

NATIONAL  
IMMIGRANT  
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

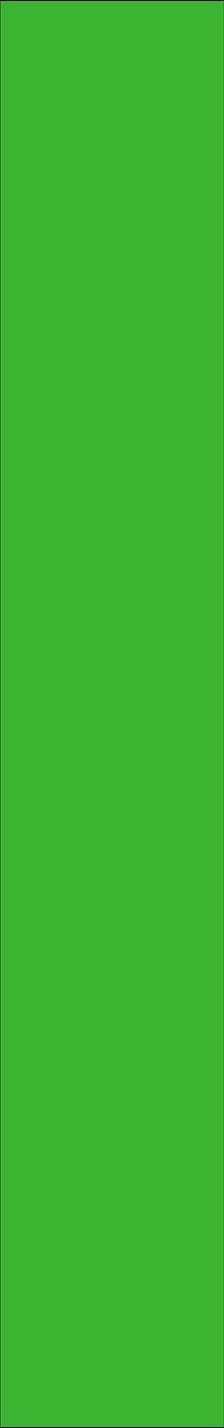
# Representing Asylum Seekers

*Pro Bono* Training

Kirkland & Ellis LLP

February 21, 2014

[www.immigrantjustice.org](http://www.immigrantjustice.org)



# Welcome

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Ashley Huebner  
Managing Attorney  
National Immigrant Justice Center

# About the National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.

NIJC serves more than 8,000 immigrants annually with the support of a professional legal staff and a network of over 1,000 *pro bono* attorneys.

# NIJC's *Pro Bono* Programs

## ➤ NIJC's *pro bono* opportunities:

- Asylum
- Special Immigrant Juvenile Status
- VAWA/U Visa
- Deferred Action for Childhood Arrivals

## ➤ 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
- Represent clients through *pro bono* attorneys at law firms in Illinois, Wisconsin, and Indiana.

# NIJC Asylum Statistics

- Asylum cases open today: > 200
- Asylum approval rate:
  - NIJC = 90%
  - Nationwide: ~30 % (between the court and the asylum office)
- NIJC clients who obtained protection in FY2013: > 80
- Main countries of origin: Eritrea, Ethiopia, both Congos, Cameroon, and Mexico/Central America
- Main reasons NIJC clients fear persecution: political activities, gender, sexual orientation, gang resistance, or family membership.

Thomas\* is a gay man from Cameroon. He fled from Cameroon after a mob attacked him and his partner. He flew to Mexico and then traveled to the border where he requested asylum at the border. After passing a credible fear interview, he was placed into removal proceedings to seek asylum before an immigration judge.

*\*Pseudonym*



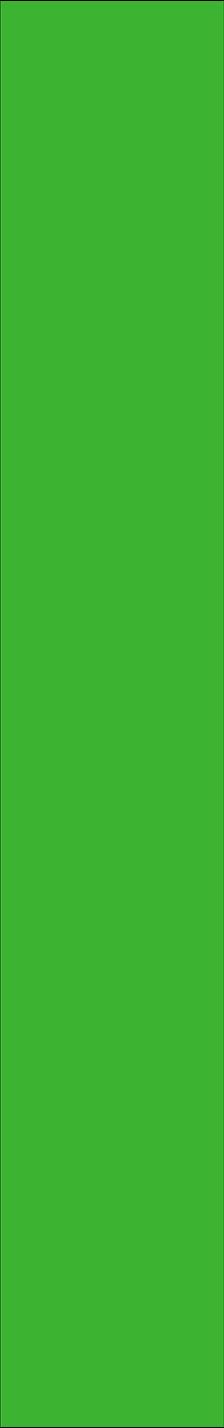
Karla\* is a woman from El Salvador. She fled her home country to escape severe abuse from her partner, who was a member of a powerful gang. She traveled up to the United States through Mexico and was apprehended while crossing the border into the United States. She explained that she was afraid to return to El Salvador and after she passed a credible fear interview, she was placed into removal proceedings to seek asylum before an immigration judge

*\*Pseudonym*



Alice is a woman from Rwanda. After government agents persecuted her for her involvement in an opposition group, she fled Rwanda with her young daughter and entered the United States on a tourist visa.  
*\*Pseudonym*





# **The Basics of Asylum Law**

Ashley Huebner  
National Immigrant Justice Center

# 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)
- Statutory and regulatory standards: INA § 208; 8 CFR § 208

# 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

# “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 = legal presumption of future persecution. 8 CFR § 208.13.
  - DHS can only rebut with proof of changed circumstances or reasonableness of safe internal relocation.
2. Fear of future persecution

Argue both whenever possible!

