

PROTECTION- BASED RELIEF

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**Lisa Koop, National Immigrant Justice Center, Chicago/Indiana
Elizabeth Sanchez Kennedy, Catholic Legal Services of Miami**

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. a protected ground:
 - 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 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

PERSECUTION

- 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.
- Poverty, discrimination, harassment generally not sufficient
- Harm constituting persecution can be less for a child than an adult. See USCIS Guidelines.
- Must be considered cumulatively. *Nzeve v. Holder*, 582 F.3d 678 (7th Cir. 2009).

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**
 - **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**
- **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. man who criticizes government's military policy, child of political activist)**
5. **Membership in a Particular Social Group: one of the most common and most complex bases for asylum**

PSG

- 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)
- **Examples:**
 - Gay Honduran men;
 - Unmarried Malian women;
 - Former government employees,
 - Honduran males who have resisted gang recruitment,
 - Immediate members of the X family

PSG

COMPLICATED CIRCUIT/BIA SPLIT

BIA	Seventh Circuit
<ul style="list-style-type: none">• Can't be overly broad	<ul style="list-style-type: none">• Breadth is irrelevant
<ul style="list-style-type: none">• Must be considered a group by society	<ul style="list-style-type: none">• No social distinction test
<ul style="list-style-type: none">• "Former" status/past experience is not enough	<ul style="list-style-type: none">• "Former" status/past experience can form the basis of a social group, without more
<ul style="list-style-type: none">• Groups can't be overly diverse	<ul style="list-style-type: none">• Diversity not an issue

Practice Advisory on PSG post-MEVG/WGR at immigrantjustice.org

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.
- 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

“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

8 C.F.R. § 208.13(b)(1)(B)(iii); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012)

ONE-YEAR FILING DEADLINE

- **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 use caution once reunified/turned 18)**
- **Limited Exceptions for everyone else**
 - **Changed circumstances**
 - **Extraordinary circumstances (e.g. mental or physical illness, incapacity, lawful status)**
INA § 208(a)(2)(D); 8 C.F.R. §208.4(a).

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

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

OTHER ISSUES TO WATCH

- **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)**

PARTICULAR SOCIAL GROUP, FORMULATING THE GROUP

- Unlike claims based on the other grounds e.g. race, nationality you have to *craft* the ground in PSG claims
- What characteristics is the persecutor targeting? Why was the applicant targeted or why would the applicant be targeted?
- Craft a PSG that will fulfill each of the tests
(**social distinction and particularity are not required in all circuits*)
- Are the characteristics immutable or fundamental?

Immutable examples:

- childhood
- disability
- HIV+/AIDS
- family ties
- orphan
- past experiences
- gender

Fundamental characteristics:

- sexual orientation or gender identity
- religious belief, deeply held conviction

FORMULATING THE GROUP

- Avoid groups defined *entirely* by the harm, they are circular “battered women” vs. “women in a domestic relationship who are unable to leave”
- Use direct evidence (what the persecutor said or did) and circumstantial evidence (legal and social/cultural norms) to prove nexus
- There is no size requirement – i.e. no requirement that the number of people in a group is small or low, but the BIA has held that the group cannot be overly broad or diffuse.
 - Some circuits reject this approach, e.g. 7th Circuit (*Cece v. Holder*, 733 F.3d 662), 9th Circuit (*Perdomo v. Holder*, 611 F.3d 662)
- Overly broad groups may run into nexus problems – if not targeted for the characteristics that define the group
 - A very broadly defined group may confront particularity problems if the *boundaries* are unclear, e.g. democrats

FORMULATING THE GROUP

➤ Social distinction can be shown by:

- Laws directed at group members
- Application of laws, including impunity for violation of laws
- Broad societal attitudes
- Widespread violence against group members
- Persecutor's perspective is relevant, but not enough (*M-E-V-G-*)
- Importance of country conditions experts
- Importance of country conditions documentation – including statistics regarding group members, scholarly literature, popular literature, to show societal attitudes

