Representing Asylum Seekers

Pro Bono Training

Greenberg Traurig, LLP
February, 2, 2017
www.immigrantjustice.org
Welcome

Ashley Huebner,
Managing Attorney
National Immigrant Justice Center
Executive Order Update

Three orders directly impact immigrants:
- Interior
- Border
- Country/refugee bans

See NIJC’s website for annotated versions of the executive orders (with our analysis and resources)
Who is an immigrant? Share your client stories with friends, family, colleagues, and neighbors.

Take an NIJC pro bono case (and encourage your colleagues to do so) to allow NIJC’s in-house resources to focus on the fight ahead.

Prepare strong case records in anticipation of litigation.

Donate!
National Immigrant Justice Center (NIJC)

- Defends the human rights of immigrants at the individual and systemic level

- Provides legal services to 10,000+ immigrants, refugees, and asylum seekers each year with the support of nearly 1,500 pro bono attorneys

- Challenges laws, policies, and practices that violate human rights through federal litigation

- Advocates for reform with members of Congress and the White House
Why are *Pro Bono* Attorneys Important for Immigrants?

Non-citizens do not have the right to appointed counsel, even when they are

- Facing deportation
- Asylum seekers
- Mentally ill
- Detained
- Children

*Kids Need Lawyers By Their Side.*
Lawyers Make the Difference

Percent of cases where immigrants obtained relief
2005-2010

74%  
13%

With representation  Without representation

1. Katzmann Study Group, 2011
NIJC’s *pro bono* attorneys provide legal representation to people fleeing persecution and torture

> 90%

NIJC’s asylum approval rate

45%

the nationwide asylum approval rate
An immigrant contacts NIJC and needs an attorney

NIJC staff conduct an in-depth case screening and assessment

If case is accepted, NIJC signs a retainer with the client and begins to look for pro bono placement

A pro bono attorney team accepts the case. NIJC remains of counsel and provides attorney support, document review, and technical assistance throughout the life of the case.
I. The Starting Point: Matter of Acosta

To qualify for asylum, an individual must demonstrate an account of "race, religion, nationality, membership in a particular social group, or political opinion." INA § 101(a)(42)(A). In Matter of Acosta, Immigration Appeals Board (BIA) established a rule for demonstrating membership in a particular social group (PSG; "ejusdem generis, "of the same kind," the BIA concluded that all protected grounds within the refugee definition (political opinion). The BIA concluded that the commonality fact that they encompass innate characteristics (like should not be required to change (like religion or gender). If a ground then, PSG membership can be based either on a shared characteristic members cannot change (like gender or sexual orientation) or a characteristic they should not be required to change (like being an uncircumcised woman). See id. (listing gender as an immutable characteristic); see also Matter of Toboso-Alfonso, 20 I&N Dec. 819 (BIA 1990) (recognizing homosexuality as an immutable characteristic); Matter of Kasinga, 21 I&N Dec. 357, 366 (BIA 1996) (recognizing the status of being an uncircumcised woman as a characteristic one should not be required to change).
The Basics of Asylum Law

Ashley Huebner

National Immigrant Justice Center
Who are NIJC’s Asylum Clients?
An individual is eligible for asylum if she meets the definition of a refugee.

- Immigration & Nationality Act (INA) § 208(b)(1)(A).

A refugee is “any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

- INA § 101(a)(42)(A)
- Definition based on international law: UN Protocol Relating to the Status of Refugees, Art I(2)
Sec. 208. (a) Authority to Apply for Asylum.

(1) In general. - Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b).

(2) Exceptions. -

(A) Safe third country. - Asylum shall not be granted if the applicant is required to apply for asylum in the country of the applicant's last known nationality, the country of the applicant's last known habitual residence, or in the country of the applicant's last known principal place of activity, pursuant to a bilateral or multilateral agreement.

(B) Time limit. - Subject to section 209(c) of this title, if an alien has been subjected to persecution or the applicant has a well-founded fear of persecution and the applicant has been granted Asylum, the alien shall be entitled to asylum in accordance with this section or, where applicable, section 235(b).

(B) BURDEN OF PROOF -

(i) IN GENERAL - The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) SUSTAINING BURDEN - The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) CREDIBILITY DETERMINATION - Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the
§ Sec. 208.4 Filing the application.

