PRACTICE POINTERS FOR COMPLETING THE ASYLUM APPLICATION*

PRACTICE POINTERS FOR COMPLETING THE NEW I-589
(APPLICATION FOR ASYLUM AND WITHHOLDING OF REMOVAL)

The USA PATRIOT Act, the Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA), and the final asylum regulations changed various aspects of U.S. asylum law. More changes are expected. For this reason, it is important to consult the statute and regulations prior to completing any application for asylum and withholding of removal. Also, carefully read the instructions to the I-589 (on enclosed CD-ROM) to ensure that you complete the form correctly and file it at the appropriate USCIS or immigration court location. The instructions also are filled with useful information, such as the telephone number to call for a list of voluntary agencies or pro bono attorneys and directions on where to file a change of address if the applicant moves.

These section-by-section practice pointers are provided to assist you in completing the I-589 effectively and to highlight several of the recent changes to asylum law. Remember, every question must be answered. If the question is not applicable to the applicant, write “not applicable,” “N/A,” or “none” in the space provided. If the applicant does not know the answer to a question, write “unknown” or “not known” in the space provided.

Part A. I—Information About You

• Question 1—Alien Registration Number

Alien Registration Number or A# refers to an eight-digit number beginning with the letter A that is assigned to individuals by DHS. If the applicant is not in removal proceedings, it is possible that he or she does not have an A#. If removal proceedings have been initiated, the A# may be found on the Notice to Appear (NTA). It is also possible that the applicant has more than one A# because the applicant may have filed for other forms of relief such as temporary protected status (TPS). All A#s should be listed.

• Question 2—Social Security Number

If the applicant does not have a valid Social Security number issued in his or her name, write “none” in the space provided.

• Questions 3–5—Name

An applicant’s last or first name may be hyphenated or contain two or more names. To ensure that you are identifying the applicant’s first, middle, and last names correctly, refer to the applicant’s identity documents, such as a national identity card or passport. List the applicant’s last name in all capital letters.

• Question 6—Aliases

The applicant should list all names he or she has previously used, including the names used on any false identity documents, nicknames, and the applicant’s maiden name, if any.

* Both the 2003 and 2001 versions of the I-589 were acceptable for filing at the time this edition was submitted for publication. Always check the USCIS Web site to determine whether you have an acceptable version of the I-589 before you file. See http://uscis.gov/graphics/formsfee/forms/i-589.htm.
• **Question 7—Residence in the United States**

The applicant should list the place where he or she resides. This address determines the asylum office that has jurisdiction to adjudicate the applicant’s claim. It is, therefore, imperative that the applicant notifies DHS, and if in removal proceedings, the immigration court, of any changes of address.

• **Question 8—Mailing Address in the United States**

If the applicant’s mailing address is different from his or her residence, this section should be completed. This is also the address to which all interview and hearing notices will be sent.

• **Question 9—Sex**

If the applicant is a transgender applicant, you may wish to supplement the answer to this question on an attached sheet.

• **Question 10—Marital Status**

For an applicant who has a common law marriage or relationship with a person that the applicant refers to as his or her spouse, you may wish to supplement the answer to this question on an attached sheet.

• **Question 11—Date of Birth**

An applicant may not know his or her exact date of birth. Write in the approximate year, if possible, in the space provided, *e.g.*, “approx. 19__.”

• **Question 12—City and Country of Birth**

The applicant may have been born in a country that no longer exists. If the applicant is stateless, this point should be highlighted.

• **Question 13—Present Nationality**

This may be a difficult question for some applicants. Due to the recent dissolution and creation of numerous countries in recent history, there are many individuals who may lack a nationality. Prior to answering this question, it may be necessary to consult the nationality laws of the country of the applicant’s birth or last habitual residence. Although a passport may be *prima facie* evidence that the applicant is a citizen or national of the issuing country, it is not conclusive and the applicant may actually be stateless or a national of another country.

• **Question 14—Nationality at Birth**

There may be individuals who were conferred no nationality at birth and were, and perhaps continue to be, stateless. On the other hand, an individual may have been born in a country that no longer exists and may be stateless for this reason.

• **Question 15—Race, Ethnic, or Tribal Group**

List all of the applicant’s racial, ethnic, and tribal groups, even if his or her claim is not based on membership in these groups.

