July 24, 2015

The Honorable Jeh Johnson
Secretary of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

The Honorable Alejandro Mayorkas
Deputy Secretary of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

Mr. León Rodríguez
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

Re: Department of Homeland Security policy of banning counsel from refugee interviews.

Dear Secretary Johnson, Deputy Secretary Mayorkas, and Director Rodríguez:

The American Bar Association (ABA) – which has a long history of defending the right to counsel in many contexts – requests that the Department of Homeland Security (DHS) reassess and reverse its present policy banning counsel from overseas refugee interviews. The ABA believes that a change in the current practice – to permit representation to refugees overseas, at no expense to the government – would improve the fairness of the process for refugee applicants, is required under the applicable federal regulations, and would better advance the objectives of the U.S. Refugee Admissions Program (USRAP).

The need for access to counsel

Refugees applying for resettlement to the United States through USRAP must navigate a complicated administrative process that includes a minimum of four interviews with United Nations and U.S. officials and the submission of numerous documents for both evidentiary and identification purposes. Most refugee applicants do not speak English and must rely on interpreters of varying quality. Many applicants suffer from mild to severe cases of Post Traumatic Stress Disorder as a result of persecution. Even the most educated refugee applicants understand almost nothing about the resettlement process and often feel intimidated and terrified by it. Numerous undesirable consequences result, including the exacerbation of symptoms of trauma, unwarranted adverse results for applicants, and the proliferation of errors in testimony from applicants who either do not understand what is happening or are unable to communicate their narrative in a coherent manner. The need for responsive and accurate decisions is critical in
this context, as the U.S. government decision ultimately to grant or deny refugee status can mean the difference between life and death for the applicant.

Representation of counsel would assure that refugees are given a fair chance to navigate the admissions process successfully while protecting their basic human rights. Presence of a legal advocate at interviews can also aid the U.S. government interviewer by bridging linguistic, cultural, and psychological gaps.

**Access to counsel is required under federal regulations**

Because the USRAP is a compulsory administrative proceeding, refugees are entitled to be allowed representation by counsel at no expense to the government under both the implementing regulations to the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA).

The applicable regulation under the INA, 8 C.F.R. § 292.5(b), broadly provides: “Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative.” From 1985 to 1992, the Immigration and Nationality Service (INS) officially interpreted 8 C.F.R. § 292.5 (b) as allowing counsel in the context of refugee asylum applications occurring outside the United States. Two memoranda from the INS Office of General Counsel from 1985 and 1986 established and confirmed that this regulation “allow[s] for representation [of refugees in overseas interviews] by an attorney or other representative.” The analysis set forth in these memoranda is direct and to the point because the regulation provides on its face for counsel to be present in all examinations.

That official interpretation remained the policy of the United States during the remainder of the Reagan Administration and during almost all of the first President Bush’s Administration. It was not until November 1992, in the waning days of the George H.W. Bush Administration, that the INS abruptly reversed its prior (and well-founded) analysis through a memorandum to the Office of International Affairs. Seeking to bend the facial meaning of the regulatory text to mean its opposite, the memorandum contains a lengthy and convoluted grammatical argument that defies the reading of the plain language. Today, the policy of banning counsel from refugees in overseas interviews is memorialized only in a footnote in the DHS Adjudicator’s Field Manual (AFM), the guidance document for DHS officials adjudicating petitions and applications. The chief reasoning provided in this footnote for the ban on the right to representation is “the longstanding practice of the Immigration and Nationality Service and [DHS].” The footnote

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1 A copy of the 1986 memorandum is provided in Appendix A to this letter.
2 A copy of the 1992 memorandum is provided in Appendix B to this letter.
3 Department of Homeland Security, U.S. Citizenship and Immigration Services, Adjudicator’s Field Manual – Redacted Public Version, Chapter 12.1, “Representation Before USCIS,” note 2 (“Refugee applicants do not have the right to representation, as such applicants are deemed to be applicants for admission. Consistent with the longstanding position of the former Immigration and Naturalization Service and USCIS, refugee applicants do not have the right to representation during an interview regarding a request for classification as a refugee, unless the applicant is the focus of a criminal investigation and has been taken into custody as outlined in 8 CFR 292.5(b).”).
ignores the 1985 and 1986 INS memoranda, and flies in the face of a sound reading of 8 CFR § 292.5(b).