Except as prohibited in paragraph (a) of this section, asylum applications shall be filed in accordance with paragraph (b) of this section.

(a) Prohibitions on filing. Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(2), the term ‘personal appearance’ means the personal appearance of the applicant or an authorized representative of the applicant, whether in person or by video conference hearing.

(b) Prohibitions on filing. Section 208(a)(3) of the Act prohibits aliens who entered the United States before November 10, 1990, from filing for asylum on or after November 10, 1996, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(3)(C) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. An alien who files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(3) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(3), the term ‘personal appearance’ means the personal appearance of the applicant or an authorized representative of the applicant, whether in person or by video conference hearing.

§ Sec. 208.13 Establishing asylum eligibility

(a) Burden of proof. The burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The fact that the applicant previously established a credible fear of persecution for purposes of section 235(b)(1)(B) of the Act does not relieve the alien of the additional burden of establishing eligibility for asylum.

(b) Eligibility. The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution. (Amended effective 1/5/01; 65 FR 76121)

(i) Past persecution. An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

(ii) Discretionary referral or denial. Except as provided in paragraph (b)(1)(ii) of this section, an asylum officer shall, in the exercise of his or her discretion, accept or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or
Asylum Legal Sources: Case Law

Stick to 7th Cir. Law

BIA Binding Unless 7th Rejected

7COA Case Law Better than BIA
Asylum: Elements

1. “Well-Founded Fear”
2. of “Persecution”
3. Perpetrated by the government or an entity the government cannot/will not control
4. “On account of”
5. – Race
   – Religion
   – Nationality
   – Political Opinion
   – Membership in a Particular Social Group

These elements are SEPARATE!
“Well-Founded Fear”

Burden of Proof: reasonable possibility

- “One in ten” chance of persecution (*INS v. Cardoza-Fonseca*, 480 U.S. 421 at 431)

Established two ways:

1. Past persecution
2. Fear of future persecution

Argue both whenever possible!
Past Persecution

Past persecution
+ all other asylum elements
Rebuttable presumption of future persecution

Rebutted by

- changed circumstances
- safe, reasonable internal relocation
Subjectively genuine fear
objectively reasonable fear (w/all elements)
+no safe, reasonable internal relocation
Well-founded fear of future persecution
Asylum on a Humanitarian Basis

Past persecution + all asylum elements

Severity of Past Persecution

Possibility of Other Serious Harm (No Nexus!)

Check the regs and case law (Matter of Chen; Matter of L-S-; Kholyavskiy).
“Persecution”: Look to Case Law

- Stanojkova v. Holder, 645 F.3d 943 (7th Cir. 2011)
  - Three types
    1. Significant physical force against a person’s body,
    2. the infliction of comparable physical harm without direct application of force . . . , or
    3. nonphysical harm of equal gravity.

- Harm constituting persecution can be less for a child than an adult.
  See USCIS Guidelines and 7th Circuit law.

- Must be considered cumulatively.
  Nzeve v. Holder, 582 F.3d 678 (7th Cir. 2009).
<table>
<thead>
<tr>
<th>Governmental Entity</th>
<th>Entity the Government is Unable OR Unwilling to Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Gangs</td>
</tr>
<tr>
<td>Military</td>
<td>Paramilitary</td>
</tr>
<tr>
<td>Security Forces</td>
<td>Guerrilla Group</td>
</tr>
<tr>
<td>Presidential Guard</td>
<td>Family Members</td>
</tr>
<tr>
<td>Mayor</td>
<td>Vigilante Group</td>
</tr>
<tr>
<td>Village Chief</td>
<td>Opposing Political Party</td>
</tr>
<tr>
<td>Paramilitary?</td>
<td>Others?</td>
</tr>
<tr>
<td>Gangs?</td>
<td></td>
</tr>
</tbody>
</table>

"On Account of a Protected Ground"

Persecution

Nexus

On Account Of

One Central
Reason

Protected Ground

• Race
• Religion
• Nationality
• Membership in a PSG
• Political Opinion

Keep These Separate!
Protected ground must be “at least one central reason” for the persecution. *Matter of J-B-N- & S-M-, 24 I&N Dec. 208 (BIA 2007)*

Persecutor can still have mixed motives. *J-B-N- & S-M-, 24 I&N Dec. at 211; Shaikh v. Holder, 702 F.3d 897 (7th Cir. 2012).*