EXAMPLE: Guatemalan orphan children

FORMULATING THE GROUP

- **Particularity: Does the group have clear boundaries? Is it discrete in the *society in question*? Do the terms defining the group have *clear meaning in the society*?**
 - Be sure the PSG is clearly defined, avoid amorphous groups, e.g. “sports fans”
 - Look to objective measures defining terms - e.g. laws or policies
 - Use expert testimony to show that in the context of the society in question, the group is discrete and who is a member is readily ascertainable
 - Distinguish from cases where PSG was found to be overbroad by focusing on the unifying characteristic(s) of the PSG
 - Remind adjudicator that the size of the group is not determinative (other grounds are large; cite cases recognizing large groups, e.g. *Toboso-Alfonso*, *Matter of H-*)

FORMULATING THE GROUP

- **Children and subgroups of children should be able to meet the tests**
- **Consider age/childhood/youth + other immutable/fundamental such as:**
 - **Nationality**
 - **Race/ethnicity**
 - **Family**
 - **Sexual orientation, gender identity**
 - **Lack of adult supervision or protection**
 - **Disability or mental illness**
 - **Witness to organized crime**
 - **Former gang member**
 - **Past recruitment by gang and active resistance to gang**
 - **Street children**

GANG CLAIMS

- **Witness defined PSGs**
 - recognition in 3d and 9th Circuits

- **Former gang members**
 - recognition in 7th, 6th, 8th, 4th circuits

- **Family defined PSGs**
 - family of prosecution witness against gang, *Crespin-Valladares*, 632 F.3d 117 (4th Cir. 2011)
 - family of former gang member, *Aquino v. Holder*, 759 F.3d 332 (4th Cir. 2014)
 - nuclear family, *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015)
 - family of gang resisters or opponents, former gang members, rival gang member, law enforcement against gang, witness

GANG CLAIMS

- **Gender defined PSGs**
 - no published decisions recognizing in the gang context
 - lots of positive caselaw on gender-defined PSGs
 - girls being forced into relationships or to be sex slaves
 - consider: girls viewed as property of the gang, nationality + girl children, girls without effective parental protection
- **Consider WHICH children gang targets**
 - Neighborhood? Students?
- **Resistance-defined PSGs**
 - past recruitment + refusal
- **Children without effective parental protection**
 - First Circuit has rejected this type of group

CHILD ABUSE

- Status and vulnerability as a child clearly is a reason children are targeted for abuse
- Certain subgroups of children may be especially vulnerable, such as: children with disabilities, orphans, girl children, stepchildren, LGBT children and gender non- conforming children, others
- Consider family as a PSG, family members of x, children of xx, female children of xx
- Children in families, stepchildren
- *Matter of A-R-C-G-*, 26 I.&N. Dec. 388 (BIA 2014) consider children unable to leave the familial relationship

*children of women in domestic relationships they are unable to leave

GENDER

- Intimate partner violence: *Matter of A-R-C-G-*, 26 I.&N. Dec. 388 (BIA 2014), married Guatemalan women unable to leave the relationship is a PSG
- Forced marriage, trafficking, female genital cutting, rape
- Consider the following characteristics
 - nationality
 - Childhood
 - gender (girls)
 - tribe/ethnicity (e.g. Malian girls from the Bambara tribe)
 - indigenous status (e.g. Guatemalan Mayan girls)
 - lacking parental protection
 - living alone
 - marital status (i.e. single, unmarried)

LGBT CLAIMS

Sexual Orientation:

Since 1990, being a lesbian or gay man has been recognized as membership in a particular social group.

- *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822-23 (1990)
- *Moab v. Gonzales*, 500 F.3d 656, 661 n.2 (7th Cir. 2007)

Gender Identity:

For transgender individuals, law is evolving, moving in a positive direction. PSG often framed as “gay men with female sexual identities.”

- *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000).
- *Avendano-Hernandez v. Lynch*, 800 F.3d 1072 (9th Cir. 2015)

NOTE: Imputed sexual orientation commonly arises in UIC cases.

