

NATIONAL
IMMIGRANT
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

Representing Asylum Seekers

Pro Bono Training

Sidley Austin LLP, October 16, 2015

www.immigrantjustice.org



Welcome

Keren Zwick
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 10,000 immigrants annually with the support of a professional legal staff and a network of nearly 1,500 *pro bono* attorneys.

NIJC's *Pro Bono* Programs

➤ NIJC's *pro bono* opportunities:

- Asylum
- 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: > 250
- Asylum approval rate:
 - NIJC = 90%
 - Nationwide: ~30 % (between the court and the asylum office)
- NIJC clients who obtained protection in FY2014: > 60
- 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.



The Basics of Asylum Law

Keren Zwick

National Immigrant Justice Center

How Do Asylum Seekers Get to the United States?



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

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 = 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
 - Subjective: genuine fear of all asylum elements
 - Objective: fear (of all elements) must be reasonable, i.e., “well-founded”
- Must show applicant will be individually targeted,
 - Exception: “pattern or practice” claim. 8 CFR § 208.13.
 - Extremely difficult
 - Don’t assert as primary claim
 - Talk to NIJC

“Persecution”: look to case law

- Three types

Stanojkova v. Holder, 645 F.3d 943 (7th Cir. 2011)

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).

Persecution: Examples

- Imminent, credible threats
- Deprivation of certain fundamental rights
- Observing harm to a family member
- Physical, sexual, mental, verbal abuse

“Government Actor”

- The persecution suffered or feared must be inflicted by the government
 - police, soldiers (interpret broadly)

OR

- Entity the government can't/won't control
 - Gangs/Guerilla/rebel/paramilitary groups
 - Abusive spouses
- Example: Case Number 4

“On Account Of” a Protected Ground

- 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
- These 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)
- The characteristic may be a former association with a controversial group. *Escobar v. Holder*, 657 F.3d 537, 546 (7th Cir. 2011)
- It can include “a shared past experience or status that has imparted some knowledge or labeling that cannot be undone.” *Cece v. Holder*, 733 F.3d 662, 670 (7th Cir. 2013).

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 distinction 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!

Examples: Woman from Mexico

B.'s ex-partner started beating her around the time she first got pregnant. B.'s ex-partner got home drunk on several occasions and kicked, punched, and choked B. After reporting him to the police, B. thought the violence would stop. However, he continued abusing her. The police arrested him one time, but released him shortly afterwards. He threatened to beat B. if she ever reported him to the police again. After this incident, B.'s ex-partner did not allow B. out of the house. When B. managed to escape, after breaking a window when her partner left the house, she immediately took her children to her mother's house and fled to the United States.

.

Examples: Young Man from Guatemala

R. was around thirteen years old when the Mara Salvatrucha (MS) gang started recruiting him and his close friend. They threatened harm to both of them if they didn't join. Shortly afterwards, the gang murdered R.'s friend. R. moved to another state and spent almost a month in hiding. Because the gang members continued looking for him, his family decided he had to leave the country. Through NIJC, R. timely filed his asylum application.

Examples: Lesbian from the Republic of Congo

B.'s family moved to Brazzaville, the capital of the Republic of Congo, and her mother and father subsequently divorced. While in Brazzaville, B. began secretly dating her first girlfriend. They kept their relationship a secret because they knew that same-sex relationships were not accepted in Congo. Though not out about her identity, B. was harassed for being a lesbian. While she was walking in the street in Brazzaville one night, B. was attacked by two men who called her gay slurs and beat her before running away. When she came out to her family, in 2011, her mother was devastated and sent her to study in China. While in China, she met her second girlfriend. After she stopped studying in China, in 2014, B. applied for a tourist visa to the United States because she knew she could not return to Congo or DRC.

Examples of Particular Social Groups

- Gay Honduran males;
- Women in relationships they are unable to leave;
- Former government employees;
- Witnesses to gang crimes;
- Honduran males who have opposed gang recruitment;
- Children who lack familial protection;
- Immediate members of the X family

Burden of Proof for Nexus

- Protected ground must be “at least one central reason” for the persecution. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007)
- Persecutor can still have mixed motives. *J-B-N- & S-M-*, 24 I&N Dec. at 211; *Shaikh v. Holder*, 702 F.3d 897 (7th Cir. 2012).
- Circumstantial evidence can be sufficient to establish the persecutor’s motives. *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010)
- Be sure to separate nexus element from protected ground

Presumption of a Future Fear

- Rebuttable presumption of future persecution if all asylum elements established for past persecution

- Govt can only rebut by showing
 1. Internal relocation would make applicant safe AND is reasonable. 8 C.F.R. § 208.13(b)(3). *Oryakhil v. Mukasey*, 528 F.3d 993 (7th Cir. 2008)
 - Relocation presumed unreasonable if the govt is the persecutor. 8 C.F.R. § 208.13(b)(3)(i)-(ii).

