Representing Asylum Seekers

Pro Bono Training

Sidley Austin LLP
July 13, 2018
www.immigrantjustice.org

Welcome

Ashley Huebner,
Asylum Project
National Immigrant Justice Center

National Immigrant Justice Center (NIJC)

• Defends the human rights of immigrants at the individual and systemic level
• Provides legal services to 10,000+ immigrants, refugees, and asylum seekers each year with the support of nearly 1,500 pro bono attorneys
• Challenges laws, policies, and practices that violate human rights through federal litigation
• Advocates for reform with members of Congress and the White House
Non-citizens do not have the right to appointed counsel, even when they are:

- Facing deportation
- Asylum seekers
- Mentally ill
- Detained
- Children

Why are Pro Bono Attorneys Important for Immigrants?

Local Pro Bono Work is Critical for National Immigration Issues

- Emergency response
- Preparing for the next step
- 1 for 1
- The border is here

Lawyers Make the Difference

<table>
<thead>
<tr>
<th>Percent of cases where immigrants obtained relief</th>
<th>2005-2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>With representation</td>
<td>74%</td>
</tr>
<tr>
<td>Without representation</td>
<td>13%</td>
</tr>
</tbody>
</table>

1. Katzmann Study Group, 2011
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.

NIJC Resources for Pro Bono Attorneys

The Basics of Asylum Law

Ashley Huebner
Who are NIJC’s Asylum Clients?

Who’s Involved: The Agencies

The Department of Homeland Security
- Immigration & Customs Enforcement (ICE)
- Office of Chief Counsel (OCC)
- Enforcement & Removal Operations (ERO)
- U.S. Citizenship & Immigration Services (USCIS)
- Asylum Office
- Customs & Border Protection (CBP)

Office of Refugee Resettlement (ORR): part of HHS; responsible for the care/custody of UICs until they can be reunified with a family member or sponsor.

The Department of Justice
- Executive Office for Immigration Review (EOIR)
- Board of Immigration Appeals (BIA)
- Immigration Courts

The Asylum System

Asylum Office/Affirmative Process
- Client in U.S., no NTA issued
- File Affirmative Application
- Asylum Office Interview
- Grant
- Referral
- Master Calendar Hearing
- Merits Hearing

Immigration Ct/Defensive Process
- Client apprehended at port of entry
- Unaccompanied child client apprehended
- “Notice to Appear” issued
- Client apprehended internally
- Client apprehended anomaly

Merits Hearing
Asylum: Definition

- 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: Case Law

- Stick to 7th Cir. Law
- BIA Binding unless 7th Rejected
- 7th Circuit Court of Appeals
- Better than BIA

Asylum: Elements

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!

“Well-Founded Fear”

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

Established two ways:
1. Past persecution
2. Fear of future persecution

Argue both whenever possible!
Past Persecution

Past persecution + all other asylum elements
Rebuttable presumption of future persecution

Rebutted by
- changed circumstances
- safe, reasonable internal relocation

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; Kholyavskiy).
“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).

The Persecutor Does Not Have to be the State

<table>
<thead>
<tr>
<th>Governmental Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
</tr>
<tr>
<td>Military</td>
</tr>
<tr>
<td>Security Forces</td>
</tr>
<tr>
<td>Presidential Guard</td>
</tr>
<tr>
<td>Mayor</td>
</tr>
<tr>
<td>Village Chief</td>
</tr>
<tr>
<td>Paramilitary?</td>
</tr>
<tr>
<td>Gangs?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Entity the Government is Unable OR Unwilling to Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gangs</td>
</tr>
<tr>
<td>Paramilitary</td>
</tr>
<tr>
<td>Guerrilla Group</td>
</tr>
<tr>
<td>Family Members</td>
</tr>
<tr>
<td>Vigilante Group</td>
</tr>
<tr>
<td>Opposing Political Party</td>
</tr>
<tr>
<td>Others?</td>
</tr>
</tbody>
</table>

“On Account of a Protected Ground

Persecution

Nexus On Account Of One Central Reason

Protected Ground

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

Keep These Separate!
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)]

### Burden of Proof for Nexus

**POLITICAL ASYLUM**

1. Race:
   - Broad meaning (Congolese Tutsis)
2. Religion
   - (Christian, Atheist)
3. Nationality:
   - Not just citizenship; can include ethnic or linguistic group. May overlap with race
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

**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.” [Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985)]

<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>

What Can Form a Particular Social Group?