JURISDICTION OF UAC ASYLUM APPLICATIONS - TVPRA

- For the first time, Congress attached significant protections and benefits to “unaccompanied alien children” (UAC)
- Under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”) the Asylum Office has initial jurisdiction over an asylum application filed by a UAC who is in Removal Proceedings. *Section 208(b)(3)(C)*
- **Benefits of the Asylum Office**
 - Non-adversarial setting (no cross examination by a DHS attorney)
 - Child-friendly asylum interviews by trained officers
 - If referred to court, case is reviewed de novo

PROCEDURAL ISSUES IN UAC CASES

➤ UAC defined as child who

- (1) has no lawful immigration status
- (2) is under 18, and
- (3) has no parent/legal guardian in the U.S. or for whom no parent/guardian in the U.S. is available to provide care and physical custody

➤ Jurisdiction over asylum claims

- Asylum Office has initial jurisdiction over asylum applications by UACs (AO position is that must be UAC at the time of filing)
- **If child deemed UAC is in removal proceedings (even if child now over 18), file I-589 with Asylum Office and seek admin closure and/or termination from Immigration Judge
- **If child reunifies with at least one parent, the child is still a UAC, as long as the status has not be revoked
- Refer to USCIS Memos dated May 2013 and June 2013 for additional guidance

PROCEDURAL ISSUES IN UAC CASES

Practice Tip

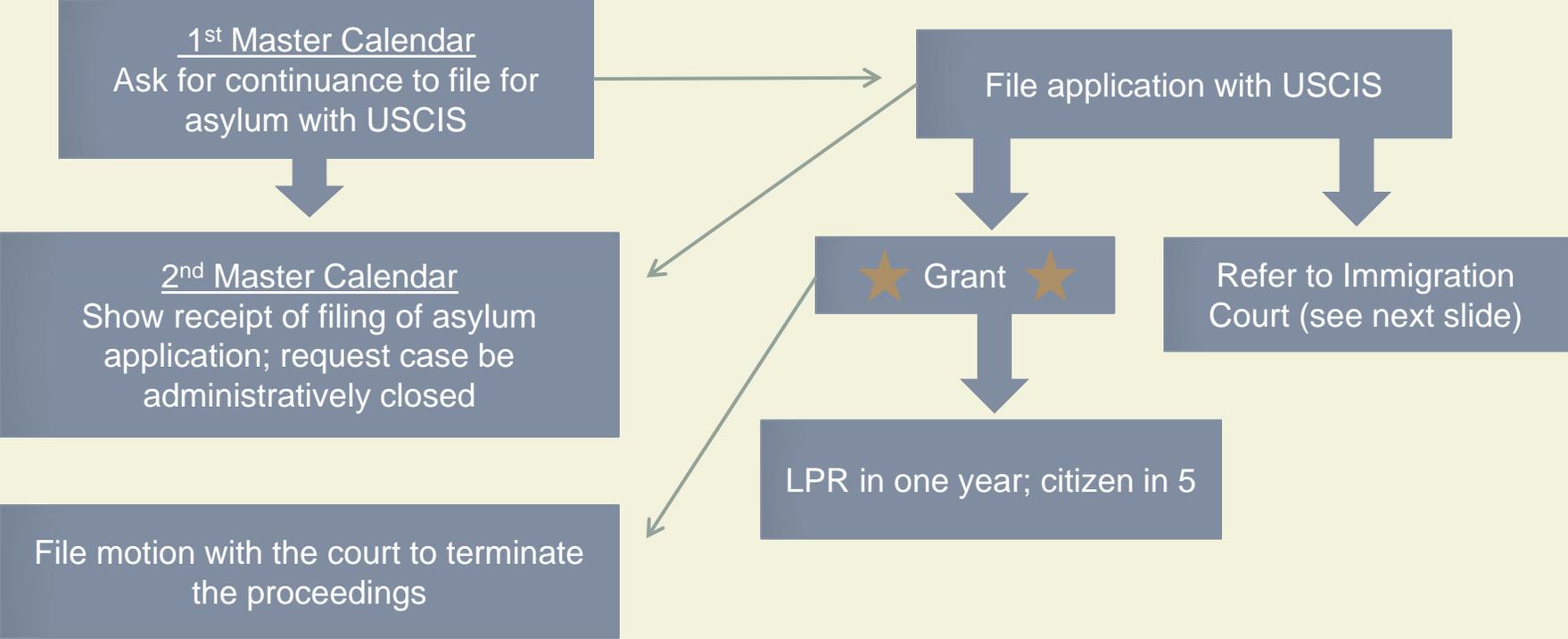
Attach proof of UAC status to the initial filing of I-589 to avoid USCIS rejecting your application