 2. Changed circumstances so fear no longer exists

Future Fear Only & Relocation

- Applicant's burden to establish relocation would not make her safe and is not reasonable
- Unless the government is the persecutor = relocation presumed unreasonable. 8 C.F.R. § 208.13(b)(3)(i)-(ii).

“Humanitarian” Asylum

- CANNOT be granted just because case is compelling
- Only available when all past persecution elements are met, but future fear has been rebutted
- 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”
 - No nexus required
 - “Other serious harm” = persecution

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

- Govt must RECEIVE application within one year of most recent arrival to be eligible for asylum
 - Entry October 5 → Application by October 4
INA § 208(a)(2)(B); 8 C.F.R. § 208.4 (a)
- Does not apply to unaccompanied children (but may apply once reunified/turn 18)
- Limited Exceptions for everyone else
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)

Crimes

- Convictions AND unconvicted criminal activity (here and abroad) may bar relief
- Asylum is discretionary

- 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!

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

Family Reunification & Post-Asylum Other Benefits

- 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)



Working With Your Client

Carolina Ramazzina Van Moorsel,
Pro Bono & Asylum Projects Coordinator
National Immigrant Justice Center

Getting Started

1. Establish trust first! Don't just jump into the case.
2. Explain your relationship with NIJC.
3. Set up a regular communication plan and communicate frequently at the beginning of representation.
4. Be prepared for questions beyond the scope of the case and know who to contact for answers.
5. Empower your client and promote independence.
6. Asylum clients may pose different challenges than other clients, but the same ethical obligations apply as with other clients

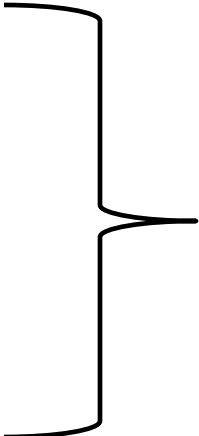
Common First Questions

- What are my chances? Remind client of:
 - 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? When?

➤ When can I bring my family here?



Depends on
case
posture

When Will I Get a Decision?

Short Answer: it's hard to predict.

More on case timing later...

When Can I Work?

- Difficult to obtain - depends on the “asylum clock”
- Clock begins to run when the asylum application is filed for
 - Affirmative Cases with USCIS, *or*
 - Defensive Cases either by “lodging” at Court Window or filing in open court. (more on this later)
- Apply for an Employment Authorization Document (EAD) at 150 days/can be issued at 180
- Clock stops if the applicant causes a delay
 - Requests to reschedule asylum interview
 - Declines an expedited hearing date
 - Requests a continuance or a change of venue
- Clock begins to run again when delay has stopped

When Can I Bring My Family Here?

- The lawful spouses and biological or legally adopted children of an asylee can obtain derivative asylum through the spouse/parent.
- If the lawful spouse and/or child(ren) are here in the U.S., they can apply, along with their spouse/parent as a derivative
- If not in the U.S., spouse/parent cannot petition for these family members until asylum is obtained.
- Asylees have two years after obtaining asylum to petition for these family members.
 - Refer your client back to NIJC for assistance with this process. Please do not handle on your own.