Circumstantial evidence can be sufficient to establish the persecutor’s motives. *Martinez-Buendia v. Holder, 616 F.3d 711 (7th Cir. 2010)*
POLITICAL ASYLUM

1. Race:
   - Broad meaning (Congolese Tutsis)

2. Religion
   - (Christian, Atheist)

3. Nationality:
   - Not just citizenship; can include ethnic or linguistic group. May overlap with race

4. Political Opinion:
   - Actual or Imputed (e.g. child of political activist, man who criticizes government’s military policy)

5. Membership in a Particular Social Group:
   - One of the most common and most complex bases for asylum
What is a Particular Social Group?

Based on a “common, immutable characteristic” that “members of the group either cannot change, or should not be required to change.”

- Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985)

<table>
<thead>
<tr>
<th>BIA Case Law</th>
<th>Seventh Circuit Case Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Can’t be overly broad</td>
<td>• Breadth is irrelevant</td>
</tr>
<tr>
<td>• Must be considered a group by society</td>
<td>• No social distinction test</td>
</tr>
<tr>
<td>• “Former” status/past experience is not enough</td>
<td>• “Former” status/past experience is enough</td>
</tr>
<tr>
<td>• Groups can’t be overly diverse</td>
<td>• Diversity not an issue</td>
</tr>
</tbody>
</table>

What Can Form a Particular Social Group?

“A former association with a group”
-Escobar v. Holder

“A shared past experience or status”
-Cece v. Holder

He told me that I might think I was powerful because I had a government position, but inside the house, he was in charge and I belonged to him.
<table>
<thead>
<tr>
<th>What Bars Relief?</th>
<th>Bars Asylum?</th>
<th>Bars Withholding/Withholding under CAT?</th>
<th>Bars Deferral under CAT?</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-Year Filing Deadline - INA § 208(a)(2)(B)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Firm Resettlement - INA §208(b)(2)(A)(vi)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Persecutor - INA § 208(b)(2)(A)(i)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Terrorism - INA § 208(b)(2)(A)(v)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Particularly Serious Crime - INA § 208(b)(2)(A)(ii)</td>
<td>Yes</td>
<td>Yes, but PSC definition for withholding differs from definition for asylum</td>
<td>No</td>
</tr>
<tr>
<td>Conviction of an Aggravated Felony as Defined in INA § 101(a)(43)</td>
<td>Yes – is a PSC</td>
<td>Yes, if the aggregate term of imprisonment sentenced was at least five years it is a PSC. But other crimes may also be found to constitute a PSC, notwithstanding the prison sentence.</td>
<td>No</td>
</tr>
<tr>
<td>Serious Non-Political Crime Outside the U.S. - INA § 208(b)(2)(A)(iii)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Danger to the Security of the U.S. - INA § 208(b)(2)(A)(iv)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
Other Issues That May Impact the Case

- Certain events in the client’s life may make her eligible for other relief
  - Marriage
  - Victim of a crime
  - Your client should not file applications for any other immigration benefits without consulting you first.

- Other life changes may compromise eligibility
  - Travel
  - Marriage (in some cases)
  - Crimes (even convicted crimes) here or abroad

Contact NIJC immediately if there are changes in your client’s life or if you think your client might be eligible for other relief!
## Other Protection-Based Relief
(Request All!)

<table>
<thead>
<tr>
<th></th>
<th>Discretion?</th>
<th>Test</th>
<th>Burden of Proof</th>
<th>Petition for Family?</th>
<th>FASFA? Travel Abroad?</th>
<th>Become a Citizen?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Asylum</strong></td>
<td>Yes</td>
<td>Persecution on account of a protected ground by govt/govt is unable or unwilling to control</td>
<td>Reasonable possibility (&gt; 10%)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>W/Holding</strong></td>
<td>No</td>
<td>Same as asylum</td>
<td>More Likely than Not (&gt;50%)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Relief under the Convention Against Torture</strong></td>
<td>No</td>
<td>Torture by the govt or w/ the govt’s acquiescence</td>
<td>More Likely than Not (&gt;50%)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Preparing Your Case

Lisa Koop,
Associate Director of Legal Services
National Immigrant Justice Center
Who’s Involved: The Agencies