- **Examples of proof of UAC status include:**
 - **Birth Certificate with Translation**
 - **Notice to Appear showing entry date and DOB**
 - **ORR Release Sheet**
 - **Signed UAC instruction sheet**
 - **ORR census showing that child was in an ORR facility**

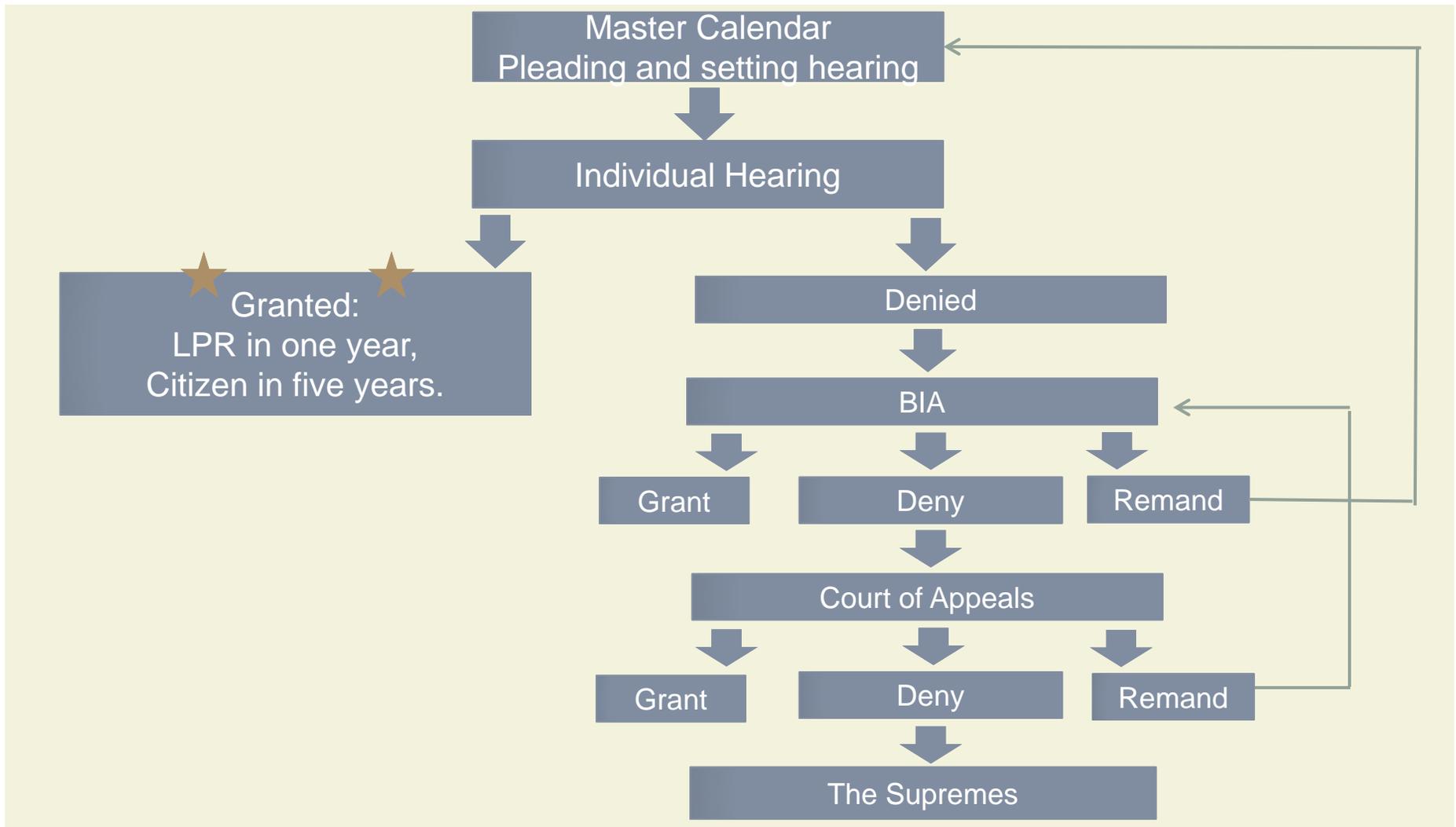
PROCEDURAL POSTURE OF A UAC CASE

Immigration Court

USCIS



PROCEDURAL POSTURE OF A UAC CASE (AFTER REFERRAL TO IMMIGRATION COURT)



THE CONTENTS OF AN APPLICATION

1. I-589:

- Found at www.uscis.gov → Forms → I-589
- Read instructions
- Handout on how to fill out I-589
- I-589 is automatically a request for asylum and withholding
- To apply for CAT, you must check off boxes on pages 1 & 5

2. G-28 (entry of appearance) for USCIS

- Found at www.uscis.gov

3. EOIR-28 (entry of appearance for EOIR (court))

- Found at www.justice.gov

4. Birth certificate with certified translation;

CONTENTS OF AN APPLICATION – DOCUMENTS IN SUPPORT OF THE I-589

5. Copy of passport, identity document, stamp in passport showing arrival into U.S., or I-94 printout
6. Documents showing past persecution:
 - Client's affidavit
 - Medical records
 - Death certificates
 - Police reports
 - Letters from people with firsthand knowledge (notarized if possible)
 - Court documents from home country (i.e. restraining order against abusive family member)
 - Proof of counseling in home country OR in the US
 - Documents from ORR file corroborating client's story
 - Newspaper articles or TV segments (transcribed) covering incident from your client's claim
 - Photos

CONTENTS OF AN APPLICATION – DOCUMENTS IN SUPPORT OF THE I-589 (CONT.)

7. Expert reports

- Medical
- Psychological (for pro bono psychological examinations, check out Physicians for Human Rights or local medical schools)
- Country conditions

8. General country conditions

- Department of State report
- Amnesty International, Human Rights Watch, etc.
- Congressional reports
