening.

Dependent's Name:

Dependent's A-number:

Date of Birth:

Relationship to Principal:

Principal's Name:

Principal's A-number:

Exception Met by Principal:

Other Dependents Included in this Screening:

[name, A-number, relationship]

Implementation of the U.S.- Canada Safe Third Country Agreement

Rev. 3/24/2023

<p>Encounter: At, or Near the Border with Canada</p> <ul style="list-style-type: none"> • Noncitizen is placed in expedited removal and expresses fear of persecution or torture, or seeks asylum. • CBP issues I-860 and prepares I-867A/B (Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act and Jurat). 	<p>Encounter: Anywhere in the U.S. while being removed from Canada through the U.S., enroute to their country</p> <ul style="list-style-type: none"> • Noncitizen expresses fear of persecution or torture, or seeks a sylum • CBP revokes parole, issues I-860 and prepares I-867A/B (Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act and Jurat).
<p>CBP (or ICE, if the noncitizen expresses a fear while in ERO custody) issues Form M-621 – Notice of Threshold Screening Interview, informing the noncitizen of the STCA process, rights, and consequences (Orientation) and refers case to an Asylum Office. The noncitizen is detained.</p>	
<p>An AO reviews I-860, I-867A/B and I-213 to determine that the noncitizen is:</p> <ul style="list-style-type: none"> • In expedited removal and expressed a fear at a land-border POE with Canada, or • Within 14 days after having entered the U.S. unlawfully and is encountered 100 air miles from the Canadian border, • The noncitizen expressed a fear elsewhere in the U.S. while enroute to being removed from Canada. <p>If the evidence shows that the noncitizen was encountered in a different manner, after consulting with SAO, AO documents that finding in a memo to file and proceeds with the CF process.</p>	
<p>Asylum office schedules threshold screening interview (TSI) at least 48 hours from detention date, unless 48-hour waiting period is waived by the non-citizen.</p>	
<div style="border: 1px solid black; padding: 10px; width: 80%; margin: auto;"> <h3 style="margin: 0;">The Threshold Screening Interview (TSI)</h3> </div>	<ul style="list-style-type: none"> • AO ensures noncitizen understands the process and is willing to proceed with the threshold screening interview. • AO elicits testimony to determine: <ul style="list-style-type: none"> ○ Is the noncitizen subject to the Safe Third Country Agreement and, if so ○ Is the noncitizen eligible for an exception to the STCA bar. The Exceptions include: <ul style="list-style-type: none"> ▪ Citizen or Stateless Last Habitually Residing in Canada ▪ Family Member with Lawful Immigration Status or a Pending Asylum Application in the U.S. ▪ Arrived with Validly Issued U.S. Visa or was Not Required to Have a Visa ▪ In the Public Interest • The testimony is recorded in Q&A format. The APSO must summarize the testimony, review the summary with the noncitizen, and permit the noncitizen to correct any errors.
<div style="border: 1px solid black; padding: 10px; width: 80%; margin: auto;"> <h3 style="margin: 0;">The Determination</h3> </div>	<ul style="list-style-type: none"> • The AO completes the STCA Worksheet. • The standard of proof is “preponderance of the evidence.” • Review: 1) SAO Review and 2) Mandatory HQ QA Review
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;">Exception Established</p> </div> <p>Noncitizen qualifies for an Exception:</p> <ol style="list-style-type: none"> 1. HQ QA concurs. 2. Asylum Office serves the STCA determination. 3. The STCA Case is Complete. <p>AO proceeds to conduct credible fear interview.</p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;">Exception Not Established</p> </div> <p>Noncitizen does not qualify for an exception</p> <ol style="list-style-type: none"> 1. HQ QA concurs 2. AO signs order portion of Form I-860, returns case to ICE, or CBP 3. Expedited removal order is effected when individual is returned to Canada. 4. The STCA Case is Complete.
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;">Review</p> </div> <p>USCIS decisions are final. The STCA Determination is <u>not</u> subject to review.</p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;">Dissolutions</p> </div> <p>The noncitizen may dissolve a STCA protection claim at any time during the process. The same dissolution rules apply as in credible fear.</p>