# Future Fear-Only Claims

- Objective and subjective components
  - Must have fear of persecution by govt/entity govt can't/won't control on account of a protected ground (subjective)
  - This fear must be reasonable, i.e., “well-founded” (objective)
- Must show applicant will be individually targeted,
  - Exception: if there's a “pattern or practice” of persecution against a similarly situated group. 8 CFR § 208.13.
  - “Pattern or practice” claims are extremely difficult and are generally not asserted as the primary claim

Talk to NIJC if you think you have a “pattern or practice” claim.

# “Persecution”: look to case law

- “*Significant* physical force against a person’s body, or
- the infliction of comparable physical harm without direct application of force . . . , or
- nonphysical harm of equal gravity.”  
*Stanojkova v. Holder*, 645 F.3d 943 (7th Cir. 2011)
  
- Also: death threats, imprisonment, infliction of harm, arrest, interrogation, prosecution, illegal searches, confiscation of property, surveillance, beatings, or torture. *Sayaxing v. INS*, 179 F.3d 515 (7th Cir. 1999); *Mitev v. INS*, 67 F.3d 1325 (7th Cir. 1995)
  
- Poverty, discrimination, harassment generally not sufficient
  
- The level of harm necessary for a child to establish persecution is less than that required of an adult. (See INS/USCIS Guidelines and 7th Circuit case law)

# Persecution Cont.

- Samuel is a young man from Kenya who was very active in his Christian church. Men from the Mungiki – a criminal/religious organization that frequently targets Christians began attempting to recruit him and repeatedly threatened to kill him if he did not join them. After he fled to the United States, the Mungiki visited his father and told him that Samuel better not return.
- Luz and her family are from Mexico. Before they fled to the United States, Luz's brother and father were kidnapped by the Zetas to try to force her other brother to work for them. When her brother agreed, the Zetas drove by their home and shot her brother as he was leaving the house. The tortured bodies of Luz's father and brother were discovered at the morgue several days later. Soon after, Luz's neighbor told her that men had been in the neighborhood looking for her husband.

# “Government Actor”

- To be eligible for asylum, the persecution suffered or feared must be inflicted by government
  - police, soldiers (interpret broadly)
- OR
- Entity the government can't/won't control
  - Gangs
  - Abusive spouses
  - Guerilla/rebel/paramilitary groups

# “On Account Of”

- Must establish nexus between the persecution suffered/feared and ...
- ...at least one of the five protected grounds
  - Race
  - Religion
  - Nationality
  - Political Opinion
  - Membership in a Particular Social Group
- The nexus and the protected ground are two distinct elements that require separate analyses.

# Protected Grounds

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.

# Membership in 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)
- E.g., gay Honduran men; unmarried Malian women; former government employees, Honduran males who have opposed gang recruitment, members of X family

# Particular Social Group Cont.

## ➤ Complicated case law and a circuit/BIA split

### **BIA**

- Can't be overly broad
- Must be considered a group by society
- “Former” status/past experience is not enough
- Groups can't be overly diverse

### **Seventh Circuit**

- Breadth is irrelevant
- No social visibility test
- “Former” status/past experience can form the basis of a social group, without more
- Diversity not an issue

**Please contact NIJC to strategize the best way to formulate the social group definition - the definition you choose can make or break you case!**

# 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)
- However, 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)
- Be sure to separate nexus element from protected ground

# Internal Relocation

- Past persecution = presumed future fear unless government establishes internal relocation possible. 8 C.F.R. § 208.13(b)(3).
- Future fear only claim = applicant's burden to establish relocation is not reasonable, unless the government is the persecutor. Then relocation presumed unreasonable. 8 C.F.R. § 208.13(b)(3)(i)-(ii).
- Two part test to determine if an applicant could safely and reasonably relocate to avoid persecution: See *Oryakhil v. Mukasey*, 528 F.3d 993 (7th Cir. 2008) and 8 C.F.R. § 208.13(b)(3).