“A former association with a group”
-Escobar v. Holder

“A shared past experience or status”
-Cece v. Holder

Common Social Groups

➢ Child abuse/domestic violence claims:
  • Children in the X family/children of X
  • [Nationality] children who lack parental protection
  • [Nationality] women in intimate relationships they are unable to leave

➢ Gender violence claims:
  • [Nationality] females [women; girls]
  • [Nationality] females in relationships they are unable to leave
  • [Nationality] females who lack parental/male protection

➢ Gang-related claims:
  • [Nationality] youth who have opposed [resisted/disrespected] gangs
  • [Nationality] who have witnessed [and reported] gang activities

Note regarding Matter of A-B-

➢ Narrow holding
➢ Substantial, negative dicta
➢ Claims remain very viable, but prepare accordingly
➢ See NIJC’s Practice Advisory and webinar
## What Bars Relief?

<table>
<thead>
<tr>
<th></th>
<th>Bars Asylum?</th>
<th>Bars Withholding/Withholding under CAT?</th>
<th>Bars Deferral under CAT?</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-Year Filing Deadline - INA § 208(a)(2)(B)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Former Reassent - INA §208(b)(2)(A)(ii)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Persecutor - INA §208(b)(2)(A)(iv)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Terrorist - INA §208(b)(2)(A)(v)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Particularly Serious Crime - INA § 208(b)(2)(A)(vi)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Conviction of an Aggravated Felony as Defined in INA § 1221(a)(4)</td>
<td>Yes - is a PSC</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Serious Non-Political Crime Outside the U.S. - INA § 208(b)(2)(A)(vi)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Conspire to the Security of the U.S. - INA § 208(b)(2)(A)(vi)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

- **Asylum**: Persecution on account of a protected ground by gov’t or gov’t is unable or unwilling to control
- **Withholding**: More Likely than Not (>50%)
- **Conviction of an Aggravated Felony**: Yes - is a PSC
- **Serious Non-Political Crime**: Yes
- **Conspire to the Security of the U.S.**: Yes

## Other Issues That May Impact the Case

- Certain events in the client’s life may make her eligible for other relief
  - Marriage
  - Victim of a crime
  - Your client should not file applications for any other immigration benefits without consulting you first.

- Other life changes may compromise eligibility
  - Travel
  - Marriage (in some cases)
  - Crimes (even un-convicted crimes) here or abroad

Contact NIJC immediately if there are changes in your client’s life or if you think your client might be eligible for other relief!

## Other Protection-Based Relief

### (Request All!!)

<table>
<thead>
<tr>
<th>Discretion?</th>
<th>Test</th>
<th>Burden of Proof</th>
<th>Petition for Family?</th>
<th>FAFSA?</th>
<th>Travel Abroad?</th>
<th>Become a Citizen?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asylum</td>
<td>Yes</td>
<td>Persecution on account of a protected ground by gov’t or gov’t is unable or unwilling to control</td>
<td>Reasonable possibility (≥10%)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Withholding</td>
<td>No</td>
<td>Same as asylum</td>
<td>More Likely than Not (&gt;50%)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Relief under the Convention Against Torture</td>
<td>No</td>
<td>Torture by the gov’t or with the gov’t’s acquiescence</td>
<td>More Likely than Not (&gt;50%)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Preparing Your Case: Working with Your Client

Ashley Huebner,
Amanda Crews Slezak,
Asylum Project
National Immigrant Justice Center