• **Question 16—Religion**

Be as specific as possible. An Evangelical Christian, for example, may be at a greater risk of harm than Christians in general in a particular country.
• **Question 17—Check Each Box That Applies**

The applicant must identify whether he or she is in removal proceedings and whether he or she has ever previously been in removal proceedings. *Beware!!* If the applicant was previously in removal proceedings, it is important to determine the outcome of those proceedings for two reasons: (1) individuals previously denied asylum by an immigration judge or the Board of Immigration Appeals are not eligible to apply for asylum unless they demonstrate changed circumstances, and (2) individuals previously ordered deported, excluded, or removed from the United States may be subject to reinstatement of removal proceedings in which they are ineligible to apply for asylum. *See* Chapter 3, at 151. To determine whether the applicant had an asylum application denied or was previously ordered removed, you may contact the Executive Office for Immigration Review information line (1-800-898-7180) or file a FOIA request with the Department of Homeland Security.

• **Question 18—Entry Questions**

If the applicant entered the country illegally and at a place other than a port of entry, write “EWI,” *i.e.*, entry without inspection, or “EWA,” *i.e.*, entry without admission, when responding to the status line in Question 18c. An I-94 is a white card given to noncitizens upon entry to the United States at a port of entry. Applicants who list previous entries to the United States should explain elsewhere in the application and/or in their declaration the reasons for not applying previously for asylum and why, if applicable, they returned to the country of claimed persecution.

➢ **Caution!** The applicant who is applying affirmatively should understand that this information, along with the information the applicant provides regarding his or her nationality, will in most cases be sufficient to establish his or her deportability or inadmissibility in removal proceedings, unless the applicant currently maintains a valid immigration status.

• **Question 19–21—Passport Information**

If the applicant obtained a passport and/or exit visa to leave his or her country, the applicant may wish to provide details regarding how he or she was able to obtain such documents if he or she fears the government that issued those documents. This information may be provided elsewhere in the application and/or in the applicant’s declaration.

• **Questions 22–24—Languages**

Answers to these questions will assist the court in arranging for an interpreter for the hearing.

**Part A. II—Information About Your Spouse and Children**

These questions are self-explanatory. Please note that the application requires all children to be listed, regardless of age or marital status. As noted above, the information provided here, as elsewhere in the application, could be used to establish that an individual is removable (deportable) from the United States.

All persons “included” in the application will be granted asylum if the applicant is granted. A spouse, to be “included” in the application, must be present in the United States. Note that a spouse must still be “listed” on the application, even if the spouse is not in the United States. A child, to be “included” in the application, must be present in the United States, under 21 years of age, and unmarried. All children, however, must be “listed” on the application. The other reasons why a spouse or child may not be “included” in the application may be because he or she has U.S. citizenship or other legal immigration status or he or she is ineligible for asylum.

To list additional children, use copies of Supplement A (included in the I-589).
Part A. III—Information About Your Background

- **Question 1—Prior Residences Before Coming to United States**
  
  If the applicant resided outside of his or her home prior to leaving, out of necessity or fear, that address must be listed, as well as his or her last address in the home country. USCIS notes in the filing instructions that “no information indicating that you have applied for asylum will be provided to any government or country from which you claim a fear of persecution.” I-589 (Rev. 07/03/03) p.4.

- **Question 2—Residences for Last Five Years**
  
  This question is self-explanatory. Note that it is not unusual for an applicant to be reluctant to release the addresses of friends, relatives, or colleagues who assisted the applicant in fleeing the country or who sheltered the applicant upon arrival here.

- **Question 3—Education**
  
  List all schools your client has attended including primary school and trade or vocational schools.

- **Question 4—Employment**
  
  Has the applicant been working without employment authorization in the United States? Now that asylum reform practically ensures that applicants do not have employment authorization until there has been a final adjudication of the claim, it is not uncommon for applicants to be working without a work permit. Should the employment be listed? Many applicants are reluctant to do so. It may be useful to ask other practitioners in your area about if and how the DHS trial attorneys and immigration judges view such employment to alleviate (in many cases) any fears the applicant has.