# “Humanitarian” Asylum

- CANNOT be granted simply because case is compelling
- Only available to asylum applicants who have established past persecution on account of a protected ground, but who no longer have a well-founded fear of future persecution.
- Must demonstrate:
  - “Compelling reasons” for being unwilling/able to return due to the severity of the past persecution; OR
  - “A reasonable possibility of other serious harm”
    - Need not be on account of a protected ground (i.e. no nexus)
    - “Other serious harm” must rise to the level of persecution
  - See 8 C.F.R. § 208.13(b)(1)(B)(iii); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012)

# Withholding of Removal

- Automatically apply for withholding when file asylum application
- Alternative remedy; INA § 241(b)(3)(A)
- Same basic, statutory definition as asylum except no subjective prong and no “humanitarian” option
- Heightened burden of proof: “more likely than not” (>50%)
- Available if applicant faces certain asylum bars (including 1-year filing deadline bar)
- Non-discretionary, but no pathway to residency and no derivative benefits for spouse, children

# UN Convention Against Torture (CAT)

- 8 C.F.R. § 1208.16 - Apply by checking box on asylum application.
- Two forms of CAT relief (withholding under CAT and deferral under CAT) – BE SURE TO REQUEST BOTH
- Different definition
  - torture v. persecution; no nexus requirement, govt/govt acquiescence
- Burden of proof: More likely than not” (>50%)
- Non-discretionary, but no pathway to residency and no derivative benefits

# What Bars Relief?

	Bars Asylum?	Bars Withholding/Withholding under CAT?	Bars Deferral under CAT?
One-Year Filing Deadline - INA § 208(a)(2)(B)	Yes	No	No
Firm Resettlement - INA §208(b)(2)(A)(vi)	Yes	No	No
Persecutor - INA § 208(b)(2)(A)(i)	Yes	Yes	No
Terrorism - INA § 208(b)(2)(A)(v)	Yes	Yes	No
Particularly Serious Crime - INA § 208(b)(2)(A)(ii)	Yes	Yes, but PSC definition for withholding differs from definition for asylum	No
Conviction of an Aggravated Felony as Defined in INA § 101(a)(43)	Yes – is a PSC	Yes, if the aggregate term of imprisonment sentenced was at least five years it is a PSC. <i>But other crimes may also be found to constitute a PSC, notwithstanding the prison sentence.</i>	No
Serious Non-Political Crime Outside the U.S. - INA § 208(b)(2)(A)(iii)	Yes	Yes	No
Danger to the Security of the U.S. - INA § 208(b)(2)(A)(iv)	Yes	Yes	No

# One-Year Filing Deadline Bar

- Individuals who do not file an asylum application within one year of their most recent arrival to the United States are barred from asylum
  - Govt must RECEIVE application within one year of most recent arrival to the United States
    - Entry October 5 → Application by October 4
  - INA § 208(a)(2)(B); 8 C.F.R. § 208.4 (a)
- Limited Exceptions (INA § 208(a)(2)(D); 8 C.F.R. §208.4(a).)
  - Changed circumstances
  - Extraordinary circumstances (e.g. mental or physical illness, incapacity, lawful status, unaccompanied minor)

# Persecutor Bar & Terrorism Bars

- Persecutor Bar: bars someone who has “ordered, incited, assisted, or otherwise participated” in the persecution of someone else on account of a protected ground. INA § 208(b)(2)(A)
  - Duress, intent, and knowledge may be relevant. *Negusie v. Mukasey*, 129 S. Ct. 1159 (2009).
- Terrorism Bar: bars someone who has in any way supported or been involved in (even under duress) a group that has or has a subgroup which has participated in violent activity against the laws of that country or the United States. INA § 212(a)(3)(B)
- Rapidly evolving area of law. Contact NIJC immediately if you think your client may be subject to one of these bars.