Preparing Your Case

Diana Tafur,
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

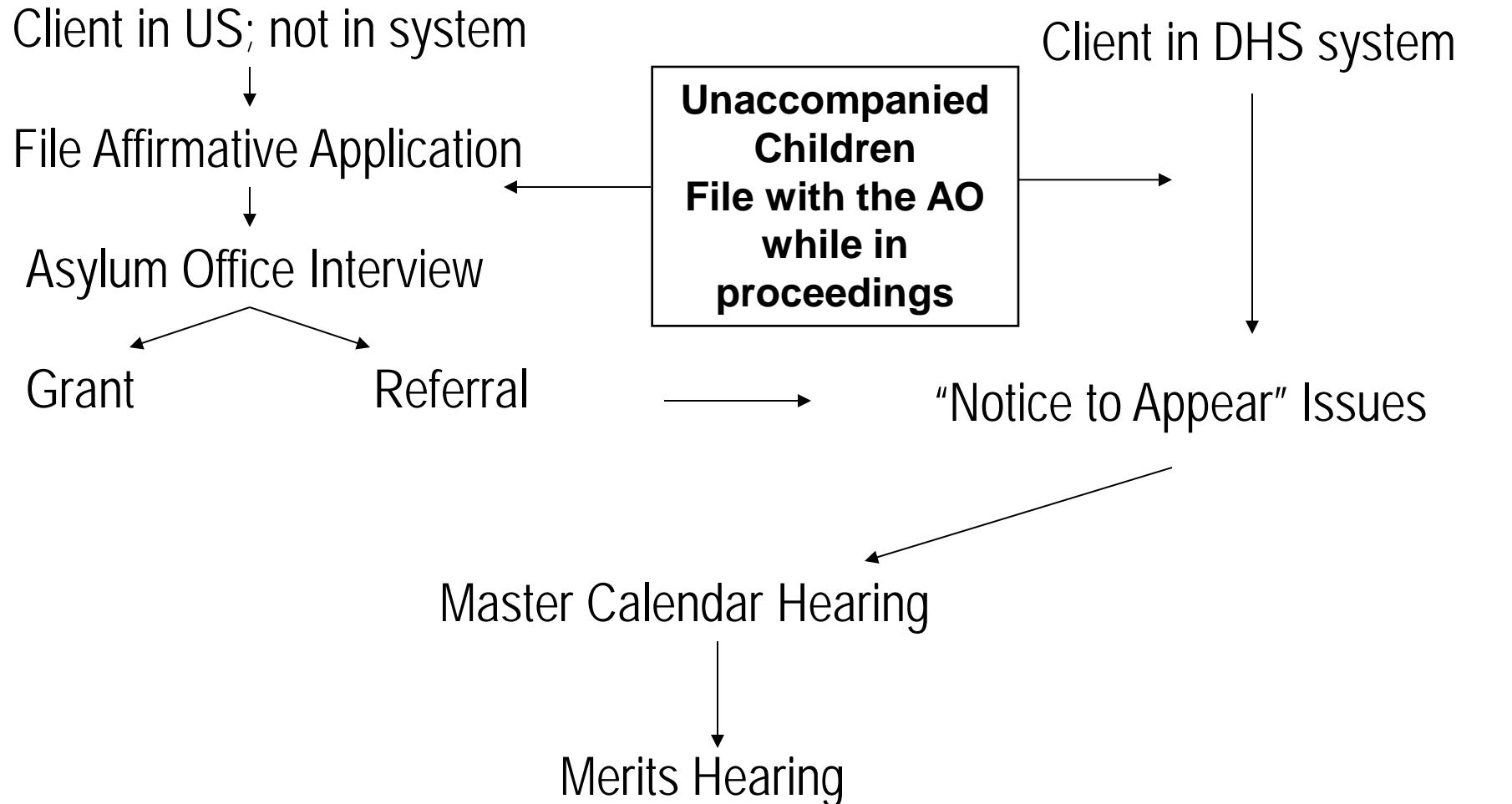
Client in DHS system

**Unaccompanied
Children
File with the AO
while in
proceedings**

↓
"Notice to Appear" Issues

↙
Master Calendar Hearing

↓
Merits Hearing



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 identity 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 I589 on DHS

No filing fee!

Prior to the merits hearing, file:

- Brief
- Client affidavit/declaration
- Annotated index
- Supporting documentation, including identity documents, expert affidavits, and other corroboration

Anytime you file anything with the Court, you must serve a copy on the government

Department of Homeland Security
U.S. Citizenship and Immigration Services

U.S. Department of Justice
Executive Office for Immigration Review

OMB No. 1615-0067

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

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

Part A. I. Information About You

1. Alien Registration Number(s) (A-Number) (if any) n/a (affirmative asylum applicants generally don't have one; defensive applicants do)		2. U.S. Social Security Number (if any) n/a	
3. Complete Last Name CLIENT	4. First Name Client	5. Middle Name Client	
6. What other names have you used (include maiden name and aliases)? n/a			
7. Residence in the U.S. (where you physically reside)		Telephone Number (123) 445-6789	
Street Number and Name 123 4 Street		Apt. Number 5	
City Chicago	State IL	Zip Code 60604	
8. Mailing Address in the U.S. (if different than the address in No. 7)		n/a (do not put attorney's address here)	
		Telephone Number	

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.

SAMPLES AVAILABLE ON NIJC'S WEBSITE

Affidavit of CLIENT

In Support of Her Application for Asylum,
Withholding of Removal and Relief under the Convention Against Torture

1. My name is CLIENT. I am a citizen of the Republic of the Congo. I fled to the United States with my children on DATE, because the Congolese military beat us, threatened us and tried to kill us. The military targeted us because my former partner, the father of my two daughters, was involved in a suit against the government for the disappearance of his brother during the Disappearance at the Beach in 1999.