The Department of Homeland Security

- Immigration & Customs Enforcement (ICE)
  - Office of Chief Counsel (OCC)
  - Enforcement & Removal Operations (ERO)
- U.S. Citizenship & Immigration Services (USCIS)
  - Asylum Office
- Customs & Border Protection (CBP)

The Department of Justice

- Executive Office for Immigration Review (EOIR)
  - Board of Immigration Appeals (BIA)
  - Immigration Courts
What to File

**Asylum Office** (Nebraska Service Center)
- Appearance form: G-28
- TVPRA Instruction Sheet (for unaccompanied children only)
- Asylum App (I-589) and 1 passport photo
- Two copies, plus an one copy for each deriv.
- No filing fee!

**Immigration Court**
- Appearance form: E-28
- Asylum App (I-589) and 1 passport photo
- Serve one copy of the I589 on DHS
- No filing fee!

**One week before the interview, file** (with the Chicago Asylum Office)
- Legal memo
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

**Prior to the merits hearing, file:**
- Brief
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

*Anytime you file anything with the Court, you must serve a copy on the government*
Keep the Big Picture in Mind

Affidavit

Legal Argument

Corroborating Evidence
There is no discovery in immigration proceedings.

File a USCIS FOIA
  • Expedited processing if in removal proceedings – request Track 3 processing

Client in removal proceedings: review the court file/hearing tapes

Unaccompanied child: request the ORR file
Step 2: The Skeletal Asylum Application

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

X

Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any)  n/a (affirmative asylum applicants generally don’t have one; defensive applicants do)

2. U.S. Social Security Number (if any)  n/a

3. Complete Last Name  CLIENT

4. First Name  Client

5. Middle Name  Client

6. What other names do you use?  n/a

7. Residence in the United States  n/a

Street Number and Name  123 4 Street

I am seeking asylum or withholding of removal based on:

☐ Race  ☐ Political opinion

☐ Religion  ☒ Membership in a particular social group

☐ Nationality  ☒ Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☒ Yes  ☐ No

If "Yes," explain in detail:

1. What happened;

2. When the harm or mistreatment or threats occurred;

3. Who caused the harm or mistreatment or threats; and

4. Why you believe the harm or mistreatment or threats occurred.

For the past few years, Mara Salvatrucha (MS-13) repeatedly threatened my brother and I and tried to kill us because we refused to join them. Please see affidavit for more information.
Credibility is the most important part of any asylum case.

Can be based on demeanor, candor, inherent plausibility, consistency of statements (made any time/any circumstance).

The adjudicator’s credibility determination will be based primarily on the client’s affidavit and testimony, so...

Your client’s affidavit is **THE MOST IMPORTANT EVIDENCE** in your case.
Affidavit Best Practices

- The most important document
- Statement of the client in his/her own voice
- Balancing detail
- Chronological
- Bulk of your prep time will be here: meet early and often
- Cover the 5 Ws + H
- Consider length

Affidavit of CLIENT
In Support of Her Application for Asylum, Withholding of Removal and Relief under the Convention Against Torture

1. My name is CLIENT. I am a citizen of the Republic of the Congo. I fled to the United States with my children on DATE, because the Congolese military beat us, threatened us and tried to kill us. The military targeted us because my former partner, the father of my two daughters, was involved in a suit against the government for the disappearance of his brother during the Disappearance at the Beach in 1999.

My Background

2. I was born on DATE, in Brazzaville, the capital of the Republic of the Congo. I had a fairly happy childhood. I am an only child and my parents loved me and were able to give me what I needed, even though we were not rich. I graduated from high school and then attended and graduated from technical college, where I received a degree to become a secretary.

3. While my family life was happy at home, the political situation in my country was unstable throughout my childhood. There was always violence between different ethnic groups, and different leaders taking power. Most of the recent violence in the Republic of the Congo has been between the north and the south fighting each other to rule the country. My family was never involved in the violence. We are reserved people who tend to keep to ourselves. Even though my family was not involved in politics and did not cause any violence, we learned, like all Congolese citizens, about the government’s corruption and the violence that came to people who opposed or questioned the government. I learned as a child that even though we say our citizens have “rights” to things like freedom of speech and the ability to criticize the government, the reality is that people are frequently hurt or worse if they try to oppose the government.
“On May 1, 2010, three police officers invaded my home and arrested me” → too much detail

“In early May, 2010, several police officers invaded my home and arrested me.” → good!