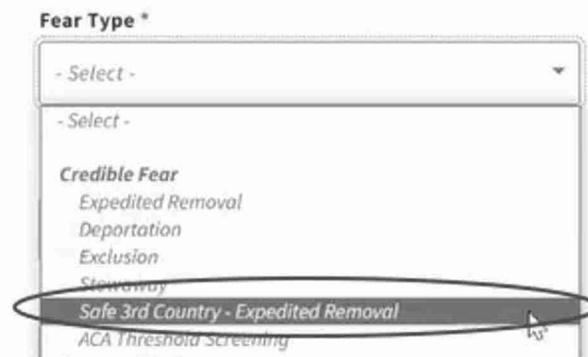
Guidance for Updating Global for Safe Third Country Agreement Threshold Screening Interviews / Determinations

As a result of the implementation of the expanded Safe Third Country Agreement (“STCA” or “Safe 3rd”) between the governments of the United States and Canada, effective Saturday, March 25, 2023, Asylum IDEA and Global added the following three new functionalities/selections in Global to enable the field to appropriately document STCA-related steps for all STCA cases: 1) the “Expressed Fear Date” field, 2) two additional STCA Outcomes, and 3) an additional STCA Case Close reason.

POPULATING THE STCA FIELDS IN GLOBAL

The STCA fields will populate in the “Information About the Applicant” card in the “Entry” Tab in Global upon selection of the “Safe 3rd Country – Expedited Removal” option from the “Fear Type” dropdown field.

1. Navigate to the “Entry” Tab in Global to find the “Information About the Applicant” card (the first card on the page). At the top-right on the page, click EDIT. The “Fear Type” field is located near the top-right of the “Information About the Applicant” card.
2. Select “Safe 3rd Country – Expedited Removal” option from the “Fear Type” dropdown field to populate the STCA fields:



3. Once the above option is selected, the five STCA related-fields (“Safe 3rd -Screening Interview Date,” “Safe 3rd – Decision Date,” “Safe 3rd – Outcome,” “Safe 3rd – Service Date,” and “Expressed Fear Date”) will be exposed for the user to enter STCA-related data:

A screenshot of the "Information About the Applicant" card in a software interface. At the top right, there are buttons for "CANCEL AND DISCARD" and "SAVE". The card contains several fields: "A# *" with a redacted value, "Fear Type *" with a dropdown menu showing "Safe 3rd Country - Expedited Removal", and "Case Category" with a greyed-out field. Below these are five STCA-related fields: "Safe 3rd - Screening Interview Date" (MM/DD/YYYY), "Safe 3rd - Decision Date" (MM/DD/YYYY), "Expressed Fear Date *" (MM/DD/YYYY), "Safe 3rd - Outcome" (dropdown menu), and "Safe 3rd - Service Date" (MM/DD/YYYY).

4. Although the “Expressed Fear Date” field is the only field currently required, staff should aim to complete as many of the other four fields as appropriate given the facts of the case. Additional fields may be changed to “required” in the near future.

HOW TO UPDATE EXPRESSED FEAR DATE IN GLOBAL

1. The “Information About the Applicant” card in the “Entry” Tab in Global includes a new, required field: “Expressed Fear Date,” which is used for STCA cases to provide the date the noncitizen expressed fear.
2. Navigate to the “Entry” Tab in Global to find the “Information About the Applicant” card (the first card on the page). At the top-right on the page, click EDIT. The “Expressed Fear Date” field is located near the top-right of the “Information About the Applicant” card:

Expressed Fear Date *

3. To enter the date when the noncitizen expressed a fear, enter the date directly into the field following MM/DD/YYYY format or click on the calendar image at the right-side of the field to select the date from the calendar. This date can be found on Forms I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, and I-876B, Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act.

RECORDING THE STCA CASE PORT OF ENTRY VS INLAND FIELD

For all STCA cases, offices must indicate whether the noncitizen was encountered at a port of entry or between ports of entry.

