



National Immigrant Justice Center

NIJC Pro Bono Seminar

Memo & Brief Writing for Asylum Cases

February 15, 2012

www.immigrantjustice.org



Welcome

Ashley Huebner
National Immigrant Justice Center

About the National Immigrant Justice Center

- The National Immigrant Justice Center (NIJC), a program of Heartland Alliance for Human Needs & Human Rights, promotes human rights and access to justice for immigrants, refugees, and asylum seekers through legal services, policy reform, impact litigation, and public education.
- For more than 30 years, NIJC has been unique in blending individual client advocacy with broad-based systemic change.
- NIJC serves more than 8,000 immigrants annually with the support of a professional legal staff and a network of over 1,500 *pro bono* attorneys.
- NIJC's *pro bono* opportunities
 - asylum
 - special immigrant juvenile status
 - VAWA & U visas
- NIJC's *pro bono* programs
 - Conduct in-depth case screening, assessment and acceptance
 - Place cases with *pro bono* attorneys
 - Provide case management, attorney support and technical assistance



Brief Writing:
Getting Organized

Keren Zwick & Ashley Huebner
National Immigrant Justice Center

Step One: Figure Out Your Format and Sections

Affirmative Applications

- Substantive Cover Letter
 - Include all the substantive components that you would include in a brief (which we'll talk about soon)
- Format of a standard business letter
 - Date, Address, Subject Line, Signature, etc.
- Keep in mind your audience
 - Asylum officers are often lawyers but not always. Yet, all they do is hear asylum cases, so they know the basics of the law.



National Immigrant Justice Center

October 21, 2011

USCIS
Nebraska Service Center
Attn: Asylum
850 S. Street
P.O. Box 87589
Lincoln, NE 68508-1225

Re: APPLICANT, Application for Asylum

Dear Asylum Officer:

The National Immigrant Justice Center represents APPLICANT in his affirmative application for asylum. Mr. APPLICANT, a 35-year old Russian national, fears persecution by the Russian government and its citizens on account of his membership in the particular social group of gay men in Russia. Mr. APPLICANT fears being beaten, threatened, and possibly killed because he is gay.

Although homosexuality is no longer illegal in Russia, gay men continue to suffer from violence, aggression, stigma, and discrimination. They are often the victims of police brutality, both at peaceful public demonstrations and at raids of gay night clubs. Skinheads or hooligans also target gay men with impunity, injuring and sometimes killing them. Mr. APPLICANT suffered from this sort of persecution in Russia; he was beaten and threatened by the Russian police as well as his neighbors, classmates, and hooligans. Based on this past persecution, Mr. APPLICANT is entitled to a presumption of future persecution. He also has a well-founded fear of returning to Russia. If he returns, he is likely to face more of the same severe physical and emotional harm and potentially even death. Mr. APPLICANT submits this application less than six months of discovering that he may be eligible for asylum on account of his sexual orientation and within two months of his recent marriage. After his marriage to a male United States Citizen on August 23, 2011, Mr. APPLICANT's fear of returning to Russia has increased. This recent event has therefore materially affected his eligibility for asylum and warrants an exception to the one-year filing deadline. Mr. APPLICANT requests that your office grant his request for asylum.

I. Mr. APPLICANT Is Eligible for Asylum in the United States.

To be eligible for asylum, an applicant must show that he is outside of the country of his nationality and 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); 8 U.S.C. § 1101(a)(42)(A). For the reasons described below and corroborated by the attached documents, Mr. APPLICANT has demonstrated that he

Step One: Figure Out Your Format and Sections

Keren Zwick, Attorney
National Immigrant Justice Center
208 S. LaSalle Street, Suite 1818
Chicago, IL 60604

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

In the Matter of	Hon. Philip DiMarzio
CLIENT	No. A 000 000 000
In removal proceedings	Individual Hearing: January 31, 2012 at 1:00 p.m.

RESPONDENT'S PRE-HEARING STATEMENT

Defensive Applications to EOIR

- Formal Legal Brief
 - Writing for a Judge
 - Follow the Immigration Court Practice Manual
- Required Components/Sections
 - Cover Page
 - "Preliminary Matters" Section
 - Statement of Facts
 - Statement of Country Conditions
 - Argument
 - Conclusion
- Other (Optional) Components
 - Table of Contents
 - Table of Authorities
- Other (Not Required) Sections
 - Standard of Review
 - Jurisdictional Statement

Step Two: Make a Plan (Before You Write)

Remember Your Goal

- The point of ALL persuasive writing is to convince the reader that you're right about your position.
- So...
 - Every sentence should be persuasive in some way.
 - Yes, even in the fact section.
- BUT...
 - Don't rely on the sympathetic facts of the case alone.
 - You must offer sound reasons (supported by legal precedent) to convince the reader to agree with you.