- Reported newspaper articles
- Journal article/books

9. See example of cover letter and handouts

TIPS – FILLING OUT THE I-589

- Read the I-589 instructions on the USCIS website
- Completeness is key! Answer every question and subsection (if the question does not apply to your client, then respond “N/A”)
- Indicate on the application that you intend to supplement the substantive responses with a detailed statement (if you plan to do so)
- Do not include information if the client is unsure (ex: precise dates vs. month/year, naming a specific gang if client is unsure which gang attacked or threatened him/her)
- Prepare the I-589 as if the most detail-oriented asylum officer will be adjudicating your claim

TIPS – INTERVIEWS AND DRAFTING THE AFFIDAVIT

- **Consistency, Consistency, Consistency**
- **This child has suffered – be gentle**
- **Get the whole story; it will change.**
- **Ask questions in different ways**
- **Be patient**
- **Take cues from your client and be creative**
- **Be aware of cultural differences**
- **Be aware of translation issues**
- **Take care of yourself. Secondary trauma is real**

TIPS – INTERVIEWS AND DRAFTING THE AFFIDAVIT

- Consistency, Consistency, Consistency (this is not a typo!)
- Use client's voice
- Detailed vs. general
- Organize in chronological order (start with timeline and review timeline with client before finalizing)
- Constantly review and verify testimony with previous interviews and applications
- Address and explain inconsistencies/omissions in affidavit
- Be aware of the client's culture and country conditions
- Know the case law before finalizing the affidavit to make sure you have asked all the right questions
- **Develop the facts! This takes time.**
 - **NOTE: Inability to articulate a "strong" asylum claim does not make the claim frivolous. A frivolous asylum claim is one that "any of its material elements is deliberately fabricated" 8 CFR §§208.20, 1208.20**

