CHECKLIST FOR SUPPORTING DOCUMENTATION

Supporting documentation, in the aftermath of the BIA’s decision in Matter of S–M–J–, Int. Dec. 3303 (BIA 1997), is more important than ever in establishing eligibility for asylum and withholding of removal. See Chapter 2, “Evidence and Country Conditions Documentation.” In S–M–J–, the BIA held that “[b]ecause the burden of proof is on the alien, an applicant should provide supporting evidence, both of general country conditions and of specific facts sought to be relied on by the applicant, where such evidence is available.” Id. at 4 (emphasis added).

Supporting documentation may be obtained from obvious and a few not-so-obvious sources. You may find yourself testing the limits of your creativity. Below is a checklist to help with your research. But don’t be surprised if your best leads come from the applicant.

Try to obtain:

☐ **Documents that specifically mention the applicant.** These may include identity documents, reports of the persecution suffered by the applicant, records that establish the applicant’s ethnicity, religion, or nationality, and proof of the applicant’s party or group memberships or affiliations. These may be documents that the applicant brought with him or her to the United States or, more likely, are documents obtained after the applicant arrived in the United States. Be creative! An affidavit from the applicant’s rabbi in the United States may be submitted as proof of the applicant’s religion. A picture of the applicant in his uniform may be submitted to demonstrate his service in the military. Statements from friends, neighbors, and relatives who witnessed an event or who may be able to substantiate the applicant’s claim may also be submitted.

☐ **Medical reports and evaluations from health care professionals.** The harm the applicant suffered may be corroborated by the health care professionals who have examined or are treating the applicant. Submit reports, affidavits, X-rays, and photographs. See Appendix 6H for a list of treatment centers and Appendix 4C for a sample affidavit from a physician.

☐ **Expert Opinions.** Other sources of valuable information are experts from a variety of disciplines. Consider obtaining affidavits from academics who have studied the conditions in the applicant’s country or a legal expert who can attest to the criminal penalties likely to be imposed on the applicant if returned. Another source is the Office of the United Nations High Commissioner for Refugees, which may verify the applicant’s refugee status in a third country or offer an advisory opinion on a particular point of law. See Appendix 4D (additional UNHCR advisory opinions are available on the enclosed CD-ROM).

☐ **Demonstrative evidence.** Consider the possibility of introducing, for example, a map of the applicant’s escape route or a model or reproduction of the instrument or device used to harm or torture the applicant.

☐ **Country condition documentation.** This information is available from many sources including Human Rights Watch, Amnesty International, the Department of State’s Country Reports on Human Rights Practices, USCIS’s Resource Information Center, and newspapers, both foreign and domestic. See Appendices 6F and Appendix 6G for sources and Web sites.
Foreign Law. If the applicant fears that he or she will be punished upon return to his or her home country for illegal exit, his or her sexual orientation, or other reasons that may be the basis of a claim, the law of the applicant’s home country should be submitted. If nationality is at issue in the applicant’s case, the nationality laws of the country of birth or last habitual residence should be submitted. The laws of many countries are available from the Library of Congress. See Appendix 6G.

Proof of Attempts to Obtain Documents. If the applicant has tried but failed to obtain documentation, those failed attempts could be submitted as evidence that the documentation is not available. The evidence may be in the form of a letter, a fax, or even phone bills (as proof of overseas calls). If attempts are made in-person, a nonparty witness might be able to submit an affidavit attesting to the encounter.

Proof of Why It Would Be Dangerous to Attempt to Obtain Documents. Often asylum applicants are from countries where communication by telephone, fax, mail, and even e-mail is closely monitored. In such circumstances it would be unreasonable to expect an asylum applicant to obtain documents from his or her home country. It is necessary, however, to show why it is dangerous to even attempt to obtain these documents. Such proof may be available from country conditions experts or reports.

Note: Documentation should be paginated, indexed, tabbed, and highlighted for easy reference.