Representing Asylum Seekers

Pro Bono Training

Faegre Drinker Biddle & Reath LLP
February 27, 2020

www.immigrantjustice.org
National Immigrant Justice Center (NIJC)

- National & Local Advocacy & Education
- Legal Services for 10,000+ noncitizens
- Federal Litigation
- ~1600 pro bono attorneys

JUSTICE
Pro Bono Opportunities at NIJC

Asylum
- Adults
- Families
- Kids
- Detained immigrants

CLINICS:
- DACA
- Naturalization
- Asylee/Refugee Family Petitions
- Asylee/Refugee Adjustment

Special Immigrant Juvenile Status Predicate Orders

VAWA and U Visa Relief

STOP DOMESTIC VIOLENCE
How NIJC’s *Pro Bono* Programs Work

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.
WHAT EVERY ATTORNEY SHOULD KNOW ABOUT ASYLUM REPRESENTATION TODAY

Ashley Huebner, Associate Director of Legal Services
Asylum Seekers’ Experiences are Human Experiences

- Memories can be faulty
- Discussing violence can be difficult
- Immediate needs can seem more important
- Family dynamics are complicated

Photo by Trocaire from Ireland (DSC_0871 (Syria 1, Emergencies 6)) [CC BY 2.0 (http://creativecommons.org/licenses/by/2.0)], via Wikimedia Commons
Why are *Pro Bono* Attorneys Important for Immigrants?

Percent of cases where immigrants obtained relief
2005-2010

- With representation: 74%
- Without representation: 13%

Non-citizens do not have the right to appointed counsel.
Representing an Asylum Seeker through NIJC Helps More than Just Your Client

- One for One: Representing an NIJC asylum client allows us to accept new asylum cases for representation.

- Reuniting families: Asylees can petition for family members and are on the road to permanent status.
THE BASICS OF ASYLUM LAW

Ashley Huebner
Who’s Involved in Asylum Adjudication

- EOIR
  - Immig Ct
  - BIA

- USCIS (AO)
  - ICE (OCC; ERO)
  - CBP

Asylum Seekers

- Families
- Attorneys

- Unaccompanied Immigrant Children
The Asylum System

**AFFIRMATIVE**

*For individuals who seek asylum and are NOT in deportation proceedings.*

USCIS-Asylum Office

**DEFENSIVE**

*Individuals who seek asylum as a defense to deportation proceedings*

DOJ- Immigration Court

Board of Immigration Appeals

7th Circuit Court of Appeals
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)
# Asylum Legal Sources:

<table>
<thead>
<tr>
<th><strong>INA</strong></th>
<th><strong>8 CFR</strong></th>
<th><strong>CASE LAW</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 208</td>
<td>§ 208: AO</td>
<td>BIA binding unless 7COA rejected</td>
</tr>
<tr>
<td>§ 101(a)(42)</td>
<td>§1208: EOIR</td>
<td>7COA has rejected A LOT</td>
</tr>
</tbody>
</table>

7COA is your friend; avoid other COA law.
When Does BIA Case Law Apply?

Congress delegates the administration of a statute to an agency.

The statutory provision is ambiguous.

The agency’s interpretation is based on a permissible construction of the statute.

= CHEVRON DEFERENCE
INA § 241(b)(3)(A):

“[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.”
8 C.F.R. § 1208.16(c): The burden of proof is on the applicant . . to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.