Permitting refugees to have counsel present at their Department of Homeland Security interviews is also required by Section 555(b) of the Administrative Procedure Act (APA). It provides: “A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel.” 5 U.S.C. §555(b). Refugees are required to appear in person for interviews with the Department of Homeland Security under 8 C.F.R. 207.2(a). The plain language of the APA thus mandates that asylum applicants outside the United States are entitled to be accompanied, represented, and advised by counsel during that appearance.

Reinstating authorization for counsel to accompany individuals to refugee interviews would not require any change in the applicable law or regulations; it could be accomplished by simply changing the agency’s interpretation through an internal memorandum.

**Access to counsel advances the objectives of the U.S. Refugee Admissions Program**

Permitting refugees to have counsel present at their DHS interviews would better serve to achieve the objectives of the U.S. Refugee Admissions Program. It has been empirically demonstrated that lifting the ban on access to counsel for refugees in overseas interviews would have positive effects. First, in certain cases where counsel has been allowed for refugees and overseas visa applicants, it has been documented to improve the efficiency and fairness of the process. Second, in the context of U.S.-based asylum seekers, who must meet an identical legal and evidentiary burden, studies have shown that the presence of counsel is one of the key determinants to a positive case resolution. This has been borne out in over a dozen cases that have been documented in which counsel has been present at interviews in the refugee context. In none of these interviews was the proceeding protracted or rendered acrimonious as a result of the presence of counsel; in fact, the evidence is to the contrary. In one particularly emblematic case, the attorney was able to clarify a key data point that was in danger of being lost in translation between the interviewer and applicant. This critical miscommunication would have resulted in an inaccurate and immediate Special Immigrant Visa denial and, as a result, a lengthy and complicated appeal. The counsel in the room thus spared both the applicant and the U.S. government months of delay and duplicated efforts, and spared the applicant months if not years.

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6 Id., Appendix C.
of further persecution.\(^7\) In short, it is clear that counsel in overseas interviews are an asset to both the interviewer and interviewee.

**Conclusion**

For the foregoing reasons, there is no legislative, regulatory, or practical reason why an individual applicant to the refugee admissions process should not be permitted to be accompanied by representation, at no expense to the U.S. government, in their interviews. Rather, applicable regulations provide that the presence of counsel is required to be allowed in this context.

Accordingly, the ABA respectfully requests that your office review and reverse the current ban on access to counsel for refugees seeking resettlement in the United States. Allowing refugee applicants to be represented at their interviews will create a fairer and more accurate refugee admissions process, which complies with the requirements of the INA implementing regulations and the APA, adheres to appropriate prior agency practice, and is more efficient and just. A change in the agency’s interpretation would require only an internal memorandum. It would not require any statutory or regulatory change, and would bring the agency into compliance with the plain language of longstanding regulations.

We welcome the opportunity to meet with representatives of your offices about this issue. Please don’t hesitate to contact Kristi Gaines in the ABA Governmental Affairs Office at kristi.gaines@americanbar.org or 202-662-1763 if you have any questions or need additional information.

Sincerely,

William C. Hubbard
President

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\(^7\) See “Example Questionnaire for Volunteer Lawyers” provided as Appendix D to this letter.
Representation in Section 207 Processing

Delia B. Combs
Assistant Commissioner
Refugee, Asylum and Parole

Maurice C. Inman, Jr.
General Counsel

This is with reference to your memorandum of December 23, 1985 in which you requested that we review the October 1, 1985 memorandum of the Officer-in-Charge, Mexico City relating to representation of refugee applicants by attorneys in overseas Service offices.

We have reviewed the memorandum as requested and believe that our previous September 10, 1985 memorandum to you on this subject is correct: Present regulations allow for representation by an attorney or other representative.

The position of the Officer-in-Charge is that an applicant for refugee status is an alien who is making an application for admission to the United States. As such, the applicant is not entitled to representation under the terms of 8 C.F.R. 292.5(b). The basis for this interpretation are the numerous references in 8 C.F.R. 207 to the "admission of" refugees, and other variations on the term "admission" or "admit" used throughout that section.

While it is true that this language is used, the language this office focussed on in the September 10, 1985 memorandum was the language used in 8 C.F.R. 207.2(b). That provision states:

Each applicant 14 years of age or older shall appear in person before an immigration officer for inquiry under oath to determine his/her eligibility for admission as a refugee.