# Crimes

- Particularly serious crime bar (crimes inside the US)
  - Bars asylum and withholding
  - Definition of is different for asylum and withholding.
    - Asylum = all aggravated felonies are particularly serious crimes
    - Withholding = aggravated felonies with an aggregate sentence of 5 years or more.
    - Even crimes that are not *per se* particularly serious can be found to be PSCs based on the nature of the offense.
- Serious non-political crime bar (outside the US)
  - No conviction necessary; most likely to arise in gang/cartel cases
- REMEMBER: Particularly serious crimes/serious non-political crimes do not bar a non-citizen from seeking deferral of removal under CAT.

# Crimes Cont.

- Arrests and convictions that do not bar asylum and/or withholding eligibility are considered as part of the discretionary element of asylum
- If your client is arrested, let NIJC know immediately so we can make sure the client's criminal attorney is aware of the immigration consequences of any conviction or plea.

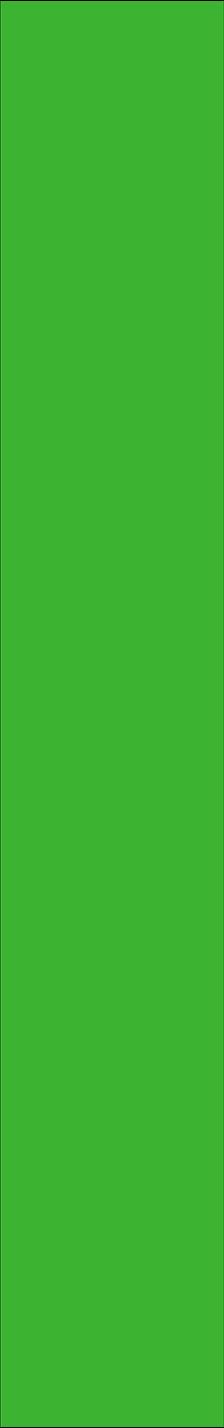
**Talk to NIJC**

**if your client has any criminal history!**

# 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 for relief
  - Travel
  - Marriage (in some cases)

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



# **Preparing Your Case**

Keren Zwick,  
Managing Attorney  
National Immigrant Justice Center

# Who is Involved?

## The Agencies

- Department of Justice (DOJ)
  - Executive Office for Immigration Review (EOIR)
    - Immigration Courts
    - Board of Immigration Appeals
  
- Department of Homeland Security (DHS)
  - Immigration and Customs Enforcement (ICE)
    - Office of the Chief Counsel (OCC)  
= the trial attorneys
    - Enforcement & Removal Operations
  - Citizenship and Immigration Services (USCIS)
  - Customs and Border Patrol (CBP)

## The Parties

- ADJUDICATOR
  - USCIS Asylum Office
  - EOIR (Immigration Judge/Board of Immigration Appeals)
  
- "US"
  - "Applicant" before USCIS
  - "Respondent" before EOIR
  
- "THEM"
  - Non-adversarial before USCIS
  - ICE trial attorneys before EOIR

# United States Asylum Process

## Asylum Office/Affirmative Process

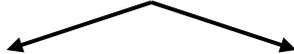
Client in US; not in system



File Affirmative Application



Asylum Office Interview



Grant

Referral



## Immigration Ct/Defensive Process

Client in DHS system



"Notice to Appear" Issues



Master Calendar Hearing



Merits Hearing

# What to File

## Asylum Office (Nebraska Service Center)

- Appearance form: G-28
- Application for Asylum (I-589) and 1 passport photo
- 2 copies, plus an additional copy for each derivative
- 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 (possibly)
  - and other corroboration

## Immigration Court

- Appearance form: E-28
- Application for Asylum (I-589) and 1 passport photo
- 1 copy of the I-589, plus another copy served on DHS
- No filing fee!