8 C.F.R. § 1208.18(a)(1): Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
<table>
<thead>
<tr>
<th>Protection-Based Relief Comparison (Request All!)</th>
</tr>
</thead>
</table>

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td><strong>Asylum</strong></td>
<td>Yes</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>More Likely than Not (&gt;50%)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>CAT Relief</strong></td>
<td>No</td>
<td>More Likely than Not (&gt;50%)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
BREAKING IT DOWN: 
THE ELEMENTS OF ASYLUM
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!
1. “Well-Founded Fear”

**Burden of Proof**

1. All asylum elements as to past harm
2. Reasonable possibility that all asylum elements will occur in the future

**Established two ways:**

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

**Argue both whenever possible!**
1. Well-Founded Fear Based on Past Persecution

Past persecution

+ All other asylum elements

Rebuttable presumption of future persecution

Rebutted by

changed circumstances

safe, reasonable internal relocation
1. Well-Founded Fear Based on Future Fear Only

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-; K holyavskiy).
2. “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).
### 3. The Persecutor

<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>

**The persecutor does Not have to be the State**
4. “On Account of” a Protected Ground

Persecution

Nexus: On Account Of

Protected Ground
- Race
- Religion
- Nationality
- Membership in a PSG
- Political Opinion

Keep all 3 Elements Separate!
4. Burden of Proof for Nexus

- 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)*
5. **POLITICAL ASYLUM**

1. **Race:**
   - Broad meaning (Congolese Tutsis)

2. **Religion**
   - (Christian, Atheist)

3. **Nationality:**
   - Not just citizenship; can include ethnic or linguistic group.

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
5. 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.”


<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>

5. Common Social Groups

- Gender/family violence claims:
  - [Nationality] females [women; girls]
  - Immediate members of the X family/children of X
  - [Nationality] women in intimate relationships they are unable to leave
  - [Nationality] women who have disobeyed gender norms

- Opposition to gang claims: [Nationality] who have flouted gang norms

- Witness-related claims: [Nationality] who have witnessed [and reported] gang activities

- Family-related claims: immediate family members of X; immediate family members of former gang members
OTHER CONSIDERATIONS
New Options! Certain events in the client’s life may make her eligible for other relief

- Marriage, victim of a crime, etc
- Your client should not file applications for any other immigration benefits without consulting you first.

RED FLAGS! Other life changes may compromise eligibility

- Travel
- Marriage (in some cases)
- Crimes (even un-convicted crimes) here or abroad

EXTERNAL Factors! Policy changes…

Contact NIJC immediately if there are changes in your client’s life or if you think your client might be eligible for other relief!
<table>
<thead>
<tr>
<th>MYTH/LEGAL DEVELOPMENT</th>
<th>TRUE/FALSE &amp; CURRENT STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The Asylum Ban has eliminated asylum protection for most asylum seekers who came across the U.S.-Mexico border (Asylum Ban #1)</td>
<td>FALSE</td>
</tr>
<tr>
<td>• O.A. v. Trump – NIJC: Vacated</td>
<td></td>
</tr>
<tr>
<td>• East Bay v. Trump – ACLU: Enjoined</td>
<td></td>
</tr>
<tr>
<td>• Central America asylum seekers are required to first seek asylum in Mexico before requesting asylum in the U.S. (Asylum Ban #2 – Transit Ban)</td>
<td>PARTLY TRUE - applies if you:</td>
</tr>
<tr>
<td>• Crossed southern land border on or after July 16, 2019</td>
<td></td>
</tr>
<tr>
<td>• Transited through 1+ countries other than country of citizenship</td>
<td></td>
</tr>
<tr>
<td>• Did not apply for protection-based relief in one of those countries and receive a final denial of that request</td>
<td></td>
</tr>
<tr>
<td>MYTH/LEGAL DEVELOPMENT</td>
<td>TRUE/FALSE &amp; CURRENT STATUS</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| • Asylum seekers must now wait in Mexico while their asylum claim is adjudicated in the U.S. | PARTLY TRUE  
  Depends on place of entry and not for people already in the United States             |
| • *Matter of A-B*- ended asylum based on domestic violence or gang violence               | FALSE  
  See NIJC’s Practice Advisory                                                             |
| • *Matter of L-E-A*- ended asylum for family-based claims                                | FALSE  
  See NIJC’s Practice Advisory                                                             |
PREPARING YOUR CASE