The Asylum System

Asylum Office/Affirmative Process

File Affirmative Application

Asylum Office Interview

Grant

Referral

Grant

Referral

Asylum Office Interview

Asylum Office/Affirmative Process

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Master Calendar Hearing

Merits Hearing

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Who’s Involved: The Agencies

The Department of Homeland Security

• Immigration & Customs Enforcement (ICE)
• Office of Chief Counsel (OCC)
• Enforcement & Removal Operations (ERO)
• U.S. Citizenship & Immigration Services (USCIS)
• Asylum Office
• Customs & Border Protection (CBP)

Office of Refugee Resettlement (ORR): part of HHS; responsible for the care/custody of UICs until they can be reunified with a family member or sponsor.

The Department of Justice

• Executive Office for Immigration Review (EOIR)
• Board of Immigration Appeals (BIA)
• Immigration Courts
How Do I Know if My Client is in Removal Proceedings?

- The Notice to Appear (NTA) 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.

Immediate Steps

1) Review NIJC’s file

2) File your appearance if
   - Your client is in removal proceedings
     - Complete e-registry and file form E28 with the court
     - Your client has a pending asylum application with USCIS
       - File form G28 with the Chicago Asylum Office

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

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

What to File

Asylum Office (Nebraska Service Center)
- Appearance form G-28
- TPRRA Instruction Sheet (for unaccompanied children only)
- Asylum App (I-589) and 1 passport photo
- Two copies, plus 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 I-589 on DHS
- No filing fee

One week before the interview, through 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 do anything with the Court, you must serve a copy on the government.
Keep the Big Picture in Mind

- Affidavit
- Legal Argument
- Corroborating Evidence

Step 1: Meeting with Your Client

- Be prepared for questions beyond the scope of the case
- Empower your client and promote independence, no matter their age
- Expect inconsistencies and missing information
- Be aware of the interpreter’s role
- Remember: interacting with asylum seekers may require a very different skill set from other client interaction

The First Client Meeting

**DO**
- Meet w/o other family/friends (even w/young children)
- Build rapport before getting into the details of the claim
- Explain legal documents in simple, non-legal language before asking for a signature
- Explain roles: who you are, who you are not, and what is expected from your client
- Provide a roadmap for how you’ll prepare the case

**DON’T**
- Forget about confidentiality or assume a client’s family/ friends know about her case
- Ask your client to talk about past harm in the first meeting
- Hand your engagement letter or other documents to your client and tell her to sign it
- Expect your client to understand how you differ from others she has encountered in the process
- Start case preparation without explaining who/what/when/why
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

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Complete Last Name</td>
<td>Last Name</td>
</tr>
<tr>
<td>B. First Name</td>
<td>First Name</td>
</tr>
<tr>
<td>C. Middle Name</td>
<td>Middle Name</td>
</tr>
<tr>
<td>D. Sex</td>
<td>Sex (Male/Female)</td>
</tr>
<tr>
<td>E. Age</td>
<td>Age</td>
</tr>
<tr>
<td>F. Alienship</td>
<td>Alienship</td>
</tr>
<tr>
<td>G. Nationality</td>
<td>Nationality</td>
</tr>
<tr>
<td>H. Race</td>
<td>Race</td>
</tr>
<tr>
<td>I. Whether in the United States on the basis of marriage to a U.S. citizen</td>
<td>Whether in the United States on the basis of marriage to a U.S. citizen</td>
</tr>
<tr>
<td>J. Whether in the United States as a lawful permanent resident or in any other capacity</td>
<td>Whether in the United States as a lawful permanent resident or in any other capacity</td>
</tr>
<tr>
<td>K. Whether in the United States on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether in the United States on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
<tr>
<td>L. Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
<tr>
<td>M. Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
<tr>
<td>N. Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
<tr>
<td>O. Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
<tr>
<td>P. Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
<tr>
<td>Q. Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
<td>Whether on the basis of a relative of a U.S. citizen or a relative of a lawful permanent resident</td>
</tr>
</tbody>
</table>

Where and How Do I File the Skeletal Asylum Application?