## **Prior to the merits hearing, file:**

- Brief
- Client affidavit/declaration
- Annotated Index
- Supporting Documentation
  - Including identity documents
  - Expert Affidavits (possibly),
  - and other corroboration

\*\*Anytime you file anything with the Court, you must serve a copy on DHS

# Credibility

- 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 client's case.

# Client Affidavit/Declaration

- The most important document
- Statement of the client in his/her own voice
- Balancing detail
- Chronological
- Bulk of your prep time will be here
- Cover the 5 Ws + H
- Consider length

See NIJC's one-hour *pro bono* webinar: "Client Counseling and Affidavit Preparation," available at <http://immigrantjustice.org/nijc-pro-bono-seminars>, for more tips on drafting an asylum affidavit.

# Client Affidavit/Declaration Cont.

- “On May 1, 2010, three police officers invaded my home and arrested me” → too much detail
- “In early May, 2010, several police officers invaded my home and arrested me.” → good!
- “I am applying for asylum because I have a well-founded fear of persecution on account of my political opinion.” → too much legalese
- “I am applying for asylum because I am afraid the government will beat, torture, or kill me because of my work with a group that opposed the government.” → good!

# Corroborating Evidence

- can be required “unless the applicant does not have the evidence and cannot reasonably obtain the evidence”
  - finding of fact (non-reviewable)
- Also remember...
  - 8 C.F.R. §1208.13(a): “The testimony of the application, if credible, may be sufficient to sustain the burden of proof without corroboration.”
- Corroborate each element of the asylum claim or provide evidence as to why your client cannot reasonably obtain corroboration.

# Obtaining Corroboration

## Everything Matters!

<b>Country Conditions</b>	<b>Client-Specific</b>	<b>Past Persecution</b>	<b>Future Persecution</b>
State Dept Human Rights Reports	Facts: dates, times, flights, DATE OF ENTRY, IDENTITY	Forensic Medical Evaluation	Evidence of past incidents that may not rise to persecution
Amnesty Intl & Human Rights Watch	Physical Evidence: pictures, police reports, receipts	Mental Health Evaluation	Affidavits from similarly situated individuals who have suffered harm
UNHCR Refworld <a href="http://www.unhcr.org/refworld">www.unhcr.org/refworld</a>	Witness Affidavits	Medical Reports	Expert Affidavits (especially for court cases)
Domestic and Foreign News Sources	Google Earth, Hand Drawn Maps	Pictures	Country Conditions

# Corroboration: Examples

- Roxana fears she will be beaten or killed if she returns to El Salvador because she is a lesbian. What evidence should you try to obtain?
- Mariana fears she will be harmed or killed in Kyrgyzstan by her husband because she left him and by others in her community because she converted from Islam to Christianity. What evidence should you try to obtain?

# Obtaining Documents

- Always verify document authenticity with your client.
- Establish chain of custody.
  - Ask you 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.

# Obtaining Your Client's Immigration History

- There is no discovery in immigration proceedings.
- If your client is in court proceedings, know the history of your case:
  - Review court file/hearing tapes
  - File FOIA request right away
    - Request Track 3 if case is in proceedings
    - Include NTA and Hearing Notice
- Contact information
  - Address: FOIA Office, Department of Homeland Security  
National Records Center  
150 Space Center Loop, Suite 300  
Lee's Summit, MO 64064-2140
  - Fax: 816.350.5785
  - Email: [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov) (for subsequent inquiries)

# The Brief/Legal Memo

- Keep it brief
  - Legal Memo (for cases before USCIS) < 10 pages
  - Legal Brief (for cases before EOIR) < 30 pages
- Follow the elements & don't conflate them.
- Case law:
  - Supreme Court
  - Federal Circuit Court of Appeals
    - Rapidly evolving and active area of law
  - Board of Immigration Appeals (BIA) precedent decisions
- Preserve all arguments and claims to relief
- Consult the BIA Practice Manual for citations: [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir)