Step Two: Make a Plan (Before You Write)

Keep in Mind the Elements of an Asylum Claim

- "Well-Founded Fear"
 - Of "Persecution"
 - By the government or someone the government is "unable or unwilling to control"
 - "On Account of"
 - One of the protected grounds.
-
- Plan to organize the bulk of your writing around proving that your client meets these elements.
 - The elements matter, even when you're drafting your fact section. Even there, you should be organizing the facts in a way that foreshadows your legal arguments.
 - **NOTE:** You need to address all the elements, but not necessarily in this order.
 - Example: For sexual orientation based claims, I like to start by arguing that my client is a member of a the social group of gay men because (1) this is likely a noncontroversial part of the argument and (2) it will frame the discussion of all the other elements.

Step Two: Make a Plan (Before You Write)

Consider Potential Additional Legal Arguments

- One-year filing deadline?
- Any criminal record?
 - Consider separate sub-section of your argument about why client nonetheless deserves discretion
- Changes in Country Conditions
 - Usually should be worked into an argument about why client still has a well-founded fear of persecution, but depending on the country, may warrant individual attention
- Withholding & CAT
 - Omit requests for these forms of relief from letters to the Asylum Office, but make these claims before the IJ.

Step Two: Make a Plan (Before You Write)

Identify Strengths & Weaknesses of Your Case

- Plan to organize your document in a way that highlights the strengths without overlooking the weaknesses
- EXAMPLE:
 - If your client experienced extensive harm, plan to construct a fact narrative that summarizes all of the harm while focusing on a few of the most egregious incidents.
 - **Conversely:** If your client experienced no harm and the case is based solely on a well-founded fear, plan to spend more time discussing the country conditions and highlighting some of the information you have in your country-conditions index.
- EXAMPLE:
 - If your case involves a novel social group, spend some time explaining what the group is and why it meets the requirements.
 - **Conversely:** If your client's claim fits squarely into one of the five protected grounds, simply say what the claim is, explain why your client fits into that group, cite a case recognizing that sort of claim, and move on. Don't waste space belaboring a point if the reader will obviously agree with you.

Step Three: Start Writing!

Once you've made your plan, the most important thing to do is start writing.

The blank page is not your friend; get some information down on paper and worry about making it read well later.

Step Three: Start Writing!

Drafting Your Fact Section

- Don't: Copy whole sentences from your client's affidavit into paragraphs.
- DO: Go through the facts in your client's affidavit and explain to the reader why they matter.
- Don't: Go through your client's story in the exact same order that you did it in your affidavit.
- DO: Organize the facts of your client's case into themes.
- Don't: Be a Slave to Chronology.
- DO: Have topic sentences, and limit your paragraphs to explaining single ideas.

Step Three: Start Writing!

Example – Organizing Your Facts Section

		TABLE OF CONTENTS
	PRELIMINARY MATTERS	2
	STATEMENT OF FACTS	3
	A. As a Young Boy, CLIENT Was Raped and Sexually Abused by Three Different Men in Mexico	4
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A. As a Young Boy, CLIENT Was Raped and Sexually Abused by Three Different Men in Mexico		4
B. Even After Arriving in the United States, CLIENT Continued to Experience Significant Hardship at the Hands of His Mexican Relatives.....		7
C. After He Was Kicked Out of His Aunt and Uncle’s Home, CLIENT Has Lived on His Own and Come to Terms with His Sexual Orientation		8
	Orientation	20
	C. The Government Cannot or Will Not Protect CLIENT or Other Members of the LGBT Community from Rape, Assault, and Even Murder	21
	D. CLIENT Has a Well-Founded Fear of Future Persecution That Cannot Be Eliminated Through Internal Relocation	23
	E. CLIENT Merits Asylum in the Exercise of Discretion.....	25
	II. CLIENT’s Recent HIV Diagnosis Should Excuse His Failure to Apply for Asylum Within One Year of Arriving in the United States.....	26
	A. CLIENT’s HIV Diagnosis Constitutes a Changed Circumstance	27
	B. CLIENT Applied for Asylum Within a Reasonable Period After His HIV Diagnosis	28
	III. In the Alternative CLIENT Should be Granted Withholding of Removal or Relief Under the Convention Against Torture	29
	CONCLUSION.....	31

Step Three: Start Writing!

Drafting Country Conditions Section

- Even though you are not a country-conditions expert, you have read all the documents in your index, so don't be shy about serving as an authority on what they say.
- Provide the reader a sense of what life would be like for your client in her home country. Give the big picture, but include specific examples.
- Stay organized with sub-headings and topic sentences.
- Foreshadow your arguments.