It was our view that this language appeared to constitute an "examination" under the terms of 8 C.F.R. 292.1 and 292.5 which provide for representation "whenever an examination is provided for in this chapter."

In our view, this is an entirely reasonable interpretation. The language cited from 8 C.F.R. 207.2(b) is virtually identical to or very similar to, that found in other provisions in the regulations, where the right to representation is clear. For example, in 8 C.F.R. 204.1(d)(4), describing the procedures applicable to third
and sixth preference immigrant visa petitions, it is stated that a
district director may require both the beneficiary and the peti-
tioner to:

... appear in person before an immigration or
consular officer and be interrogated under oath
concerning the allegations in the petition.

Likewise, in 8 C.F.R. 245.8, relating to adjustment of status, it
is stated that:

Each applicant for adjustment of status under this
part shall be interviewed by an immigration officer.
The interview may be waived in the case of a child
under the age of 14...

Similarly, in 8 C.F.R. 209.1(a), every alien in the United States
as a refugee under section 207 of the Immigration and Nationality
Act:

... is required to appear before an immigration
officer one year after entry to determine his/her
admissibility under sections 235, 236 and 237 of
the Act. The applicant shall be examined under
oath to determine admissibility.

In 8 C.F.R. 208.6, dealing with applications for asylum, there is a
requirement for the applicant to be "examined in person by an
immigration officer or judge." The personal appearance of children
may be waived.

Finally, in 8 C.F.R. 209.2(e), relating to procedures for adjust-
ment of status of asylees, there is the following language:

(e) Interview. Each applicant for adjustment of
status under this part shall be interviewed by an
immigration officer. The interview may be waived
for a child under 14 years of age.

Clearly, in this last provision it would be extremely difficult to
defend the interpretation that the applicant for adjustment of
status is not entitled to representation. It is obvious that the
term "examination" is not used, but under the terms of section 209
of the Act, the applicant to be "interviewed" is an alien who is
required to establish that he is "admissible to the United States." 8 C.F.R. 209.2(a).

CONCLUSION

For the reasons outlined above, it is our view that an applicant
for refugee status is entitled to representation under the terms of
8 C.F.R. 292, because there is no substantial difference between
the language used in 8 C.F.R. 207.2(b) and that used in other
proceedings in which representation is accorded as of right.
APPENDIX B

Subject: Representation of an Applicant for Admission to the United States as a Refugee During an Eligibility Hearing

Date: NOV - 9 1992

To: Jan C. Ting
Office of International Affairs

From: Grover Joseph Rees III
General Counsel

A January 14, 1986 memorandum from this office to the Assistant Commissioner for Refugees, Asylum, and Parole set out the conclusion that 8 C.F.R. § 292.5(b) entitles a person applying abroad for admission to the United States as a refugee to be represented at the hearing to determine the person's eligibility. A copy of that memorandum is attached. That conclusion appears, after careful consideration, to be incorrect.

The Immigration and Naturalization Service (INS) regulations provide at 8 C.F.R. § 292.5(b) that "whenever an examination is provided for in this chapter," the person involved shall have the right to representation. A proviso follows that "nothing in this chapter shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." Id.

Although a § 207.2(b) refugee inquiry is not clearly a "primary or secondary inspection," the subject of the inquiry is clearly an "applicant for admission." Indeed, Part 207 by its heading governs the "admission of refugees." A person seeking the benefits of this part may "apply for admission to the United States." 8 C.F.R. § 207.1(a). Such a person is referred to throughout the part as an applicant for admission. See, e.g., 8 C.F.R. §§ 207.2, 207.3. Thus the plain language of § 292.5(b)(2) seems to exclude applicants for admission as refugees from the class of persons to whom the regulation does give a right to representation.

One could argue that the "primary or secondary inspection" language is meant to limit the category of "applicants for admission" who do not have the right to representation under § 292.5(b)(2). Under this reasoning, the phrase "whenever an examination is provided" would include any person not specifically described by the narrow limiting language that
follows. That is, only an applicant for admission who is in primary or secondary inspection does not have the right to representation under § 292.5(b)(2). The far better reading, however, is that the second sentence of the subsection is meant to exclude any applicant for admission from the scope of the category described in the first sentence. That is, no applicant for admission -- even one who is in secondary inspection, which in many ways resembles an examination -- has a right to representation under § 292.5(b)(2) merely by virtue of having applied for admission. Since even an applicant for admission being inspected on United States shores does not have the right to representation under § 292.5(b)(2), clearly that section does not furnish such a right to an applicant for admission who is outside United States territory.

