THE ABA IMMIGRATION JUSTICE PROGRAM OFFERS SAN DIEGO PRACTITIONERS A UNIQUE OPPORTUNITY TO MAKE A DIFFERENCE

BY ELIZABETH SWEET
DIRECTOR, IMMIGRATION JUSTICE PROJECT, AMERICAN BAR ASSOCIATION

Originally from the Sudan, Benjamin was a Lost Boy who wandered through West Africa with several other young male refugees. They escaped atrocities to live for several years in refugee camps before being resettled to the United States. Sadly, the trauma that Benjamin suffered as a young boy resulted in severe Post-Traumatic Stress Disorder (PTSD), as well as schizophrenia. This went undiagnosed and he spent several years homeless in San Diego. As a homeless person, Benjamin committed several relatively minor crimes which ultimately lead to Immigration and Customs Enforcement initiating removal proceedings against him. He was detained at the San Diego Correctional Facility at that time. Luckily for Benjamin, he was detained in the San Diego Correctional Facility where there are several non-profit organizations providing free legal services to individuals in detention.

When Veronica Barba met him through the ABA Immigration Justice Project's group know-your-rights presentations, she identified Benjamin as an individual in need of assistance. He had been eligible for several years to apply for a lawful permanent resident or “green card,” and it was evident that he needed social and psychological services. She worked to prepare a waiver under 209(c) of the Immigration and Nationality Act which permits a refugee to apply for a green card in spite of negative factors. Congress authorized this generous waiver for crimes and other negative factors for refugees where there is a public interest, humanitarian reason or to preserve family unity.

Benjamin was not aware that he could become a legal permanent resident of the United States or the procedures to apply. With the help of a volunteer psychologist, Ms. Barba presented a case that Benjamin's mental illness and history of serious trauma in the Sudan were compelling reasons to waive the minor crimes in his record. Citizenship and Immigration Services promptly granted the waiver application and Benjamin was released from immigration detention. He has since been able to connect with English classes and necessary social services.

Stories like Benjamin's do not always end this way. Nationally, approximately 84% of detained immigrants lack legal representation. There is no right to a government-paid attorney in immigration court in spite of the adversarial nature of the proceedings. Individuals like Benjamin are forced to navigate complex proceedings alone in spite of linguistic, educational and cultural barriers. The majority of men and women in this situation face either permanent separation from immediate family members or a return to a place where they fear persecution. Statistics show dramatic differences in outcomes between asylum seekers represented by counsel and those appearing pro se.

Stepping into this equation, the ABA Immigration Justice Project addresses this need. It is a program unique to San Diego to screen every man and woman confronting removal (deportation) proceedings. The Project makes know-your-rights presentations to all individuals in proceedings whether detained or living in the community. More than 5,000 individuals have attended these presentations since the IJP opened its doors. Then IJP staff identifies individuals with defenses to removal and refers cases to volunteer attorneys.

Volunteer attorneys handle a range of immigration cases. Cases vary in hours, country of origin, and type of proceeding. All IJP cases are immigration court cases, so most attorneys have the opportunity to present a case including direct and cross-examination as well as arguing before an Immigration Judge. This offers the opportunity for skill building, particularly for new attorneys.

Some opportunities are available for appellate work. These are typically cases in which an immigrant is continuing to pursue a defense before the Board of Immigration Appeals or to the Ninth Circuit Court of Appeals. These cases require only written briefing on the existing record, though oral argument is afforded at the Ninth Circuit to all IJP volunteers.

And there are cases that present special needs. Benjamin’s case illustrates a particularly vulnerable group – those individuals whose difficult situation is compounded by mental illness. According to Ms. Barba, working with individuals from such a vulnerable population makes the need for counsel apparent: "While everyone that I meet at the immigration detention facility faces a difficult situation, individuals like Benjamin really stand out. He could not have moved forward with his case on his own.”

The San Diego Correctional Facility in Otay Mesa, which is the immigration detention facility in San Diego, has several beds dedicated to housing individuals with severe mental illness who face immigration proceedings. Nationally, there are estimates that approximately 700 of the 37,000 immigrants detained daily may have a severe mental disability.

In response to concerns about severely mentally disabled individuals in detention, the ACLU of Southern California with the ACLU of San Diego & Imperial Counties, Public Counsel and several other organizations filed a class action last November. Franco-Gonzalez argues that severely mentally disabled individuals in immigration detention are deprived of due process and that federal officials are violating anti-discrimination laws. Franco-Gonzalez v. Holder, No. 10-02211 (C.D. Cal. filed March 26, 2010). Last December, a U.S. District Court Judge issued a preliminary injunction in the case, ordering the government to provide representation for two individuals named in the litigation.

While this case is pending, however, hundreds of individuals in similar situations wait in detention centers for assistance. Benjamin had been detained for a year and a half when his case was accepted by Ms. Barba. Other individuals wait even longer or give up and accept a deportation order to avoid prolonged detention.

With the help of counsel, deportation or prolonged detention can be avoided. Ms. Barba says now that “it is so great to hear from Benjamin who now has access to services and the support of the Sudanese community.” He simply could not have presented his case without her assistance.

Though the issues are complex, the IJP provides support to volunteer attorneys. That support includes training sessions, technical support and mentoring from attorneys on a Pro Bono Mentoring Panel. Upcoming training opportunities include a June training on handling appeals before the Board of Immigration Appeals. Introductory sessions for new pro bono attorneys are provided on a monthly basis. For more information or to begin volunteering, please contact Liz Sweet, Director, ABA Immigration Justice Project at liz.sweet@americanbar.org.

1 His name was changed to protect his identity.