1. **Port of Entry:** Ensure that the Port of Entry field is completed either with the city and state of the POE or “unknown” for INL cases:

Port of Entry *

2. **Special Group:** For INL cases, ensure that the Special Group code is completed as follows:

Special Group

HOW TO UPDATE THE STCA OUTCOME IN GLOBAL

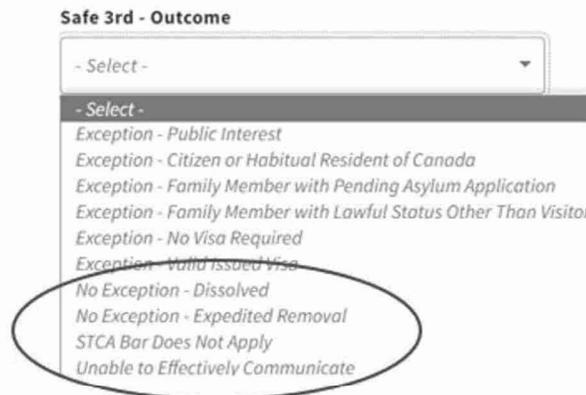
1. The “Information About the Applicant” card, in the “Entry” Tab in Global, includes two new case outcomes: “STCA Bar Does Not Apply” and “Unable to Effectively Communicate,” that were added to “Safe 3rd Outcome” dropdown field for STCA cases.
2. Navigate to the “Entry” Tab in Global to find the “Information About the Applicant” card (the first card on the page). At the top-right on the page, click EDIT. The “Safe 3rd Outcome” dropdown field is located near the top-left of the “Information About the Applicant” card:



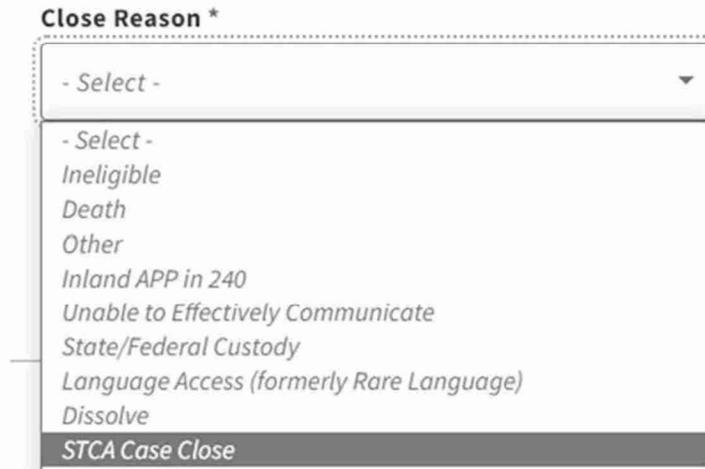
3. The “STCA Bar Does Not Apply” outcome option is selected in circumstances when Canada is not the “country of last presence,” or the noncitizen did not express a fear.
4. The “Unable to Effectively Communicate” outcome is selected in circumstances when the noncitizen is unable to testify on their own behalf because of a mental illness or disability.

COMPLETE STCA CASE PROCESSING IN GLOBAL

If the selected outcome is “STCA Bar Does Not Apply,” “Unable to Effectively Communicate,” “No Exception – Dissolved,” or “No Exception – Expedited Removal,” an additional step is required in order to close the case in Global. These cases must be closed in the Adjudication Tab.



1. The “Close Reason” dropdown field, in the “Adjudication” Tab in Global, includes a new case close type for STCA cases in the “Case Close” card: “STCA Case Close.”
2. Navigate to the “Adjudication” Tab in Global to find the “Case Event” dropdown field (the blue button on the top-left on the page). Select “Close Case” event under “ADD A CASE EVENT” dropdown field. The “Close Reason” dropdown field is located near the top-right on the “Case Close” card:



3. The STCA close reason should be the only close reason used for STCA cases in Global. Other administrative closure reasons are reserved for other APSO case types.
4. Once the case is properly closed in Global, the status of the case located on the top right-hand of the page will change from “CF Case Not Clock In” to “CF Case Closed STCA Case Close”:



Alternatively, if an exception applies, clock in the CF case and proceed as per current guidance with adjudicating the CF case.

If you have questions about using the STCA feature in Global, please reach out to your office POCs or [Asylum IDEA](#). Please submit a [SNOW](#) ticket for any technical issues.

If you would like to provide feedback on the STCA workflow and improve functionality for future enhancements, please sign up for a [Global User Research Interview](#).