- Adults who are not in removal proceedings:
  - USCIS (Nebraska Service Center)

- Adults who are in removal proceedings
  - Immigration court window or in open court at a hearing
  - Obtain a date-stamped copy for your records (important)

- Unaccompanied children
  - USCIS (Nebraska Service Center)

- 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.

Affidavit Interviews with Trauma Survivors

- Meet frequently and for limited duration
- Explain why you are asking what information you’re asking
- Ask short questions
- Be comfortable with silence
- Provide empowerment through choices
- Bookend the interview

Affidavit Best Practices

- The most important document
- Statement of the client in his/her own voice
- Balancing detail
- Chronological
- Bulk of your prep time will be here: meet early and often
- Cover the 5 Ws + H
- 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
On May 1, 2010, three gang members stopped me after school and threatened me → too much detail

I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave. → too much legalese

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 "investigate" but their investigation was cursory and superficial and no arrests were made. (See Tab P, DOS Human Rights Report, for evidence of government complicity in gang activity.) → not in client's voice
Step 5: Corroborating Your Case

- Corroboration is the second most important part of an asylum case. **Don’t leave it until the end!**
- Can be 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.

How Much Corroborative Evidence is Necessary?

- **Corroboration is the second most important part of an asylum case.**
- **Don’t leave it until the end!**
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- **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.**

Obtaining Corroboration

<table>
<thead>
<tr>
<th>Everything Matters!</th>
<th>Country Conditions</th>
<th>Client-Specific</th>
<th>Past Persecution</th>
<th>Future Persecution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State Dept Human Rights Reports</td>
<td>Facts, dates, times, rights, 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></td>
<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></td>
<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></td>
<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

- 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:
  - Supreme Court
  - Federal Circuit Court of Appeals
    - Stick to the Seventh Circuit
  - Board of Immigration Appeals (BIA) precedent decisions
- Preserve all arguments and claims to relief
  For more tips on presenting your evidence and claim, see NUC’s 10/13/16 webinar, “Gathering Evidence and Presenting Claims before EOIR and USCIS,” at http://immigrantjustice.org/training-webcasts

Step 6: Drafting the Legal Memo or Brief

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**Filing Format**

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<tr>
<th>Asylum Office</th>
<th>Immigration Court</th>
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</thead>
<tbody>
<tr>
<td>Follow the Immigration Court Practice Manual</td>
<td>Follow the Immigration Court Practice Manual</td>
</tr>
<tr>
<td>Annotate index and highlight important info in country condition reports</td>
<td>Annotate index and highlight important info in country condition reports</td>
</tr>
<tr>
<td>File supporting docs directly with the Chicago Asylum Office (two copies + additional for derivative)</td>
<td>Court may reject if filing requirements are not met (tabs, two-hole punch, certificate of service, etc.).</td>
</tr>
<tr>
<td>Copy of all filings must be submitted to OCC</td>
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**Presenting Your Case:**
**the Asylum Office**

Amanda Crews Slezak

**The Asylum System**

[Diagram showing the asylum process]
Asylum Office Timing

| Day 1: | Asylum application received by Nebraska Service Center (Clock starts to run). |
| Day 10-20: | Receipt of biometrics notice issued |
| Day 30-50: | Receive interview notice approximately 2 weeks before the interview EXCEPT: UICs; filings before Jan 2018 |
| 1 week before the interview | File supporting documents |
| 2 weeks after notice | Interview |
| ~10 days – 6 months later | Decision |

While Your Case is Pending

- Develop rapport with your client
- Maintain contact
- 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!)
- File a work authorization application for your client when s/he is eligible and track the timing for renewals

Work Authorization

- Can be difficult to obtain - depends on the “asylum clock”
- Clock begins to run when the asylum application is filed (received)
  - By USCIS for asylum office cases (affirmative asylum)
  - By the immigration court for court cases (defensive)
- Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
- Clock stops if the applicant causes a delay
  - Declines an expedited hearing date
  - Requests a continuance or a change of venue
- Clock begins to run again when delay has stopped
Asylum Office Advocacy

- Before the interview
  - Obtain an interpreter and practice with interpreter & client
  - Prep client with open-ended questions
  - Explain the interview process and clarify the non-adversarial nature of the interview.

