Representing Asylum Seekers
Pro Bono Training

Seyfarth Shaw LLP
August 21, 2019
www.immigrantjustice.org

National Immigrant Justice Center (NIJC)

- Defends the human rights of immigrants at the individual and systemic level
- Provides legal services to more than 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

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
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
True or False: Asylum Developments

<table>
<thead>
<tr>
<th>Changes in Asylum Law and Procedure</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</td>
<td>FALSE (for Ban #1 (manner of entry))&lt;br&gt;Vacated: O.A. – NCI&lt;br&gt;Injunction: East Bay – ACLU&lt;br&gt;TRUE AND FALSE (for Ban #2 (3rd country transit))&lt;br&gt;Vacated: O.A. – NCI&lt;br&gt;Injunction: East Bay – ACLU&lt;br&gt;(Also does not apply to people in the United States before 7/16/19)</td>
</tr>
<tr>
<td>• Asylum seekers must now wait in Mexico while their asylum claim is adjudicated in the U.S.</td>
<td>TRUE AND FALSE (depends on place of entry, but does not apply to people already in the U.S.)</td>
</tr>
<tr>
<td>• Matter of A-B- and Matter of L-E-A- ended asylum based on domestic or gang violence, or violence based on family membership</td>
<td>FALSE</td>
</tr>
</tbody>
</table>

Why are Pro Bono Attorneys Important for Immigrants?

<table>
<thead>
<tr>
<th>Percent of cases where immigrants obtained relief</th>
<th>Non-citizens do not have the right to appointed counsel.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2010: 74% With representation</td>
<td>13% Without representation</td>
</tr>
</tbody>
</table>

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

National Immigrant Justice Center
WORKING WITH LGBT CLIENTS

Keren Zwick,
Associate Director of Litigation

Talking To LGBT Clients

WORDS MATTER!!
More so than in many other asylum cases, the words you use to speak to your client and about the case will affect his/her willingness to open up and trust you.

WHY?
Your client’s claim of persecution probably involves being teased and called derogatory names, so it is important for you to be sensitive as to the words you use so that you don’t repeat some of the very treatment she’s fleeing.

Rule 1: Take cues from your client.
- Use the same vocabulary that your client uses.
  - If a client says “I am gay”
  - Do not respond with, “How long have you been a homosexual.”
- If your client is transgender, ask what name (s)he prefers to use as a first name and use it.
- Refer to your client using the pronoun that corresponds to his or her gender identity. If you are unsure, ask, but be respectful.
- NOT: “What are you?”
- INSTEAD: “Do you identify as male or female?”
**Talking To LGBT Clients**

**Rule 2: Familiarize yourself with the relevant vocabulary.**

The terminology that is used to refer to individuals who identify as lesbian, gay, bisexual or transgender is frequently changing, so spend some time making sure you’re referring to your client in a manner that s/he will respond to favorably.

For a comprehensive glossary check out: [USCIS’s Training Manual for LGBT Asylum Cases](#)

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**Terminology**

**The Gender Unicorn**

Terms to avoid:
- transgendered
- transvestite
- hermaphrodite
- cross-dresser
- tranny

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**Talking To Your Client**

**Rule 3: Account for cultural differences.**

- We just discussed terms that are used in the American LGBT community. Your client may use different words or phrases.

- Examples:
  - **Travesti:** This Spanish term is commonly used to refer to transgender individuals but it translates to “transvestite.”
  - **Sexual Preference:** Some Spanish speakers will refer to their sexual orientation as their “sexual preference”

- To accommodate these differences:
  - Use the terms your client uses when speaking to your client.
  - But use the terms that would be used in the U.S. when writing your brief.
THE BASICS OF ASYLUM LAW
Ashley Huebner, Associate Dir. Of Legal Services

Who's Involved in Asylum Adjudication

- EOIR
- Immig Ct
- BIA
- USCIS (AO)
- ICE (OCC; ERO)
- CBP

Who's Involved in Asylum Adjudication

- 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
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:

- **INA**
  - § 208
  - §101(a)(42)
- **8 CFR**
  - § 208: AO
  - §1208: EOIR
- **CASE LAW**
  - BIA binding unless 7COA rejected
  - 7COA has rejected A LOT
  - 7COA is your friend; avoid other COA law

BREAKING IT DOWN: THE ELEMENTS OF ASYLUM
Asylum: Elements

1. "Well-Founded Fear"
2. of "Persecution"
3. Perpetrated by the government or an entity the government cannot/will not control

*These elements are SEPARATE!

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

*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; Kholyavskiy).

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

**Governmental Entity**
- Police
- Military
- Security Forces
- Presidential Guard
- Mayor
- Village Chief
- Paramilitary?
- Gangs?

**Entity the Government is Unable OR Unwilling to Control**
- Gangs
- Paramilitary
- Guerrilla Group
- Family Members
- Vigilante Group
- Opposing Political Party
- Others?

**The persecutor does Not have to be the State**

4. “On Account of” a Protected Ground

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

4. Burden of Proof for Nexus


- 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

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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."