“I am applying for asylum because I have a well-founded fear of persecution on account of my political opinion.” → too much legalese

“I am applying for asylum because I am afraid the government will beat, torture, or kill me because of my work with a group that opposed the government.” → good!
The Supreme Court tightened the rules for political refugees who want to stay in the U.S.

A well-founded fear of persecution in your country is not enough.

What kind of evidence would be enough?

A note from your dictator.
Corroboration is the second most important part of an asylum case.

Don’t leave it until the end!

Can be required “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”

But, “[t]he testimony of the application, if credible, may be sufficient to sustain the burden of proof without corroboration.” 8 C.F.R. §1208.13(a)

Corroborate each asylum element OR show why your client cannot reasonably obtain corroboration.
# Obtaining Corroboration

## Everything Matters!

<table>
<thead>
<tr>
<th>Country Conditions</th>
<th>Client-Specific</th>
<th>Past Persecution</th>
<th>Future Persecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Dept Human Rights Reports</td>
<td>Facts: dates, times, flights, DATE OF ENTRY, IDENTITY</td>
<td>Forensic Medical Evaluation</td>
<td>Evidence of past incidents that may not rise to persecution</td>
</tr>
<tr>
<td>Amnesty Intl &amp; Human Rights Watch</td>
<td>Physical Evidence: pictures, police reports, receipts</td>
<td>Mental Health Evaluation</td>
<td>Affidavits from similarly situated individuals who have suffered harm</td>
</tr>
<tr>
<td>UNHCR Refworld <a href="http://www.unhcr.org/refworld">www.unhcr.org/refworld</a></td>
<td>Witness Affidavits</td>
<td>Medical Reports</td>
<td>Expert Affidavits (especially for court cases)</td>
</tr>
<tr>
<td>Domestic and Foreign News Sources</td>
<td>Google Earth, Hand Drawn Maps</td>
<td>Pictures</td>
<td>Country Conditions</td>
</tr>
</tbody>
</table>
Practice Pointers for Obtaining Corroborating Evidence

- Work with your client

- Establish chain of custody.
  - Ask your client how he/she obtained the document
  - Provide evidence of the document’s origin (e.g. copy of the envelope containing the postmark from the country of origin)

- If you doubt the authenticity of a document, leave it out.

- All foreign documents must be translated into English.
<table>
<thead>
<tr>
<th>Tab</th>
<th>Exhibit</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Affidavit of Mr. CLIENT</td>
<td>1</td>
</tr>
<tr>
<td>B</td>
<td>Letter in support of Mr. CLIENT’s asylum application from his wife ... dated September 1, 2012, with translation and copy of the envelope in which the letter arrived</td>
<td>20</td>
</tr>
<tr>
<td>C</td>
<td>Copy of the biographic page of Mr. CLIENT’s passport</td>
<td>27</td>
</tr>
<tr>
<td>D</td>
<td>Copy of Mr. CLIENT’s B1/B2 Visa and I-94 card, establishing date of entry as DATE</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>“The Republic of the Congo is slightly larger than New Mexico, but vast areas in the north include jungles that are virtually uninhabited. ... Congo is one of the most urbanized countries in Africa, with 70% of its total population living in Brazzaville, Pointe-Noire, or along the 332-mile railway that connects them. In southern rural areas, industrial and commercial activity suffered as a consequence of the civil wars in the late 1990s.”</td>
<td></td>
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<tr>
<td></td>
<td>“Denis Sassou-Nguesso was reelected president in 2009 with 78 percent of the vote, but the validity of these figures is questioned. The 2009 election was peaceful, and the African Union declared the elections to have been free and fair; however, opposition candidates and nongovernmental organizations (NGOs) cited irregularities.”</td>
<td></td>
</tr>
</tbody>
</table>
Keep it brief
- Legal Brief (for cases before EOIR) < 30 pages
- Legal Memo (for cases before the AO) < 10 pages

Follow the elements & don’t conflate them.

Case law:
- Supreme Court
- Federal Circuit Court of Appeals
  - Stick to the Seventh Circuit
- Board of Immigration Appeals (BIA) precedent decisions

Preserve all arguments and claims to relief
Follow the Immigration Court Practice Manual

If filing requirements are not met (tabs, pagination, two-hold punch, certificate of service, etc.), the Court may reject your filing.

