

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM



BLESSINGER
LEGAL PLLC

Presenting Your Case:

How to Prepare Your Client

December 2015
www.immigrantjustice.org

www.blessingerlegal.com

Who is Involved?

The Agencies	The Parties
<ul style="list-style-type: none">➤ Department of Justice (DOJ)<ul style="list-style-type: none">• Executive Office for Immigration Review (EOIR)<ul style="list-style-type: none">- Immigration Courts- Board of Immigration Appeals ➤ Department of Homeland Security (DHS)<ul style="list-style-type: none">• Immigration and Customs Enforcement (ICE)<ul style="list-style-type: none">- Office of the Chief Counsel (OCC)<ul style="list-style-type: none">= the trial attorneys- Enforcement & Removal Operations• Citizenship and Immigration Services (USCIS)• Customs and Border Patrol (CBP)	<ul style="list-style-type: none">➤ ADJUDICATOR<ul style="list-style-type: none">• USCIS Asylum Office• EOIR (Immigration Judge/Board of Immigration Appeals) ➤ “US”<ul style="list-style-type: none">• “Applicant” before USCIS• “Respondent” before EOIR ➤ “THEM”<ul style="list-style-type: none">• Non-adversarial before USCIS• ICE trial attorneys before EOIR

United States Asylum Process

Asylum Office/Affirmative Process

Immigration Ct/Defensive Process

Client in US; not in system

Client in DHS system

File Affirmative Application

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

Asylum Office Interview

Grant

Referral

"Notice to Appear" Issues

Master Calendar Hearing

Merits Hearing

What to File

Asylum Office (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 Asylum Office)

- Legal memo Court, you must
- 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:

serve a copy on DHS

- 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

Evidentiary Rule in Immigration Court

- “Immigration judges shall administer oaths, receive evidence, examine, and cross-examine aliens and witnesses.” 8 C.F.R. § 1003.10
- Relevance and fundamental fairness are the only bars to admissibility of evidence in deportation cases. Matter of Ponce-Hernandez, 22 I&N 784 (BIA 1999)
- The general rule with respect to evidence in immigration proceedings favors admissibility as long as the evidence is shown to be probative of relevant matters and its use is fundamentally fair so as not to deprive the alien of due process of law. Matter of Ramirez-Sanchez, 17 I&N Dec. 503 (BIA 1980)

Credibility

- Most important part of any 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.

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!

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, Internet Footprint	Pictures	Country Conditions

Obtaining Documents

- Always verify document authenticity 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.

Obtaining Your Client's Immigration History

- There is no discovery in immigration 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 (for subsequent inquiries)

Country Condition Experts

- Do you need an expert?
- Who can be an expert?
 - Academics
 - Journalists
 - Human rights workers
 - Missionaries

Country Condition Experts

- How do you qualify your expert?
 - CV
 - Voir dire
 - Institutional affiliation
 - Publications
 - Daubert factors
- How do you use an expert?
 - Include expert affidavit?
 - Provide live testimony by expert?

Matter of Y-S-L-C-, 26 I&N Dec. 688 (BIA 2015)

- 15-yr.-old boy from Guate., targeted by gangs from age 4
- IJ required that he be qualified as expert when attorney asked: “These events...have they caused you any psychological issues...”
- BIA FOUND:
 - *The requirements of the Federal Rules of Evidence with respect to the admission of expert testimony are inapposite to a respondent’s testimony regarding events of which he or she has personal knowledge.*
 - *Conduct by an Immigration Judge that can be perceived as bullying or hostile is never appropriate, particularly in cases involving minor respondents, and may result in remand to a different Immigration Judge.*

Preparing Witnesses in Immigration Court

- Know your jurisdiction. Every jurisdiction and every judge is different
- Make a list of the elements for the case so that you remember what points to ask
- Figure out what the holes are in your case and prepare your client with difficult questions
 - Example: Focus on your client's criminal history or new information that was not presented at a credible fear interview
- Prepare an affidavit for all supporting witnesses because the government will usually allow them to adopt the affidavit as their testimony
- Explain to your client the roles of everyone in the courtroom
- Try to get to court early with your client and witnesses so you can prepare them actually sitting in the witness chair
- Remind your client to wear professional attire

Examining Witnesses in Immigration Court

- Always speak to the trial attorney assigned to the case 1-3 days before the individual hearing to see if you can narrow the issues
- Keep notes of the testimony. Always highlight when you want to follow up on something from cross examination in redirect examination
- Rehabilitation: do not give up after cross examination; make sure to rehabilitate your witness if it is possible
- Do not be afraid to object
 - Example: Calls for Speculation if asked why another witness did something
- Remember that hearsay is permissible in Immigration Court
- If there is a translator, remind witnesses to always wait for the translation and to speak in two sentences then wait for the translation

Examining Witnesses in Immigration Court (cont'd)

- Control your witness; remind your witness to answer the question that is asked and not to offer additional information
- Practice cross examination with your client using “correct” and “isn’t that true.”
- Tell your witness that it is alright to say “I don’t know” if he/she does not know the answer to a question
- Don’t write out your questions; focus on the element of the case, the answers you receive, and not the order of your questions
- Remind your client the importance of the case and that this is the only opportunity he/she has to relay the importance of this relief to the court
 - Show sincerity and remorse; be honest
- Body language: Look at the court when you are answering your questions to show you are engaged

Direct Examination in State Court

- Know your jurisdiction. Every jurisdiction and every judge is different
- Make a list of the elements for the case so that you remember what points to ask
 - Example for Special Immigrant Juvenile Status: show abandonment/neglect/abuse by one parent, why the client cannot return to home country, length of time living in the jurisdiction
- Remind your client the roles of the different people in the courtroom
- Remember that you cannot ask leading questions on direct examination
- Hearsay is typically not permitted in state court

Preparing for An Asylum Interview

- Remember that you will not be able to ask your client's story; all questions are asked by the asylum officer
- Remind your client of the central points of the case. Clients often think that generalized violence is sufficient for an asylum case; discuss the case strategy ahead of time
- Bring any pertinent case law with you to the hearing to provide a copy to the asylum officer at the conclusion
- Remember the points you want to be covered because you will be given an opportunity at the end of the interview to ask additional questions
- Remind your client to bring his/her passport or other identification to the interview

Preparing for An Asylum Interview (cont'd)

- Prepare your client a couple of days before the interview and determine whether you need to bring an interpreter
- Bring originals of any documents you previously submitted
- All derivative applicants must appear at the interview
- Have all documents in another language translated with a certified translation
- More information is available here:
<http://www.uscis.gov/humanitarian/refugees-asylum/asylum/preparing-your-asylum-interview>

Questions?

- Feel free to contact us with any questions you may have. Here is our contact information:
- Eileen Blessinger: eileen@blessingerlegal.com
- Lisa Koop: lkoop@heartlandalliance.org