# Filing Format

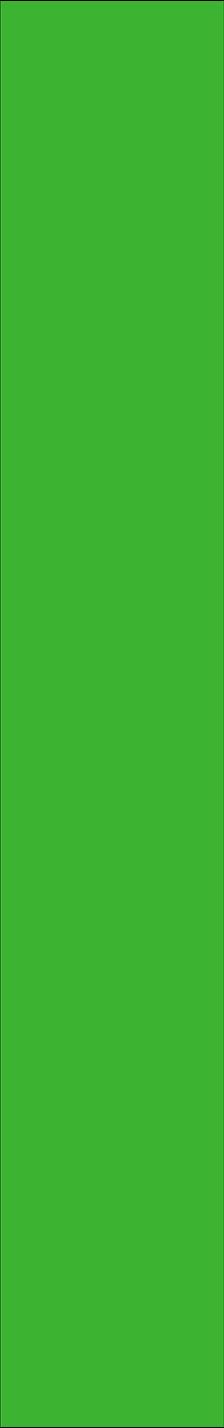
## ➤ Asylum Office:

- No format requirements, but try to follow Court requirements in case your client is referred to the Immigration Court. Don't use plastic bindings!

## ➤ EOIR:

- Follow the Immigration Court Practice Manual
- If filing requirements are not met (tabs, pagination, two-hole punch, certificate of service, etc.), the Court may reject your filing.
- Check with the IJ's clerk for filing limits (~100-200 pages)
- Copy of all filings must be submitted to DHS (use the OCC email address for e-filings)

Be sure to annotate your index and highlight important information in country condition reports



# **Presenting Your Case**

Keren Zwick,  
National Immigrant Justice Center

# Asylum Office: Case Timing

**Day 1:** Asylum Application Rec'd by Nebraska Service Center (Clock starts to run).

**Day 10:** Receipt Issued

**Day 15-30:** Fingerprint Appointment Notice

**Day 20-30:** Receive Interview Notice

**1 week before interview:**

File Supporting Documents

**Day 40:** Interview at Asylum Office\*\*

**Day 50:** Decision by Asylum Office

*\*\*Some cases are backlogged.*

# 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

# Immigration Court: Case Timing

## Non-Detained

### ➤ Expedited Hearing:

- 45 days – 6 months until merits hearing.
  - Asylum clock  $\geq$  75 days on date of referral from the asylum office, not eligible for expedited hearing

### ➤ Non-expedited Hearing: about two-three years until merits hearing (Declining an expedited hearing can impact ability to get work authorization...to be discussed shortly)

## Detained

### ➤ 6-8 weeks from master hearing until merits hearing

Consult NIJC for a case-specific estimated timeline.

# Court Proceedings: Notice to Appear

U.S. Department of Justice  
Immigration and Naturalization Service

## Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No:                     

In Matter of:

Respondent:                      currently residing at:                       
                     (Number, street, city, state, and ZIP code)                      (Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

- 1) You are not a citizen or national of the United States;
- 2) You are a native of ALBANIA and a citizen of ALBANIA;
- 3) You entered the United States at or near DETROIT, MI(MAY-OCT) on or about January 14, 2001;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212 (a) (6) (A)(i) of the Immigration and Nationality Act (Act), as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at                       
55 EAST MONROE ST., SUITE 1900, CHICAGO, IL 60603-0000

on April 2, 2002 at 10:00 AM to show why you should not be removed from the United States based on the charge(s) set forth above.

                      
(Signature and Title of Issuing Officer)

Date: MAR 12 2002

CHICAGO, IL  
(City and State)

See reverse for important information

Form I-802 (4-1-97)

The Notice to Appear (NTA) is the charging document that places an individual in removal proceedings.

Allegations: correct with IJ if necessary; admit

Charge(s): correct with IJ if necessary; concede charge/removability

# Entering Your Appearance in Court

- E-28 appearance form: file as soon as possible
  - Can file electronically once registered or in paper format
- E-Registry
  - All attorneys appearing before the immigration court and Board of Immigration Appeals (BIA) **MUST** register with the Executive Office for Immigration Review's E-Registry system by December 10<sup>th</sup> in order to appear before the Court or BIA.
  - E-Registry contains both an electronic and an in-person identification component.
  - See <http://www.justice.gov/eoir/engage/eRegistration.htm> for more information.