If the refugee eligibility hearing set out in § 207.2(b) were an "examination" within the meaning of § 292.5(b), then all the attributes of the right to representation spelled out in § 292.5(b) would be available. That is, the applicant's attorney or representative would be entitled to examine or cross-examine the applicant and witnesses, to introduce evidence, to make objections and have them entered on the record, and to submit briefs. A § 207.2(b) hearing would thus take on the character of a full, adversarial evidentiary adjudication. Part 207, however, which generally governs procedures for the admission of refugees, does not itself appear to contemplate that these procedures would be features of the "inquiry under oath" held to determine eligibility. Nor does the INS appear to have understood § 207.2(b) to provide such procedures when it wrote internal guidelines to implement that section. (See the INS Examinations Handbook, p.IV-5, discussing the INS "policy" to permit the "non-participatory" observation of refugee interviews by persons "with a legitimate interest in the refugee program.")

The limited scope of the right to representation under § 292.5(b)(2) was emphasized in Ali v. Immigration and Naturalization Service, 661 F. Supp. 1234 (D. Mass. 1986). There an alien and citizen spouse challenged INS marriage petition procedures. They argued that their marriage petition proceedings were conducted by INS examiners and that § 292.5(b)(2), creating the right to representation "whenever an examination is provided," furnished them the right to counsel and the attendant procedural opportunities. For reasons equally apt here, the court held that, despite its apparent breadth, the right to representation under § 292.5(b)(2) is a limited right. This regulation implements § 292 of the Immigration and Nationality Act (INS), 8 U.S.C. § 1362, which ensures the right to counsel in exclusion and deportation hearings and in appeals from decisions in such proceedings. Given its limited purpose, 8 C.F.R. § 292.5(b)(2) could not properly be read to provide a right to counsel in marriage petition proceedings conducted by INS examiners. Id. at 1248-49.

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The conclusion in the 1986 Office of General Counsel memorandum was based on premise that, whenever an appearance before an immigration officer can be characterized as an "examination," § 292.5(b)(2) gives the right to representation in that appearance. This premise, along with the view that a refugee eligibility hearing is an "examination," is inconsistent with the principles discussed above. First, it would conflict with the clear purpose of the regulation not to extend the right to counsel generally to "applicants for admission." Second, it would turn the refugee eligibility hearing into a full evidentiary adjudication -- with briefing, cross examination, and recorded objections -- of a kind not apparently contemplated by part 207. Finally, it would conflict with the limited scope of § 292.5(b)(2) and of the statutory authority it exercises.¹

For these reasons, § 292.5(b) does not appear to entitle an applicant for admission as a refugee to be represented in the inquiry that takes place under § 207.2(b). This memorandum supersedes the January 14, 1986 conclusion of this office to the contrary.

Grover Joseph Rees III
General Counsel

¹ Indeed, taken to its conclusion, the reasoning of the 1986 memorandum would arguably lead to the conclusion that the right to counsel under 8 C.F.R. § 292.5(b)(2) exists even in the early stages of an arrest. Section 287(a)(1) of the INA permits an INS officer to make a warrantless arrest of an alien violating the entry laws and to present the alien without unnecessary delay for an "examination." Specific regulatory power to exercise this authority is provided to immigration officers by 8 C.F.R. § 287.1(a)(2)(c). Yet § 292.5(b)(2) could not properly be read to create a right to representation -- including the right to file briefs and cross-examine -- at this early stage of the arrest process.
Iraqi Refugee Assistance Project: MEMO
June 24, 2015
Legal Representatives in SIV/IOM Interviews: Questionnaire Responses

Summary of Questionnaire Responses

IRAP collected fourteen questionnaires from ten different legal representatives and nine questionnaires from clients about their experiences in SIV and IOM interviews. Although none of the legal representatives made arguments on behalf of their clients during the interviews, they unanimously described their presence as helpful. The most frequently cited benefit was their client’s increased confidence. All the lawyers believed that they were able to make their clients feel more comfortable and self-assured. For example, Betsy Fisher’s client, Mr. Wilson, informed her “that he was much less nervous just knowing that there would be someone in the room to support him… and that simply having an attorney there, even if [she] did not need to say anything, made a huge difference to him.” Many lawyers also noted that they were able to prompt their clients to discuss or clarify certain key facts.