ORDER OF EVENTS FOR AN AFFIRMATIVE CASE

- **Send I-589 to the Nebraska Service Center (refer to UAC Instruction Sheet for more detail)**
- **Receive a receipt**
- **Receive biometrics**
- **Receive interview notice**
- **File additional documents with local asylum office**
- **Interview**
- **Decision mailed to client**

THE ASYLUM INTERVIEW - PREPARATION

- Let the client know who will be present at the interview and where the interview take place (AO vs. Immigration Court)
- Explain (again) to your client what it means to file an asylum application
- Review their affidavit word-for-word
- “the big story”
- Review all questions/answers on the application
 - An asylum interview is divided into 3 parts:
 1. Biographic Information;
 2. What happened in the past/why forced to leave home country; and
 3. Why your client cannot return to home country.
- This is not a test! Your client’s only job is to tell the truth and explain to the officer why they cannot return
- Explain that they will not receive a decision same day

THE ASYLUM INTERVIEW

- **Attorney comments at end, time permitting**
- **If something goes drastically wrong, intervene!**
 - Ask to call supervisor if necessary
 - The interview is supposed to be non-adversarial, especially with children
- **Must bring interpreter**
- **Interview Agenda:**
 1. Swearing in
 2. Biometrics
 3. Go over I-589
 4. Go over substance of case
 5. Closing arguments

ASYLUM IN COURT

- **File Freedom of Information Act request**
- **Review court file – Ask your mentor for local rules**
- **Master calendar**
 1. File I-589 – original to judge, copy to government (EOIR practice manual)
 2. Plead to Notice to Appear (NTA)
 3. Ask for relief in form of asylum, withholding, CAT and voluntary departure if applicable
 4. Remain mute on country of return, or “respectfully decline to designate”
 5. File G-28 (entry of appearance to USCIS)
 6. File EOIR-28 (entry of appearance for EOIR)
 7. Certificate of Service to OCC
 8. Request court-appointed interpreter in client’s first language
 9. Get trial date
 10. Clarify on the record filing deadlines for documents and witness lists

ASYLUM IN COURT (CONTINUED)

- **File additional documents within 15 days of trial date (according to the EOIR Practice Manual)**
 - **NOTE:** Some IJs set different filing deadlines (ex: 60 days prior to the hearing)
 - Update materials
 - Motions for telephonic testimony
 - Witness list
- **Merits Hearing**
 - Bring own interpreter (friend/family) to monitor court-appointed interpreter
 - Housekeeping issues (exhibits, amendments to I-589, late filings, etc.)
 - Request opening if planning on one
 - Direct, cross, redirect
 - Judge may ask questions
 - Rules of evidence do not apply
 - De Novo review of USCIS decision
 - OCC might use asylum officer's notes to impeach
 - Usually judge will render discussion orally in court
 - Have to make all people who supplied letter available for cross examination
 - Former asylees need to sign waiver to testify
 - 30 days to file Notice of Appeal with BIA if case is denied

WORK PERMISSION

- **Clock starts ticking...**
 - On receipt of I-589 filed with USCIS
or
 - When I-589 lodged with court
or
 - When I-589 filed at Master Calendar

- **Tick Tick Tick**
 - File for work permission **150** days after clock is running
 - Form I-765 (www.uscis.gov)
 - USCIS will begin adjudication at day **180**
 - Currently taking 90 days or more adjudicate

- **Clock will stop**
 - For any delay caused by applicant

IMMIGRANT VICTIMS OF CRIME

- **Vulnerable to crimes**
 - **Fear of law enforcement and deportation**
 - **Lack of understanding of U.S. laws**
 - **Language barriers**
 - **Cultural differences**
 - **Separation from support networks such as family and friends**

U VISA: VICTIMS OF VIOLENT CRIMES

- **Eligibility:**
 - **Suffered substantial physical or mental abuse as a victim of a serious crime.**
 - **Cooperated and given information to help the investigation or prosecution of the crime.**
 - **Law Enforcement Certification has been signed.**

U VISA

The U Visa for non-citizen victims of crime was created to strengthen the ability of law enforcement agencies to investigate and prosecute crimes while offering humanitarian protection to victims of such crimes.