- At the interview
  - Attend interview with your client
  - Expect informal setting
  - You must provide an interpreter
  - Take cues from the asylum officer
  - Prepare a closing, but be flexible
  - No same-day answer

After the Asylum Office Decision

- If you win:
  - Let NIJC know immediately (30-day deadline for benefits)
  - Work Authorization, Social Security Card & Benefits
  - Advise client to contact NIJC to apply for derivative family members

- If you lose, the case is not over:
  - 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
  - Let NIJC know immediately and consult with NIJC re: timing and next steps

Presenting Your Case: the Immigration Court

Ashley Huebner
Master Calendar Hearing

- What it is: a status hearing:
- Hearing procedures:
  - Arrive Early! YOUR CLIENT MUST APPEAR!
  - E-registry must have been completed ahead of time
  - Plead
  - Schedule the merits hearing
  - Review NIJC’s asylum manual for specific steps and talk to NIJC prior to the hearing

Immigration Court: Case Timing

Varies tremendously depending on the type of case and the judge.

Please consult NIJC for a case-specific estimated timeline and to discuss the consequences of accepting or declining an expedited date.

Pre-Merits Hearing Issues

- Know your judge’s practice and preferences (contact NIJC)
- Filing Deadlines:
  - 15-day filing deadline for non-detained cases (unless the IJ tells you otherwise)
  - Review the Court’s file
  - Review the Immigration Court Practice Manual
- Contact ICE Office of Chief Counsel Trial Attorney
  - Not assigned until the month of the merits hearing. Contact ICE-OCC to find one which attorney will be handling your case.
Pre-Merits Hearing Issues: Fingerprints

- It is YOUR responsibility to obtain a fingerprint appointment for clients in court proceedings unless
  - Client is detained or
  - Has previously been fingerprinted for her asylum application
- Fingerprints taken at the border do not count.
- If no fingerprints - NO RELIEF!
  - IJ cannot grant relief and could deny the application for abandonment.
- See NIJC’s asylum manual and fingerprint FAQ for instructions

Opening Statement

BE BRIEF: no more than about one to three minutes

- Offer a concise “roadmap”
- Brief review of the facts
  - Solomon is an Eritrean man
  - Persecuted for leaving the country without permission and evading forced conscription in the military
  - Perceived as a traitor
  - Country condition documentation
  - Letters from family members
- Brief mention of other major issues

Direct Examination of Witnesses

- Key issue is credibility
- Don’ts
  - Don’t script answers
  - Don’t ask leading questions
  - Don’t waste time on irrelevant matters
- Do’s
  - Do follow a chronological story; use declaration as guide
  - Do draw the story out
  - Consider using visual aids, particularly maps
  - Make your record
Preparing Your Client for Cross

- Anticipate questions
- Prepare client for leading questions
- Expect questions from judge
- Empower client, BUT remind client to maintain demeanor
- Remember cultural obstacles
- PRACTICE, PRACTICE, PRACTICE!

Closing Statement

- Take cues from the judge
- Make the legal argument
- Make the record
- Respond to issues

After the Merits Hearing

- If you win:
  - Let NIJC know immediately (30-day deadline)
  - For Court Cases, Need to get Client’s I-94
  - Work Authorization, Social Security Card & Benefits
  - Refer client to NIJC to apply for derivative family members

- If you lose, the case is not over:
  - Reserve right to appeal
  - Let NIJC know immediately
  - Appeal to BIA
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

THANK YOU!