Step Three: Start Writing!

Examples – Foreshadowing Country-Conditions Arguments

- Example:
 - Explain that the violence against people like your client occurs throughout the country and provide specific examples.
 - This will be useful in your argument section if you need to discuss the impossibility of internal relocation.
- Example:
 - If your client is from a country with a mixed record of treatment for individuals like your client, explain how despite efforts at reform, the situation on the ground remains dangerous.
 - This will help you if you have to make an argument that the government cannot control the violence against a particular population.

Step Three: Start Writing!

Example – Organizing Your Country Conditions Section

TABLE OF CONTENTS	
PRELIMINARY MATTERS	2
STATEMENT OF FACTS.....	3
A. As a Young Boy, CLIENT Was Raped and Sexually Abused by Three Different Men in Mexico	4
B. Even After Arriving in the United States, CLIENT Continued to Experience Significant Hardship at the Hands of His Mexican Relatives.....	7
C. After He Was Kicked Out of His Aunt and Uncle’s Home, CLIENT Has Persecution.....	8
STATEMENT OF COUNTRY CONDITIONS	11
A. LGBT Individuals Throughout Mexico Suffer Brutal, Hate-Based Violence and Even Death Because of Their Sexual Orientation	12
B. CLIENT’s HIV Status Makes Him an Even Greater Target.....	14
C. Legislative Reforms in Mexico Have Not Reduced Violence Against the LGBT Community, so They Do Not Diminish CLIENT’s Fear of Persecution.....	15
D. CLIENT Experienced Past Persecution on Account of His Sexual Orientation	20
C. The Government Cannot or Will Not Protect CLIENT or Other Members of the LGBT Community from Rape, Assault, and Even Murder.....	21
D. CLIENT Has a Well-Founded Fear of Future Persecution That Cannot Be Eliminated Through Internal Relocation	23
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Step Three: Start Writing!

Argument Section

- Use the elements as your organizing principle.
- Include point headings for each separate item that you have to prove.
- Remember IRAC (Issue, Rule, Application, Conclusion)
 - You might hate this method but it works.
 - State the issues in a persuasive way.
 - DO THIS: My client was persecuted because he is a member of X political party.
 - NOT: The next issue is whether my client suffered past persecution.
- Analogize to other cases to prove your legal points.
 - DO NOT go into a lengthy exposition about the facts and holdings of another case.
 - DO explain why the holding of a particular case is dispositive in your case.

Step Three: Start Writing!

Argument Section (Cont.)

- Use Cases Law to Support your Contentions
 - Every legal proposition must be followed by a citation to case law.
 - Many of the “rules” and definitions you will be using come from the INA or the CFR. Whenever possible, include case law in addition.
 - Best cases to use are from BIA, 7th Circuit, and Supreme Court because they’re binding.
 - Don’t be afraid to go out of circuit or to cite agency guidance documents for their persuasive authority.
 - Be on the look out for “non-precedential” circuit court cases. (Your biggest hint is that the citation will be to Fed. App’x.) These cases can be used, but even if they are in-circuit, they are not binding.

Step Three: Start Writing!

Argument Section (Cont.)

- Be clear about what point you making. If you are confusing, there is substantial risk that the adjudicator will be confused, even though they know a lot about the law in this area.
- Examples:
 - **Nexus v. Social Group:** Be clear about when you are explaining your client's membership in a social group and when you are explaining how she was persecuted **on account of** her membership in that group.
 - **Multiple Grounds & Mixed Motives:** If your client was persecuted for multiple reasons (and especially if some of the reasons cannot be tied to a protected ground), be clear about how he his case is tied to a protected ground and address the complications that arise in mixed-motive cases.
 - **Changes in Circumstances & One-Year Arguments:** A change in circumstances to get around a one-year bar need not be an independent ground for relief. Make sure you don't conflate them.

Step Four: Proofread & Revise

Allow Enough Time for Review. Ask yourself:

- Are there typos and or formatting errors?
 - These things may seem minor but they detract from credibility.
- Are your citations correct?
 - Cite binding authority and in the proper format.
- Have you included all significant facts in your fact section?
 - If you relied on it in your argument, it must be in your facts.
- Have you addressed every relevant point?
- Have you complied with formatting rules?
 - For briefs, remember to look through the EOIR practice manual.

**** Allow yourself enough time that you are able to submit your brief to someone at NIJC for review before filing.**

Step Five: Redact & Share

- When your case is over (and after you've won) send a redacted version of your brief to NIJC.
- These documents help us help other pro bono attorneys down the line.

THANK YOU!

National Immigrant Justice Center

For more information contact:

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