QUALIFYING CRIMES (or similar activity):

Rape

Torture

Trafficking

Incest

Domestic violence

Sexual assault

Abusive sexual conduct

Prostitution

Sexual exploitation

Female genital mutilation

Being held hostage

Peonage

Perjury

Involuntary servitude

Slave trade

Kidnapping

Abduction

Unlawful criminal restraint

False imprisonment

Blackmail

Extortion

Manslaughter/Murder

Felonious assault

Witness tampering

Obstruction of justice

Stalking

*****Includes attempts, conspiracy, or solicitation to commit any of the above.**

U VISA

Qualifying family member status. 8 C.F.R. § 214.14(a)(10)

- If petitioner is under 21, then spouse, children, parents (only if petitioner is unmarried) and siblings under 18 at the time of filing I-918 can apply for qualifying family member status.
- If petitioner is over 21, then spouse and children can apply for qualifying family member status.

T VISA

TRAFFICKING: The use of coercion, deception or force to move men, women, or children from one location to another for the purpose of placing them in slavery or in slavery-like conditions. E.g., forced labor, domestic servitude, debt bondage, and forced commercial sexual exploitation.

➤ WHO IS ELIGIBLE FOR A T VISA?

- Victim of severe form of trafficking
- Victims under age 18 or has complied with any reasonable request for assistance in investigation or prosecution
- Applicant physically in U.S. due to trafficking
- Applicant will suffer extreme hardship involving unusual and severe harm if removed
- Applicant has not engaged in trafficking
- Applicant is admissible

VAWA

- The Violence Against Women Act was signed into law by President Clinton in 1994 as part of a larger crime bill to address domestic violence, sexual assault and stalking
- VAWA was amended in 2000, 2005, and 2013. VAWA includes special provisions for battered immigrants that allows them to gain legal immigration status without relying on their abusive USC or LPR spouses, parents, or children
INA § 204; 8 C.F.R. § 204
- **VAWA PROTECTS:**
 - Abused spouses of USCs and LPRs;
 - Non-abused spouses of USCs or LPRs whose children are abused (need not be children of abuser);
 - Abused children;
 - Abused *intended spouses*, meaning a spouse who entered into a bigamous marriage in good faith;
 - Abused parents of USC children

HYP0

Marco, a 15 year old Salvadoran boy, has an uncle who lives in the United States and send him presents. Two years ago, his uncle brought him an iPhone, which no one else in his neighborhood owned. Several weeks after he received the iPhone, he began to receive calls from anonymous individuals who identified themselves as being in a gang, and who told him they wanted his phone. They told him to go to the town plaza with the phone and to give it to someone who would meet him there. Antonio was very frightened and told his mother. His mother insisted that they call the police, which they did. The police told Marco go to the plaza, and that they would be nearby and would arrest the gang members. Marco did as he was told, and as a result, several gang members were arrested, while others got away. After the arrests, the police suggested to Marco that he and his family move because they (the police) could not protect them. Shortly after, Marco received a summons to come to the court as a witness against the gang members; he also began receiving threats that he would pay the consequences for what he had done. He knew of others who had appeared as witnesses against the gangs and were later killed. He stopped going to school, stayed inside the house night and day, and finally his uncle helped him make his way to the United States.

HYP0

Ana Maria is an indigenous Guatemalan. She is one of six siblings in the family. Her father frequently insulted and beat her mother, pulling her by the hair, pushing her against walls, and kicking and punching her when she was pregnant. When Ana Maria reached the age of eight, she began trying to defend her mother, putting herself between her mother and father. This enraged her father, who began to beat her also. There were no police stations nearby, and in any case, Ana Maria and her mother knew that it was pointless to go to the police, because they would tell them that they didn't get involved in "family matters." The abuse continued, and when Ana Maria reached the age of fifteen, her father began pressuring her into a relationship with Osorio, a 25 year-old man he had picked out for her. He said that she was old enough to marry and that he would not feed her forever. She went with Osorio, hoping that she would come to feel comfortable with him. Osorio began beating and raping Ana Maria. She eventually fled to the U.S.