All but one of the interviewees responded that having a lawyer present was helpful. In addition to feeling more confident, many of the interviewees found that their interactions with consular officers were more productive and congenial. Mr. Davis felt that his lawyer’s presence encouraged the interviewer “ask the right questions,” instead of subjecting him to “unnecessary questions to kill [his] confidence.” Mr. Davis told his lawyer that the interviewer’s “overall demeanor was much better” than it had been during a previous interview that he had attended alone. Mr. Thompson likewise believed his interviewer took into “consideration the presence of IRAP lawyer because she try to be very nice.”

In at least two of the cases, an adverse outcome likely would have resulted but for the guidance and authoritative presence of a legal representative. Mr. Lee expressed doubt that his interviewer would have permitted him to take a break during the interview to resolve a problem with his application if his lawyer had not requested time for a brief consultation. His lawyer helped him locate a crucial document establishing that his application was valid and complete. Similarly, Saeq Shajjan interrupted his client Mr. Taylor’s interview to ask for a two-minute break, during which
he urged Mr. Taylor to elucidate an ambiguous point and turn over relevant material. Mr. Shajjan described this break as “the turning point in the interview.” Immediately following the break, the interviewer announced that Mr. Taylor was eligible to receive a visa. Both clients might have missed these critical opportunities to clarify, correct, and strengthen their applications had they not been able to rely on the careful oversight and shrewd assistance of their lawyers.

In most cases, the presence of a lawyer did not add significantly to the length of the interview. According to the legal representatives, the SIV interviews lasted between four minutes and one hour, with an average duration of 18 minutes, and the IOM interviews lasted between 1.4 hours and 3.5 hours, with an average duration of 2.2 hours. Interviewees reported SIV interviews lasting from nine minutes to 15 minutes, with an average duration of 13 minutes (excluding an outlying figure of 2-2.5 hours. The client’s lawyer put the duration of the same interview at fifteen minutes) and one IOM interview lasting two hours. Seven of the legal representatives reported that their presence did not extend the interview, with only one answering that his presence extended the interview slightly and another answering that she was not sure. Only one of the interviewees thought that his lawyer’s presence extended the interview, while six responded that it did not.

1. Legal Representative Questionnaire Responses

Thomas O. Alderman, Counsel for Ms. Smith (IOM Interview, 1.4 hours)
Mr. Alderman felt that his presence was helpful to his client, who “was strengthened emotionally” by his support. He also explained that the IOM staff was very accommodating, even assisting him to file his G-28 form electronically. The interviewer permitted him to ask questions at the conclusion of the interview.

Kimberley Motley, Counsel for Mr. Johnson (SIV Interview 9 minutes)
Ms. Motley did not actively participate in the interview but felt that her presence put her client at ease. However, she thought that the interviewer was apprehensive about her presence; a supervisor observed the entire interview, which is not standard practice.
Kimberley Motley, Counsel for Mr. Williams (SIV Interview, 7 minutes)
Ms. Motley again observed that her presence calmed her client’s nerves but possibly confused or agitated the interviewer.

Shamsi Maqsoudi, Counsel for Mr. Jones (SIV Interview, 4 minutes)
Ms. Maqsoudi did not speak during the interview but his client was very appreciative of his willingness to accompany him. Ms. Maqsoudi “understood that [my client and his wife] felt much more confident that I was with them during the interview.” He also noted that the guards and interviewers were puzzled by his role and he had some initial difficulty gaining entrance to the Embassy.

Shamsi Maqsoudi, Counsel for Mr. Miller (SIV Interview, 17 minutes)
Ms. Maqsoudi was able to review new documents that his client brought to the interview, encourage his client not to worry, and remind his client to discuss certain critical details. He noticed that his client was confident before and during the interview.

Shamsi Maqsoudi, Counsel for Mr. Davis (SIV Interview, 12 minutes)
Ms. Maqsoudi’s client was nervous for his interview because his previous experience was not positive. Ms. Maqsoudi calmed down his client and his client’s wife and made sure they felt confident about their case. His client left the interview feeling optimistic and told him that the interviewer’s “overall demeanor was much better than the last time [when he did not have a lawyer].”

Betsy Fisher, Counsel for Mr. Wilson (IOM Interview, 3.5 hours)
Ms. Fisher was skeptical that her presence would be helpful because her client was well prepared and organized. However, her client told her that he was much less nervous just knowing that there was someone in the room to support him. Simply having an attorney by his side, even if she didn’t speak at all, made a huge difference to him.