# Filing the Asylum Application

- Asylum applications for individuals in removal proceedings can only be “filed” in open court
- If your client’s one-year deadline is before her first court hearing, you still MUST attempt to file a skeletal application before the one-year deadline
  - File a motion to advance the hearing date
  - File a motion asking permission to file the asylum application with the court clerk

Talk to NIJC if your client is in this situation.

# Master Calendar Hearing

## ➤ What it is: a status hearing:

- File appearance form (E-28) if you haven't already done so.
- If your client has not yet filed for asylum, prepare a skeletal application for the master calendar hearing, but do not file supporting documents (usually)\*  
**Talk to NIJC to determine your judge's requirements**

## ➤ Hearing procedures:

- Arrive Early! YOUR CLIENT MUST APPEAR!
- Admit/deny charges; concede removability
- Decline to designate country for removal
- Relief sought (asylum, withholding, CAT)
- Request interpreter, with specific dialect
- Accept/decline expedited hearing 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 the responsibility of the asylum applicant/attorney to obtain a fingerprint appointment in Court Proceedings unless the asylum applicant is detained
- Fingerprints are good for 15 months.
- How to request a fingerprint appointment:
  - File with Nebraska Service Center
  - Submit: Cover Sheet, Partial I-589, and E-28
  - This request must be submitted at least 6 months in advance.
  - Contact NIJC if you file the request, but your client has not received an appointment in the mail.
- If fingerprints are not current, **NO RELIEF!**  
IJ cannot grant discretionary relief if fingerprints are not current and could deny the application for abandonment.
- See NIJC's Fingerprint FAQ in the appendix to the manual

# Evidence in Immigration Court

## ➤ Written:

- Trial Brief
- Supporting Documents

## ➤ Oral Testimony

- Applicant
- Fact witnesses, especially to corroborate identity
- Experts

# Evidence in Court Cont.

- Nima is a young woman from Sudan. She fled extreme abuse from her uncle by using a friend's Ethiopian passport. What evidence can Nima present in court to establish her identity and citizenship?
  - Letters from family/friends
  - Testimony/affidavit from a linguistics expert (Sudanese dialect)
  - Affidavits from mental health/medical experts
  - Testimony/affidavit from country conditions expert
  - Country condition documentation

# Opening Statements

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 Witness

- 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 Examination

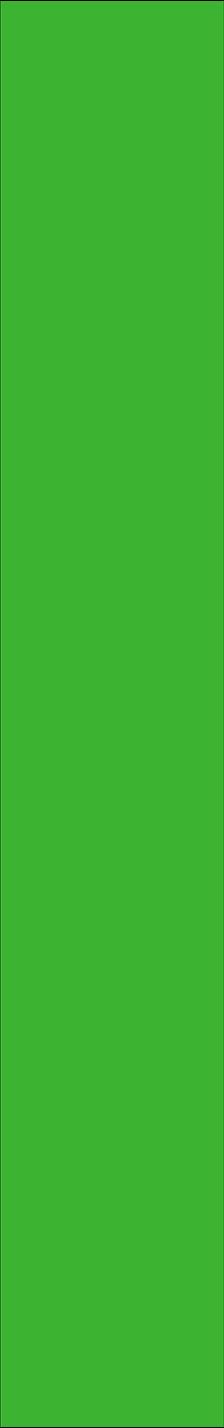
- Anticipate questions
- Prepare client for leading questions
- Expect questions from judge
- Empower client, BUT remind client to maintain demeanor
- Remember cultural obstacles
- PRACTICE, PRACTICE, PRATICE!