HYP0

Antonio's parents left him and his siblings in their care of their grandparents and migrated to the United States from Honduras when Antonio was very young. Antonio's grandfather believes he is the master of the house and that children are to obey. He beats Antonio and his siblings whenever he thinks they are behaving badly. One time he beat Antonio's brother with an electrical chord; another time he burned Antonio's sister with a cigarette. When Antonio turned 12 his uncle, who also lived in the home, started coming into his bed at night and fondling him and eventually raped him. Antonio's uncle frequently has parties at the home. Soon after Antonio's rape, the uncle's friends begin raping Antonio too. Sometimes after raping him, they leave money next to the bed. His sister's boyfriend starts calling Antonio a girl and some kids at school call him a "maricon," a derogatory term for gay. Antonio strongly identifies as a heterosexual boy. Eventually he flees to the United States.

HYP0

Carlos is a 17 year old Salvadoran teenager. MS-13 gang members approached him and invited him to join the gang. Carlos resisted and gang members threatened to kill him if he did not join. They punched and kicked him all over his body and held a knife to his throat. Soon thereafter, Carlos' older cousin Jesus was deported back to El Salvador from the U.S. Jesus had been a member of Mara 18 before he fled El Salvador. Carlos and Jesus were talking in town one day when MS 13 members drove by in a car shooting at them, naming them both by name, and yelling that they were both "dead men." Soon thereafter MS 13 members showed up at Carlos's home, but no one opened the door. They stood outside the house yelling that they knew who his cousin was and that first they would kill his cousin and that Carlos would be next. Carlos fled to the U.S.

HYP0

Laura is a 12 year old Honduran girl from San Pedro Sula. She came to the United States when she was 10 to reunify with her parents who had been living and working in Los Angeles since she was three. Laura lived with her paternal grandmother in Honduras. She has a close relationship with her grandmother and never suffered any harm while she was in Honduras, but she knows about other girls who have. Laura has heard gunshots in her town and has seen gang members. She once even saw a dead body in the street, a few blocks from her home. Now that she has reunified with her parents she does not want to leave them again. She is scared to go back to Honduras because “it is dangerous; bad things happen there.”

HYPO (RACHEL AND RAMIRO)

Rachel and Ramiro, teenage twin siblings, grew up in Guatemala. Their parents were very poor and could no longer afford to pay for school once Rachel and Ramiro turned 14 years old. Wanting to help their family, the twins decided to leave their home and travel to the United States, where they hoped to find work. Their parents borrowed money to pay for a coyote to guide them to the U.S. Then, while traveling through Mexico, the twins were kidnapped by members of a Mexican cartel. They were blindfolded with their hands tied and taken to a warehouse, where they were separated. Rachel's kidnappers took her to a room and raped her until she fell unconscious from the pain. They kept her there for three days, raping her repeatedly. They then forced her into the back of a transport truck along with several other girls who had also been kidnapped. The girls were told to stay quiet or they would be killed. The transport truck passed inspection at the U.S. border, and the captives were taken to a house in Houston, Texas. There, Rachel was forced to have sex with several men while her kidnappers profited. One week later, police raided the house, and Rachel was apprehended. She told authorities about her kidnappers and what had happened to her.

HYPO (RACHEL AND RAMIRO)

When the kidnappers first took Ramiro to the warehouse, they kept him in a room with several other teenage boys. They asked if he had any family members or acquaintances in the U.S. who could pay his ransom. When he said no, the kidnappers proceeded to beat him and burn several parts of his body. They told Ramiro he would have to work to pay off the ransom. After one week of torturing Ramiro and the other boys, the kidnappers loaded them up in a truck and drove them close to the border. The boys were tied together by the waist and strapped with large duffle bags of marijuana weighing 75 pounds each. They were instructed to walk in a line while one cartel member led the way with a gun and another cartel member followed behind. The boys were told they were being watched from a distance at all times by cartel members with binoculars and that they would be shot if they tried to escape. The boys trekked in the desert for three days. Ramiro and another boy managed to escape when they took a brief stop and soon turned themselves in to U.S. immigration authorities.