Rachel Milos, Senior Attorney
Reminder: Who’s Involved

- EOIR
  - Immig Ct
  - BIA

- USCIS (AO)
  - ICE (OCC; ERO)
  - CBP

- DOJ
- DHS

- ORR
  - Unaccompanied Immigrant Children

- Asylum Seekers

- Families
- Attorneys
The Asylum System

**Affirmative Process: Asylum Office**
- Client in U.S.; no NTA issued
  - File Affirmative Application
  - Asylum Office Interview
    - Grant
    - Referral

**Defensive Process: Immigration Ct**
- Client apprehended at port of entry
- Unaccompanied child client apprehended
- Client apprehended internally
- “Notice to Appear” Issued
  - Master Calendar Hearing
    - Merits Hearing
How Do I Know if My Client is in Removal Proceedings?

The Notice to Appear (NTA)

- This is the charging document that places an individual in removal proceedings.
- An individual is only placed into removal proceedings when the NTA is filed with the immigration court.
- Some people have an NTA, but it has not yet been filed with the court, so they are not in removal proceedings.
**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.*
WORKING WITH YOUR CLIENT
### Immediate Steps

1) Review NIJC’s file

2) File your appearance:

<table>
<thead>
<tr>
<th>If…</th>
<th>…Then</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your client is in removal proceedings</td>
<td>Complete e-registry and file form E28 with the court</td>
</tr>
<tr>
<td>Your client has a pending asylum application with USCIS</td>
<td>File form G28 with the Chicago Asylum Office</td>
</tr>
</tbody>
</table>

2) Calendar all deadlines:
- Employment authorization, Court hearings, One year filing deadline

3) Check the EOIR info line (1-800-898-7180)
- Check every other week if your client has an NTA, but it has not been filed with the court
Keep the Big Picture in Mind

Affidavit

Legal Argument

Corroborating Evidence
Step 1: The First Client Meeting

Build rapport!

1. Introductions and small talk
   • Explain roles and confidentiality
   • Meet family as necessary, but then ask family to step out
   • Start getting to know your client and her life in the United States

2. Make a plan for communication, meetings, and transportation

3. Discuss a roadmap and ask about any questions

4. Explain engagement letter in simple terms

5. Sign forms (G28; FOIA)

**DO NOT TALK ABOUT THE CLAIM UNLESS YOUR CLIENT EXPLICITLY ASKS TO DO SO!**
Step 2: Obtain Your Client’s Immigration History

- 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 3: The Skeletal Asylum Application

I-589, Application for Asylum and for Withholding of Removal

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.

Part A.1. 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
4. First Name
5. Middle Name

6. What other names have you used? n/a
7. Residence Street Number
   Street Name
   City State Zip

I am seeking asylum or withholding of removal based on:

- Race
- Religion
- Nationality
- Political opinion
- Membership in a particular social group
- Torture Convention

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

- No
- Yes

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.
<table>
<thead>
<tr>
<th>Category of Client</th>
<th>Where to file:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults who are <em>not</em> in removal proceedings</td>
<td>USCIS (Nebraska Service Center)</td>
</tr>
<tr>
<td>Adults who are in removal proceedings</td>
<td>Immigration court window or in open court at a hearing</td>
</tr>
<tr>
<td></td>
<td>Obtain a date-stamped copy for your records (important!)</td>
</tr>
<tr>
<td>Unaccompanied children</td>
<td>USCIS (Nebraska Service Center)</td>
</tr>
</tbody>
</table>

- Review filing procedures and NIJC check list to ensure sufficient copies and format
- Consider filing early to make your client eligible for a work permit. Talk to NIJC about consequences.
Step 4: Drafting the Affidavit or Declaration

- 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.
REMEMBER: working with trauma survivors requires new skills. Prepare and do your homework before you meet!