# Closing Statements

- 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)
  - Work Authorization, Social Security Card & Benefits
  - Refer client to NIJC to apply for derivative family members (Form I-730)
  
- If you lose, the case is not over:
  - **Reserve right to appeal**
  - Let NIJC know immediately
  - Appeal to BIA



# **Working With Your Client**

Diana Tafur,  
Staff Attorney

National Immigrant Justice Center

# Getting Started

1. Establish trust first! Anticipate cultural differences
2. Set up a regular communication plan and communicate frequently at the beginning of representation. (See NIJC's detention supplement.)
3. Check-in regularly, especially if there are delays or if the client is detained.
4. Be prepared for questions beyond the scope of the case and know who to contact for answers.
5. If your client is detained, communicate with her directly, but obtain contact information for non-detained friends/family who can assist with case preparation. Get permission to speak to these individuals.
6. Empower your client and promote independence, but recognize that detained clients have restraints on their liberty that will pose additional challenges in this area.

# Well Being Issues with Detained Clients

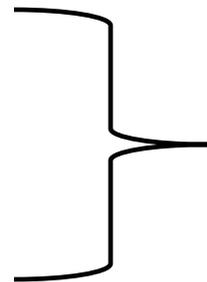
- Detained asylum seekers have likely experienced significant past persecution, and detention is likely to cause the trauma surrounding those events to resurface.
  - As a result, you may need to remind your client what's at stake and reassure him that the suffering they're enduring while detained is worth the long-term benefit.
- Communicate clearly and honestly with the client about how long each step of the process will take.
- Allot some time in each call or meeting to check in with the client on his/her personal situation and any conditions issues.
- **Most Importantly:** Be patient! You are likely your client's only connection to the outside world. Indulge a limited amount of non-case related conversation, but keep in mind that your communication time is limited.

# Common First Questions

- What are my chances?
  - Grant rate for NIJC clients
  - NIJC's screening process
  - Joint effort between attorney and client to achieve best possible result
  - Unpredictable immigration system

➤ When will I get a decision?

➤ Can I work?



Depends on the posture of the case, and the Asylum Clock.

➤ When can I bring my family here?

# The Asylum Clock

- Begins to run on the date the asylum application is filed.
  - Asylum applicants in removal proceedings can “lodge” an asylum application with the court clerk to start the clock before the application can be “filed” in open court.
  - Stops if the applicant requests that the asylum interview be rescheduled. Starts again on the date of the re-interview.
  - Stops during court proceedings any time the applicant causes a delay in the adjudication (requesting a change of venue, continuance, declining an expedited hearing etc.)
- Determines eligibility for an expedited hearing and work authorization.
- Check you client’s clock by calling the EOIR Automated Information Line (1-800-898-7180)

# Employment Authorization (EAD)

- Asylum applicants are eligible to apply for work authorization when the asylum clock is at 150 days and can receive an EAD when the clock is at 180 days.
  - Difficult to obtain; generally the client cannot obtain an EAD if the client declines an expedited hearing
  - See NIJC's FAQ and EOIR Clock Memo
  - Check the 1-800 number before filing (1-800-898-7180)
- Individuals who are only eligible for withholding/CAT relief are not eligible for EADs
  - Talk to NIJC if your client will be asserting an exception to the one-year filing deadline for asylum! Extra steps are needed at the master calendar hearing to ensure the client will be eligible for an EAD.

# Family Reunification & Post-Asylum Other Benefits

- Asylees have two years after obtaining asylum to petition for a lawful spouse and biological and legally adopted children (under 21 at the time of filing and unmarried)
  - Refer your client back to NIJC for assistance with this process.
- Automatically eligible to work (*pro bono* attorney can assist with SSN and I-94 card)
- Asylee benefits (refer back to NIJC)
- Apply for permanent residency (green card) after one year (refer back to NIJC)

# Other Ways to Support NIJC

- NIJC Annual Appeal
- Twitter: @NIJC
- Facebook:  
<https://www.facebook.com/immigrantjustice>
- You Tube: <http://www.youtube.com/immigrantjustice>
- NIJC's Action Alerts:  
<http://org2.democracyinaction.org/o/5967/t/6480/signUp.jsp?key=1151>

# THANK YOU!

For more information contact

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