- 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>


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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

- Witness/opposition to gang claims:
  - [Nationality] who have opposed [resisted/disrespected] gangs

- 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

*Evolving Case Law – Review NUC Practice Advisories
5. LGBT Based Social Groups

- Gender Identity based groups:
  - Transgender women from [Country]
  - Gender nonconforming people from [Country]
  - Gay man with female sexual identity.
  - Transgender woman who is perceived as gay in [Country]

- Sexual Orientation based groups:
  - Gay men/Lesbians from [Country]
  - Bisexual men/women from [Country]
  - Persons perceived of as members of the LGBT Community

- HIV/Health Related social groups
  * See Case Appendix*

OTHER CONSIDERATIONS

Other Issues That May Impact the Case

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!
# Bars to Relief

<table>
<thead>
<tr>
<th>Bars Asylum?</th>
<th>Bars Withholding/Withholding under CAT?</th>
<th>Bars Deferral under CAT?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Yes, but PSC definition for withholding differs from definition on the asylum</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

- **One-Year Filing Deadline - INA §208(a)(2)(B)**
- **Persecutor - INA §208(a)(2)(A)(ii)**
- **Serious Crime under CAT - INA §208(b)(4)(A)(iv)**
- **Commission of an Aggravated Offense as Defined in INA §101(a)(43)**
- **Serious Non-Political Crime Outside the U.S. - INA §208(b)(2)(A)(iii)**
- **Danger to the Security of the U.S. - INA §208(b)(2)(A)(iv)**

# 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>FASFA?</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 government is unable or unwilling to control</td>
<td>Reasonable possibility (≥ 10%)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>W/Holding</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 govt or w/the govt’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

Aneesha Gandhi, Managing Attorney
Keren Zwick, Associate Director of Litigation

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BE AWARE of any previous contacts with immigration authorities!
The Asylum System

Affirmative Process: Asylum Office

- File Affirmative Application
- Asylum Office Interview
- Grant

Defensive Process: Immigration Ct

- Client apprehended at port of entry
- Unaccompanied child client apprehended

- "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

- One week before the interview, file (with the Chicago Asylum Office)
- Legal memo
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identification documents, expert affidavits, and other corroboration

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

- Prior to the merits hearing, file:
- Brief
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identification documents, expert affidavits, and other corroboration

Anytime you are working with the Court, you must...
### 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>

3) 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
- Corroborating Evidence
- Legal Argument
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

![Image of the skeletal asylum application form]
Where and How
Do I File the Skeletal Asylum Application?

<table>
<thead>
<tr>
<th>Category of Client</th>
<th>Where to file:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults who are not 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 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.**

Affidavit Interviews with Trauma Survivors

**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
Affidavit Interviews with LGBT Clients

1. Remember status v. conduct. Just because your client has had no sexual partners, that does not mean he is not in fact gay. It will make it harder to prove it, but that does not mean he is not a credible witness.

2. Conversely, just because he has had partners of the opposite sex (or even MARRIED someone of the opposite sex), that does not mean he’s not gay.

3. Be respectful in your questioning your client about sex.
   - Although it is within bounds to ask about previous partners, don’t go overboard and keep in mind WHY you need that information.
   - You’re looking for potential avenues of corroboration. You don’t need to know the graphic details of your client’s sex life.

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 NJIC’s 11/18/16 webinar: “Telling Your Client’s Story: Affidavit Writing 101,” at http://immigrantjustice.org/training-webcasts

LANGUAGE: Client Affidavit/Declaration Cont.

<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>I was persecuted because I belong to the group of Salvadoran females in relationships they are unable to leave.</td>
<td>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.)</td>
<td>On May 1, 2010, three gang members stopped me after school and threatened me...</td>
</tr>
</tbody>
</table>
Step 5: Corroborating Your Case

Corroboration 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.

Obtaining 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, 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>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

- 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](http://immigrantjustice.org/training-webcasts)
Waiting for Adjudication
Aneesha Gandhi, Managing Attorney

Timing is Everything

"I compare the immigration courts to traffic courts and the cases that we hear - they are death penalty cases."
Judge Dana Leigh Marks

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

| 2 weeks before the interview | Receiving an interview notice |
| 1 week before the interview | File supporting documents |
| 2 weeks after notice | Interview |
| ~10 days – 6 months later | Decision |

NOTE: Timing is difficult. Changes of policies and practices at USCIS may alter this timing.
Immigration Court 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.

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!)
➢ File a work authorization application for your client when s/he is eligible and track the timing for renewals

AFFIRMATIVE or DEFENSIVE: While Your Case is Pending

➢ Meet early and often with your client!
   • Finalize drafts of your client’s affidavit and witness affidavits early and supplement later as needed
   • Send drafts to NIJC review
   • Gather your corroborating evidence early and supplement later as needed
   • Discuss your draft index with NIJC

Remember: immigration court scheduling is unpredictable – your hearing date could move forward or backwards!
Work Authorization

**Regulatory changes are likely in the works**

- Depends on the date the asylum application was filed and whether any delays were caused by the applicant. See NIJC’s Asylum Manual and EAD FAQ for more information.

- 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.

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Presenting Your Case

Aneesha Gandhi, Managing Attorney

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The Asylum System

Asylum Office/Affirmative Process

- File Affirmative Application
- Asylum Office Interview
- Grant
- Non-Adversarial

Immigration Ct/Defensive Process

- Client apprehended at port of entry
- Client apprehended internally
- Unaccompanied child client apprehended
- “Notice to Appear” issued
- Master Calendar Hearing
- Merits Hearing

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Client in U.S.; no NTA issued

Client apprehended

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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

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

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.

Pre-Merits Hearing Issues

➤ Filing Deadlines:
• 15-day filing deadline for non-detained cases (unless the IJ tells you otherwise)

➤ Judge’s practice and preferences (contact NIJC)

➤ Contact ICE Office of Chief Counsel Trial Attorney

➤ Fingerprint appt: It is YOUR responsibility unless
• Client is detained or
• Has previously been fingerprinted for her asylum application

If your client has not been printed, the judge can deny the case!
Merits Hearing

A merits hearing is a trial, it requires:
• Open and closing statements
• Direct and cross examinations

• When scheduled – or rescheduled for a merits hearing, notify NIJC immediately.
• Consult with NIJC regarding strategy and practice
• Calendar deadlines for biometrics, documents to NIJC for review, and filing deadline

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

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

THANK YOU!