- Meet frequently and for a limited duration
- Provide empowerment through choices
- Explain the objective of your questions: why you need the information and what you intend to do (and Not do) with it
- Ask short questions
- Do not expect chronological or complete consistency
- Bookend the interview
Considerations for Preparing the Affidavit

The bulk of your prep time will be here: meet early and often

- Maintain the client’s voice
- Craft the events in chronological order
- Cover the 5 Ws + H
- Balance detail
- Consider length

For more tips on drafting an asylum affidavit, see NIJC’s 11/18/16 webinar: “Telling Your Client’s Story: Affidavit Writing 101,” at http://immigrantjustice.org/training-webcasts
DECLAREATION OF [REDACTED]

IN SUPPORT OF HIS APPLICATION FOR ASYLUM

1. [REDACTED] hereby swear under penalty of perjury that the following statement is true and correct to the best of my knowledge:

   I am applying for asylum because I am afraid that I will be hurt by my aunt, father, and man from the gang if I return to Honduras. First, my aunt in Honduras hurt me badly and a lot when I lived with her. Also, my mom told me that my dad said that he would hurt me and my sister to take his revenge on my mom if he was ever deported. I have learned that my dad did not treat my mom well when they were both living in the United States and that he was deported. I am scared that he might harm me if I return back to Honduras. Finally, I am scared that if I return to Honduras, gang members will hurt me.

Family Background

1. I am Honduran. I was born on [REDACTED] in San Pedro Sula, Honduras. I am [REDACTED] years-old.

2. I have two brothers and a sister. My older brother [REDACTED] is almost [REDACTED] years-old. My sister [REDACTED] was born in Honduras. My youngest brother [REDACTED] is [REDACTED]. He was born in [REDACTED], North Carolina.

3. When I was maybe two years old, my mom left for the United States to join my father, who was already here. She left my sister [REDACTED] and me with [REDACTED] and I lived with [REDACTED] until I was nine years old.

4. My mom's mom lived in [REDACTED], which I believe is about an hour from [REDACTED]. My grandparents could not take care of me and my sister because my grandmother was sick and she was very old. She and my grandfather [REDACTED] had a farm with a lot of cows, chickens, and pigs to take care of. They were too old to take care of all of us. Because [REDACTED] was older and easier to care for, they took only him.

My aunt [REDACTED] abuse

5. Aunt [REDACTED] hit me and [REDACTED] and mistreated us. She would smoke a lot every day, and would drink alcohol out of a big bottle. She would get dizzy, her face would get red, and it looked like she was going to fall on the floor. Her breath would smell like alcohol and there would be bottles of alcohol in our living room. She would hit me most of the time when she was drunk, but would also hit me when she was not drunk.
<table>
<thead>
<tr>
<th>Not In Client’s Voice</th>
<th>Too Much Legalese</th>
<th>Too Much Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave.</em></td>
<td><em>When I told them I did not want to join their gang they became more menacing...This triggered a melee with the whole group involved in kicking me...Some police belatedly came to ostensibly &quot;investigate&quot; but their investigation was cursory and superficial and no arrests were made. (See Tab P, DOS Human Rights Report.)</em></td>
<td><em>On May 1, 2010, three gang members stopped me after school and threatened me</em></td>
</tr>
</tbody>
</table>
Top 4 reasons NIJC edits an asylum affidavit

- Voice
- Asylum Elements
- Context and background
- Internal Consistency & with other docs
Step 5: Corroborating Your Case

Corroborating evidence is the second most important part of an asylum case. Don’t leave it until the end!