- **Question 5—Parents and Siblings**
  
  This question is self-explanatory. Note, however, that the asylum officer and the DHS trial attorney will question your client regarding why his parents and siblings, if still residing in the home country, are able to live there and the applicant is not.

Part B—Information About Your Application

The I-589 contains very limited space for providing information regarding the applicant’s claim. It is recommended that the applicant prepare a separate declaration or affidavit regarding his or her claim and attach it to the I-589. If a more detailed declaration is attached, the applicant may then provide brief answers to the questions in this part and, after each answer, specifically refer to his or her declaration or affidavit. If the applicant wishes to provide a more detailed response to particular questions, he or she may use copies of Supplement B, included with the I-589. Read each of the questions carefully. The information requested in each is important for establishing eligibility for asylum. Such information should be included in the declaration.

- **Question 1—Why Are You Applying for Asylum, Withholding of Removal, or Convention against Torture relief?**
  
  Provide detailed information regarding the applicant’s claim for asylum, withholding of removal, and/or CAT relief. Begin by providing a summary of the claim. The summary should include the basis for the fear, whether the applicant or the applicant’s family or friends have experienced past persecution, and the reasons why the applicant fears persecution or torture if he or she is returned. If a declaration has been prepared, refer to the declaration for more details regarding the applicant’s claim. The question also requests that the specific basis for the claim be specified, i.e., race, religion, nationality, membership in a particular social group, political opinion, Convention against Torture. All applicable grounds should be identified. It is common for more than one ground to be the basis of a claim.
(a) **Question 1A—Mistreatment in Past**

This is an important question requesting information regarding any past persecution suffered by the applicant or his or her family members. If past harm was suffered, the applicant should provide specific details regarding any and all occurrences. Note that the harm may have been inflicted by groups the government is unable or unwilling to control, which may include guerrilla groups, paramilitary groups or death squads, vigilante groups, or rival clans. The applicant should include as part of the supporting documentation any documents that may relate to these incidents, including newspaper accounts, medical or psychological reports regarding the physical or mental harm inflicted, and statements from witnesses.

(b) **Question 1B—Do You Fear Harm or Mistreatment If You Return?**

The applicant should provide details regarding the harm he or she would face upon return. These details may be obtained from documents that show how individuals similarly situated to the applicant have been harmed in the applicant’s home country. The applicant should also note any previous harm he or she, his or her family, or his or her colleagues have suffered in the past, or the threats they have received. If there has been a change in government, a ceasefire, or a peace agreement since the applicant left his or her home country, the applicant should provide details regarding why, in light of these events, he or she continues to fear returning. Again, it is preferable to provide a summary here and then refer to the applicant’s detailed declaration attached to the application.

- **Question 2—Accusations, Charges, Arrests . . .**

  The applicant should list any incident in which applicant or his or her family member was accused, charged, arrested, detained, interrogated, convicted, sentenced, or imprisoned in any country other than the United States. In addition, the applicant should provide detailed information regarding each incident, preferably in his or her declaration. *Careful!* Is the applicant fleeing persecution or prosecution? An applicant who committed a serious nonpolitical crime outside of the United States is barred from asylum and withholding of removal, but is eligible for Convention against Torture relief.

- **Question 3—Membership in Organizations or Groups**

  These questions ask for information regarding the membership of the applicant or his or her family members in organizations or groups in the applicant’s home country. Such groups may include ethnic groups, labor unions, religious groups or organizations, political parties, student groups, human rights groups, the press or media, military or paramilitary groups, civil patrols, or guerrilla organizations. If the applicant answers “yes” to this question, he or she must provide the names of the organizations, the dates of membership or affiliation, the purpose of the organization, the applicant’s or his or her family member’s duties as a member, and whether the applicant or his or her family member is still active.

  There is no requirement that an asylum applicant be a member of a political party or other highly organized group to be granted asylum. He or she may simply be a member of a clan or ethnic minority that his or her family has belonged to for generations that is being targeted by the government or other group.

- **Question 4—Torture**

  This question asks whether the applicant fears that he or she will be tortured upon return to his or her home country, and, if so, to explain why. The United States, a signatory to the UN Convention against Torture may not return an individual to a country where he or she is likely to be tortured. Unlike asylum or withholding of removal, there are no bars to such protection and, furthermore, there is no requirement that the torture feared be on account of race, religion, nationality, membership in a
particular social group, or political opinion. The Convention against Torture defines “torture” broadly as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” It does not, however, include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. See Chapter 4.