Ahmad Nabil Shariq, Counsel for Mr. Anderson (SIV Interview, 15 minutes)
Mr. Shariq felt that his presence was helpful because it “provided my client confidence and I made sure to guide him regarding how to prepare for SIV interview prior to the interview.”

**Saeeq Shajjan, Counsel for Mr. Taylor (SIV Interview, 20 minutes)**
Mr. Shajjan interrupted the interview to request a break of two minutes so that he could encourage his client to clarify certain answers and submit supporting documents. He felt that this break marked “the turning point in the interview,” after which the interviewer announced that Mr. Taylor had met the essential criteria to qualify for an SIV.

**Saeeq Shajjan, Counsel for Mr. Thomas (SIV Interview, 8 minutes)**
Mr. Shajjan his presence was “important in giving confidence to [Mr. Thomas] to answer the questions properly.”

**Sonya Servin, Counsel for Mr. Moore (IOM Interview, 2 hours)**
Ms. Servin interjected on several occasions during the interview to clarify or reorient the line of questioning and supplement her client’s responses with factual information about the manner in which ISIS targets U.S. affiliated Iraqis. She also noted that she gave her client “comfort and support.”

**Ahmad Nabil Shariq, Counsel for Mr. Martin (SIV Interview, 15 minutes)**
Mr. Shariq’s presence gave his client confidence. He also felt that the opportunity to prepare his client prior to the interview was helpful.

**Theresa Henson, Counsel for Mr. Jackson (SIV Interview, 1 hour in first interview, 30 minutes in second)**
Ms. Henson was able to assist her client by correcting items in her client’s application, helping her client’s wife to obtain photos, and encouraging her client to remain calm and tell the truth. She also spoke with the interviewer before and after the interview to be sure that all her client’s documents were in order and to seek the interviewer’s opinion on her client’s case.

**Ziad Saad, Counsel for Mr. Thompson (IOM Interview, 2 hours)**
Mr. Saad asked his client questions during the interview to elicit critical details. The interviewer appeared “happy” that Mr. Saad was present but did not allow him to take notes.

2. Interviewee Questionnaire Responses

Mr. Miller, Represented by Shamsia Maqsoudi (SIV Interview, 9 minutes)
Mr. Miller thought that his “lawyer was very helpful.” The presence of his lawyer made him feel confident because he was certain that Ms. Maqsoudi was observing the interview closely and if anything went wrong “my lawyer going to fix it.” Mr. Miller “really and deeply appreciated” his lawyer’s assistance.

Mr. Thomas, Represented by Saeeq Shajjan (SIV Interview, 10-15 minutes)
Mr. Thomas noted that his lawyer practiced interview questions with him and helped him maintain his composure throughout the interview. Having his lawyer present made the process feel “more official” and reassured him that there was someone there to help “at a time when he had no one else to consult with.”

Mr. Thompson, Represented by Ziad Saad (IOM Interview, 2 hours)
Mr. Thompson found that “the presence of IRAP lawyer was very helpful for me because he talk with me all the time and make me very relaxed before the interview.” Mr. Thompson explained that he discussed all aspects of his case at length with his lawyer in preparation for the interview and he felt that his interview went very well. He thought that his interviewer was more polite to him because he had a lawyer.

Mr. Williams, Represented by Kimberley Motley (SIV Interview, 10 minutes)
Mr. Williams explained that his lawyer asked him practice questions before the interview and advised him to look directly at the interviewer while answering but he did not feel her presence was helpful during the interview because “she did not argue the case nor did she talk. I made my own case.”

Mr. Martin, Represented by Ahmad Nabil Shariq (SIV Interview, 15 minutes)
Mr. Martin reported that his lawyer was helpful because “his presence provided comfort to me during the interview.”

**Mr. Anderson, Represented by Ahmad Nabil Shariq (SIV Interview, 2-2.5 hours)**

Mr. Anderson was encouraged by his lawyer’s presence and felt that “he was helpful to me.”

**Mr. Davis, Represented by Shamsi Maqsoudi (SIV Interview, 15 minutes)**

Mr. Davis felt that having his lawyer present compelled the interviewer to “ask the right questions,” rather than peppering him with “unnecessary questions to kill the confidence of the applicant.”