Check notes from the status hearing for other requirements.

Copy of all filings must be submitted to DHS (use the OCC email address for e-filings).

Be sure to annotate your index and highlight important information in country condition reports.
Presenting Your Case: the Asylum Office

Ashley Huebner,
National Immigrant Justice Center
The Asylum System

Asylum Office/Affirmative Process

Client in U.S.; no NTA issued

File Affirmative Application

Asylum Office Interview

Grant

Referral

Immigration Ct/Defensive Process

Client apprehended at port of entry

Unaccompanied child client apprehended

“Notice to Appear” Issued

Master Calendar Hearing

Merits Hearing

Client apprehended internally
## Asylum Office Timing

| Day 1: | Asylum application received by Nebraska Service Center (Clock starts to run). |
| Day 10-20: | Receipt and biometrics notice issued |

<table>
<thead>
<tr>
<th>Unaccompanied Children</th>
<th>All Other Applicants</th>
</tr>
</thead>
<tbody>
<tr>
<td>8+ months later (?): Receive interview notice approx. 2 weeks before the interview date</td>
<td>~3 years later: Receive interview notice approx. 2 weeks before the interview date (currently interviewing ~December 2013 applicants)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1 week before the interview</th>
<th>File supporting documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 weeks after notice</td>
<td>Interview</td>
</tr>
<tr>
<td>~10 days – 6 months later</td>
<td>Decision</td>
</tr>
</tbody>
</table>
While Your Case is Pending

- Develop rapport with your client
- Maintain contact
- Determine what evidence is important and available and begin to gather it, especially from abroad (remember that you must corroborate everything!)
- Connect your client with a therapist and/or medical doctor for evaluations, if appropriate (NIJC can help!)
- File a work authorization application for your client when s/he is eligible and track the timing for renewals
Work Authorization

- Can be difficult to obtain - depends on the “asylum clock”
- Clock begins to run when the asylum application is filed (received)
  - By USCIS for asylum office cases (affirmative asylum)
  - By the immigration court for court cases (defensive)
*Note Policy New Change!
- Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
- Clock stops if the applicant causes a delay
  - Declines an expedited hearing date
  - Requests a continuance or a change of venue
- Clock begins to run again when delay has stopped
Before the interview
- Obtain an interpreter and practice with interpreter & client
- Prep client with open-ended questions
- Explain the interview process and clarify the non-adversarial nature of the interview.

At the interview
- Attend interview with your client
- Expect informal setting
- You must provide an interpreter
- Take cues from the asylum officer
- Prepare a closing, but be flexible
- No same-day answer
After the Asylum Office Decision

If you win:

• Let NIJC know immediately (30-day deadline for benefits)
• Work Authorization, Social Security Card & Benefits
• Advise client to contact NIJC to apply for derivative family members

If you lose, the case is not over:

• Referral to the immigration court for de novo review
• DHS issues Notice to Appear (NTA) placing client in removal proceedings
• Client is now seeking asylum as a defense to removal
• Let NIJC know immediately and consult with NIJC re: timing and next steps
Presenting Your Case: the Immigration Court

Lisa Koop,
National Immigrant Justice Center
Filing Your Appearance in Court

- E-28 appearance form: file as soon as possible
  - Can file electronically once registered or in paper format

- E-Registry
  - All attorneys appearing before the immigration court and Board of Immigration Appeals (BIA) MUST register with the Executive Office for Immigration Review’s E-Registry system in order to appear before the Court or BIA.
  - E-Registry contains both an electronic and an in-person identification component.
  - See http://www.justice.gov/eoir/engage/eRegistration.htm for more information.
Filing Your Asylum Application in Court

- Can be filed at the court window or in open court

- Review filing procedures to ensure sufficient copies and format

- Obtain a date-stamped copy for your own records (very important!)

- File early to potentially make your client eligible for a work permit. Talk to NIJC about consequences.
What it is: a status hearing:

Hearing procedures:
- Arrive Early! YOUR CLIENT MUST APPEAR!
- File appearance form (E-28) if you haven't already
- Admit/deny charges; concede removability
- Decline to designate country for removal
- Relief sought (asylum, withholding, CAT)
- Request interpreter, with specific dialect
- Accept/decline expedited hearing date (remember EAD consequences).
The Notice to Appear (NTA) is the charging document that places an individual in removal proceedings.