My Background

2. I was born on DATE, in Brazzaville, the capital of the Republic of the Congo. I had a fairly happy childhood. I am an only child and my parents loved me and were able to give me what I needed, even though we were not rich. I graduated from high school and then attended and graduated from technical college, where I received a degree to become a secretary.
3. While my family life was happy at home, the political situation in my country was unstable throughout my childhood. There was always violence between different ethnic groups, and different leaders taking power. Most of the recent violence in the Republic of the Congo has been between the north and the south fighting each other to rule the country. My family was never involved in the violence. We are reserved people who tend to keep to ourselves. Even though my family was not involved in politics and did not cause any violence, we learned, like all Congolese citizens, about the government's corruption and the violence that came to people who opposed or questioned the government. I learned as a child that even though we say our citizens have "rights" to things like freedom of speech and the ability to criticize the government, the reality is that people are frequently hurt or worse if they try to oppose the government.

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.

**Index of Documents in Support of CLIENT's
Application for Asylum, Withholding of Removal,
and Relief under the Convention Against Torture**

Tab	Exhibit	Page
A	Affidavit of Mr. CLIENT	1
B	Letter in support of Mr. CLIENT's asylum application from his wife --- dated September 1, 2012, with translation and copy of the envelope in which the letter arrived	20
<u>Identity Documents</u>		
C	Copy of the biographic page of Mr. CLIENT's passport	27
D	Copy of Mr. CLIENT's B1/B2 Visa and I-94 card, establishing date of entry as DATE	28
<u>Background Information Regarding Mr. CLIENT's Asylum Claim</u>		
E	United States Department of State, <i>Background Note: Republic of the Congo</i> (January 3, 2012), available at: http://www.state.gov/outofdate/bgn/congobrazzaville/193657.htm [last accessed September 19, 2012] "The Republic of the Congo is slightly larger than New Mexico, but vast areas in the north include jungles that are virtually uninhabited. . . . Congo is one of the most urbanized countries in Africa, with 70% of its total population living in Brazzaville, Pointe-Noire, or along the 332-mile railway that connects them. In southern rural areas, industrial and commercial activity suffered as a consequence of the civil wars in the late 1990s. "	30
F	United States Department of State, <i>2011 Country Reports on Human Rights Practices - Republic of the Congo</i> (May 24, 2012), available at: http://www.state.gov/documents/organization/186397.pdf [last accessed September 19, 2012] "Denis Sassou-Nguesso was reelected president in 2009 with 78 percent of the vote, but the validity of these figures is questioned. The 2009 election was peaceful, and the African Union declared the elections to have been free and fair; however, opposition candidates and nongovernmental organizations (NGOs) cited irregularities. "	36

Obtaining Corroboration

Everything Matters!

Country Conditions	Client-Specific	Past Persecution	Future Persecution
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 www.unhcr.org/refworld	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

- Cristina is a transgender woman from Mexico who was repeatedly attacked by men in her community. (Case Number 6)
- A gang in Honduras attacked Maria's family members and murdered her brother when they refused to pay a protection fee. (Case Number 47)
- Ibrahim is a man from Somalia whose family was repeatedly attacked by a majority clan because they belonged to a minority clan. (Case Number 37)

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.
- Unaccompanied children:
 - Request ORR file
- 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

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
 - **Stick to the Seventh Circuit**
 - Board of Immigration Appeals (BIA) precedent decisions
- Preserve all arguments and claims to relief

Filing Format

➤ Asylum Office:

- No format requirements, but try to follow Court requirements. 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 notes from the status hearing for other requirements
- 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

Diana Tafur,
National Immigrant Justice Center

Asylum Office: Case Timing

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

Day 10-20: Receipt and Biometrics Notice Issued
(Unaccompanied children)

Day 20-30: Receive Interview Notice
(All other applicants)

1-2 Years Later: Receive interview notice

1 week Before Interview: File Supporting Docs

2 Weeks After Notice: Interview at Asylum Office

10 days – 6 Months Later: Decision

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.

➤ Non-expedited Hearing: about three-four years until merits hearing (Remember that declining an expedited hearing impact the asylum clock)

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 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 “lodge” a skeletal application before the deadline
 - “Lodge” the application at the court window (see EOIR memo and NIJC FAQ)
 - File a motion to accept the lodging date as the filing date

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
- File skeletal asylum application if you haven't already, but do not file supporting documents (usually)
Talk to NIJC to determine your judge's requirements
- Special prep needed for cases with one-year deadlines

➤ 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 (remember EAD consequences).

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 your client is detained
- Fingerprints are good for 15 months.
- If fingerprints are not current, **NO RELIEF!** IJ cannot grant relief and could deny the application for abandonment.
- See NIJC's asylum manual and fingerprint FAQ for instructions

Evidence in Immigration Court

➤ Written:

- Trial Brief
- Supporting Documents

➤ Oral Testimony

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

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)
 - 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 (Form I-730)
- 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
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312-660-1307

cramazzinavanmoorsel@heartlandalliance.org

Other ways to support NIJC:

- NIJC Annual Appeal
- Twitter: @NIJC
- Facebook: [facebook.com/immigrantjustice](https://www.facebook.com/immigrantjustice)