Part C—Additional Information About Your Claim to Asylum

The six questions in this part seek information to determine whether the applicant may be barred from asylum or withholding of removal under one of the following grounds:

- **Question 1—Prior Applications for Asylum or Refugee Status in United States**
  
  Did the applicant or any family members previously apply for asylum in the United States? If so, the applicant may be barred from reapplying without first establishing changed circumstances. Previous grants to other family members may help to bolster the applicant’s claim and should be listed.

- **Question 2—Travel Through, Permanent Residence in, or Citizenship in Another Country (Safe Haven and Firm Resettlement)**
  
  The applicant must list all of the countries the applicant, his or her spouse, and his or her children traveled through or resided in after leaving his or her home country prior to arriving in the United States. In addition, the applicant must give details for each country regarding the length of stay, status, reason for leaving, ability to return, and whether he or she applied for asylum or refugee status while in that country. This question is designed to elicit information regarding whether the applicant was “firmly resettled” in another country prior to entering the United States. An applicant who is determined to be firmly resettled is ineligible for asylum, but not withholding of removal. See Chapter 2, at 96.

- **Question 3—Harm to Others (Persecutor Bar)**
  
  If the applicant, his or her spouse, or the applicant’s child caused harm or suffering to another person on account of race, religion, nationality, membership in a particular social group, or political opinion, the person who engaged in persecution is ineligible for asylum and withholding of removal.

- **Question 4—Return to Country of Claimed Persecution**
  
  Applicants who returned to their home country must provide details regarding their return, the length of stay, purpose of trip, and the circumstances of the visit. If such a visit occurs after the filing of the application for asylum, the applicant is presumed to have abandoned his or her application unless he or she can demonstrate compelling reasons for returning. Applicants are also required to obtain advance parole prior to leaving the United States while an application for asylum is pending, or their application will be deemed abandoned.

- **Question 5—One-Year Deadline**
  
  The applicant is asked to state whether his or her application is being submitted more than one year after his or her last arrival in the United States. If it is more than one year, the applicant is asked to explain why and is referred to the Filing Instructions for guidance. Persons are not eligible for asylum if they apply more than one year after their arrival in the United States unless they are able to demonstrate exceptional circumstances or changed circumstances. These terms are defined in the regulations at 8 CFR §1208.4. Whether one of these exceptions applies will be determined by the asylum officer, immigration judge, or the BIA.
• Question 6—Crimes in United States

This question asks not only about arrests, charges, and convictions in the United States, but also whether the applicant has “committed” any crimes. Is the applicant protected by the Fifth Amendment right not to incriminate him- or herself? See Chapter 3, at 128, on “Rights.” Note that if the applicant has been “convicted” of an aggravated felony in the United States, he or she is ineligible for asylum. If he she received a sentence of five years or more, regardless of any suspension of sentence, the applicant is also ineligible for withholding of removal. But see Chapter 4, for information regarding relief under the Convention against Torture.

Part D—Signature

The applicant must sign the application, certifying under penalty of perjury that the information is true and correct. This section also contains a warning that the information provided may be used in removal proceedings, even if the application is later withdrawn and that an applicant who knowingly files a frivolous application will be permanently ineligible for any benefits under the Immigration and Nationality Act. The applicant must also print his or her name and, if applicable, in his or her native alphabet.

Part E—Signature of Person Preparing Form

This part must be completed only if a person other than the applicant’s spouse, parent, or child completed the application form. If a person other than the spouse, parent, or child of the applicant completed the form, he or she must declare that the form was completed at the request of the applicant, that the responses were provided by the applicant or based on information of which the preparer has knowledge, and that the completed application was read to the applicant in his or her native language before the applicant signed it, in the presence of the preparer. The preparer must also acknowledge that he or she is aware that the knowing placement of false information on this form is subject to civil penalties. The preparer must provide his or her name, address, and daytime telephone number.

Part F—To Be Completed at Interview

This part is completed when appearing before the asylum officer or immigration judge.

*A copy of the Form I-589 is also included on the CD-ROM.*