Allegations: correct with IJ if necessary; admit

Charge(s): correct with IJ if necessary; concede charge/removability
Varies tremendously depending on the type of case and the judge.

Please consult NIJC for a case-specific estimated timeline and to discuss the consequences of accepting or declining an expedited date.
Pre-Merits Hearing Issues

- Know your judge’s practice and preferences (contact NIJC)

- Filing Deadlines:
  - 15-day filing deadline for non-detained cases (unless the IJ tells you otherwise)
  - Review the Court’s file
  - Review the Immigration Court Practice Manual

- Contact ICE Office of Chief Counsel Trial Attorney
  - Not assigned until the month of the merits hearing. Contact ICE-OCC to find one which attorney will be handling your case.
Pre-Merits Hearing Issues: Fingerprints

- It is YOUR responsibility to obtain a fingerprint appointment for clients in court proceedings unless your client is detained or has previously been fingerprinted at an application support center.

- Fingerprints taken at the border do not count.

- If no fingerprints - NO RELIEF! IJ cannot grant relief and could deny the application for abandonment.

- See NIJC’s asylum manual and fingerprint FAQ for instructions
Evidence in Immigration Court

Written:
- Trial Brief
- Supporting Documents
- FRE do not apply (but will give more weight)

Oral Testimony
- Applicant
- Fact witnesses, especially to corroborate identity
- Experts
BE BRIEF: no more than about one to three minutes

- Offer a concise “roadmap”

- Brief review of the facts
  - Solomon is an Eritrean man
  - Persecuted for leaving the country without permission and evading forced conscription in the military
  - Perceived as a traitor
  - Country condition documentation
  - Letters from family members

- Brief mention of other major issues
Direct Examination of Witnesses

- Key issue is credibility
- Don’ts
  - Don’t script answers
  - Don’t ask leading questions
  - Don’t waste time on irrelevant matters
- Do’s
  - Do follow a chronological story; use declaration as guide
  - Do draw the story out
  - Consider using visual aids, particularly maps
  - Make your record
Preparing Your Client for Cross

- Anticipate questions
- Prepare client for leading questions
- Expect questions from judge
- Empower client, BUT remind client to maintain demeanor
- Remember cultural obstacles
- PRACTICE, PRACTICE, PRACTICE!
Closing Statement

- Take cues from the judge
- Make the legal argument
- Make the record
- Respond to issues
If you win:
- Let NIJC know immediately (30-day deadline)
- For Court Cases, Need to get Client’s I-94
- Work Authorization, Social Security Card & Benefits
- Refer client to NIJC to apply for derivative family members

If you lose, the case is not over:
- Reserve right to appeal
- Let NIJC know immediately
- Appeal to BIA
Working With Your Client

Carolina Ramazzina Van Moorsel,
Asylum and *Pro Bono* Projects Supervisor
National Immigrant Justice Center
The First Meeting With Your Client

- Establish trust first! Don’t just jump into the case.
- Explain your relationship with NIJC and your role in the process.
- Set up a regular communication and an emergency plan.
- Go through a road map of what you’ll discuss in the meeting.
- Go through a road map of what will happen on his/her case.
What are my chances? Remind client of:
- NIJC’s screening process
- Joint effort between attorney and client to achieve best possible result
- Unpredictable immigration system

When will I get a decision?

Can I work? When?

When can I bring my family here?
Other Client Meetings

- Explain the purpose of the documents you are preparing.

- When preparing your affidavit keep in mind:
  - Clients endured trauma, they might have a hard time explaining what happened and remembering details.
  - Different people tell their stories in different ways – you might need to help them with developing a timeline.
  - Don’t try to get it all out in one day.

- Encourage your client to go to counseling. If they aren’t yet connected with services, contact us. NIJC can help you with referrals.
Important Tips

- Be prepared for questions beyond the scope of the case.
- Empower your client and promote independence.
- Manage expectations on decision timing.
Thank you!

For more information contact
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312-660-1307
cramazzinavanmoorsel@heartlandalliance.org

Other ways to support NIJC:
• NIJC Annual Appeal
• Twitter: @NIJC
• Facebook: facebook.com/immigrantjustice