- 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.
<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.
Presenting Corroborating Evidence

<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></td>
<td><strong>Identity Documents</strong></td>
<td></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><strong>Background Information Regarding Mr. CLIENT’s Asylum Claim</strong></td>
<td></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>
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<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>
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</tbody>
</table>
Step 6: Drafting the Legal Memo or Brief

- 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 – focus on the Seventh Circuit
  - BIA precedent decisions (as necessary)

- Send to NIJC for review 5 business days before filing

- Preserve all arguments and claims to relief

  For more tips, see NIJC’s webinar: “Gathering Evidence and Presenting Claims before EOIR and USCIS,” at http://immigrantjustice.org/training-webcasts
Filing Format

- Follow the Immigration Court Practice Manual
- Annotate index and highlight important info in country condition reports
- Alphabetical tabs on the right and consecutively paginate
- Affirmative (AO): File supporting docs directly with the Chicago Asylum Office (two copies + additional for derivative)
- Defensive (court): File supporting doc at court window; court may reject if filing requirements are not met
  - All filings must include a cert. of service and a copy must be submitted to OCC
Presenting Your Case

Ashley Huebner
Asylum Office/Affirmative Process

Client in U.S.; no NTA issued

File Affirmative Application

Asylum Office Interview

Grant

Immigration Ct/Defensive Process

Client apprehended at port of entry

Unaccompanied child client apprehended

‘Notice to Appear’ Issued

Referral

Master Calendar Hearing

Merits Hearing

Client apprehended internally

Non-Adversarial
### Asylum Office Timing

- AO interview timing for pre-2018 filings is unknown
- No matter when you filed, you will only receive two weeks notice of the interview

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 weeks before the interview</td>
<td>Receiving an interview notice</td>
</tr>
<tr>
<td>1 week before the interview</td>
<td>File supporting documents</td>
</tr>
<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>

**NOTE:** Timing is difficult. Changes of policies and practices at USCIS may alter this timing.
Varies tremendously depending on the type of case and the judge.

Consult with NIJC Before Your Master Calendar Hearing and Let NIJC Know Immediately When a Merits Date is Scheduled or Rescheduled.
AFFIRMATIVE or DEFENSIVE: While Your Case is Pending

Maintain contact: Develop rapport with your client

- 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!)

- Request biometrics (if your client is in court, you **must** do this)

- File a work authorization application for your client when s/he is eligible and track the timing for renewals
Work Authorization

- Depends on the “asylum clock”:
  - **Regulatory changes are likely in the works**
  - Clock begins to run when the asylum application is filed (received) by USCIS (for asylum office cases)
  - Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
  - Clock stops if the applicant causes a delay

- If your clients already have EADs – you MUST renew 180 days before the EAD expires to avoid gaps in employment authorization

Work authorization is a life changer for your client and his/her family
Prepping Your Client for the AO Interview or Merits Hearing

Try for 3 preps: (1) full prep; (2) tough; (3) confidence builder

✓ Explain the process and practice accordingly
  o AO = interview – you provide the interpreter!
  o Merits = trial

✓ Prep with open-ended questions.

✓ Make sure your client has a good understanding of the elements, what she needs to prove and how you see the case

✓ Explain possible results and manage expectations

✓ Empower your client (I don’t know; I don’t understand; please repeat)
ASYLUM NOT GRANTED…

- 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
- Notify NIJC immediately and consult re: timing and next steps.

ASYLUM GRANTED!!

- Let NIJC know immediately (30-day deadline for benefits)
- Next steps: Work Authorization, Social Security Card & Benefits
- Advise client to contact NIJC to apply for derivative family members
After the Merits Hearing

ASYLUM GRANTED!!
- Let NIJC know immediately (30-day deadline for benefits)
- Obtain client’s I-94
- Work Authorization, Social Security Card & Benefits
- Refer client to NIJC to apply for derivative family members

ASYLUM DENIED…
- Reserve right to appeal
- Let NIJC know immediately
- Appeal to BIA

KEEP CALM AND KEEP FIGHTING
AFTER YOUR CASE IS OVER

• CELEBRATE!

• TAKE ANOTHER CASE!

• RECRUIT YOUR COLLEAGUES!

• ADVOCATE for access to justice for IMMIGRANTS!

• DONATE!
THANK YOU!

For more information contact
Anna Sears
312-660-1307
ansears@heartlandalliance.org

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