**Mr. Lee, Represented by Saeeq Shajjan (SIV Interview, 15 minutes)**

Mr. Lee consulted with his lawyer during his interview to address a perceived deficiency in his application. Mr. Shajjan was able to produce a document that showed that Mr. Lee’s application was complete. Mr. Lee felt that he would not have been granted the time to make this correction without the presence of a lawyer.

**Mr. Taylor, Represented by Saeeq Shajjan (SIV Interview, 10-15 minutes)**

Mr. Taylor found Mr. Shajjan’s presence helpful because “he knew everything about the SIV interview so he was my lawyer and a kind of teacher and instructor.”
Iraqi Refugee Assistance Project

Refugee Interview Attendance Form

Draft dated: XXX, XX, 2014

Name of Lawyer: [Redacted]
Name of Client: [Redacted]
Location of Interview: Consulate Section, US Embassy, Kabul Afghanistan
Date of Interview: [Redacted] 2014
Scheduled Time of Interview: 7:30am
Actual Time of Interview: 9:25am
Type of Interview: SIV
Who conducted the interview? Assistant counsellors but she was not allowed to disclose her name
Duration of the interview: 15 minutes
Were you allowed to accompany the client to the interview? (Y)
If not, please describe your attempts to attend the interview and what happened:
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
If not allowed to attend, how would your presence would have been helpful to the client?
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
If you were allowed to attend, please complete the rest of this form.

Did the interviewer have the relevant documents and information about the case? (Y)

Was an interpreter used during the interview? (N)

Were there any interpretation issues during the interview? (N)

Please describe how you gained access to the interview. Were you given any instruction as to your role in the interview?

The Consulate office was aware and was expecting me to accompany the client. I had to show the G-28 form at the main entrance and I had no problem. I was not given any instruction on my role, except the time when I asked for permission to interrupt and helped my client.

What questions was the client asked?

The Counsellor asked the client to take oath at the start of the interview. The oath was followed by taking his finger prints and then the client had to sign a document that said the interviewee is ready to leave Afghanistan permanently.

The counsellor asked the following questions:

- Are you single?
- What was your last job?
- Was it just for NATO?
- What did you do for NATO?
- Was it paid by the US Military?
- Who your supervisor was?
- The American advisors working were civilians or military?
- You had two different jobs with DynCorp?
- The two different jobs with DynCorp, were they both for the same Project?
- The time you have served with the American military is only 11 months; it is one month short of being qualified for SIV? I wanted to interrupt here but I was not allowed!
- Why did you stop working?
- Where did you live during the Taliban?
- Did your father worked for the government during the Taliban?
- What was the source of income for your family?
- What kind of shop your father had?

What was your role during the interview?

• Did you speak? (N) I tried but I was not allowed.

• Were you allowed to present an argument? (N)
• Did you explain anything to the client? (Y)
• Did you instruct the client whether or how to answer any question? (Y)
• Did you do anything else? (N)
• Did your participation extend the interview? (Y/N) maybe

If you answered yes to any of the above, please give details:

When the client was told that the duration of his employment is only 11 months and therefore he is not qualified for SIV. I tried to interrupt but I was not allowed and instead the officer explained that I can only observe the proceedings and take note if I want. The officer appreciated my participation and asked if I want to take a break and talk to my client. I accepted the offer and took a break in between.

I tried to calm down the client, as he was very nervous about his interview and in particular the question that he has only worked for 11 months with the US military. I asked him to emphasize on the fact that he work for DynCorp will make him qualify for the SIV. I also found out a recommendation letter from one of his supervisors in his documents that said he has worked for well over a year. I also asked him to present the letter of recommendation.

We went back for the interview, the client started to explain his employment with DynCorp but the officer wanted some sort of recommendation from his supervisors and also some detailed information about his contract with DynCorp. I took the letter of recommendation from his supervisor and asked him to present that. When the counsellor saw that and said “Bingo! You are good now”. She took the letter to one her colleagues and came back and said, “You are good now”.

Was your presence was helpful to the client? If yes, how so?

I believe my participation was very helpful, especially when I took the break and helped him calm down and better explain things to counsellor. Helping him to show the letter of recommendation from his supervisor was a real turning point in his interview.

Was the client told anything at the end of the interview? If so, what? E.g. “You can expect to hear from us in 6-8 months.”

The client was told that he has passed Step 4, and his case will be forwarded for administration process.