



oasis  
LEGAL SERVICES

## **ASYLUM INTERVIEW PREPARATION PACKET**

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## FIRST STEPS

### ARRANGE INTERVIEW PREPARATION APPOINTMENT

- Arrange to prepare the client for the interview sometime in the few days before the interview date. (It is best not to do the prep more than a week before the interview date.)
  - Tell the client and interpreter that the interview prep session will take around one and a half to three hours.
  - All interview preparations should be held at Oasis.
  - Make sure to find out the language the client will be using and arrange for an interpreter for the prep session.
- Review the client file, including the client's declaration, I—589, and all supporting documents.
- Schedule a time to meet with the attorney of record before your prep session to discuss the case.
  - If the attorney is not in the office, discuss the case with another Oasis attorney prior to the client prep session.
  - Ask client to bring all original documents listed in their document packet to the prep session.
- Check in with the attorney of record or supervising attorney at the end of the prep **before** you let the client and interpreter leave.
- Print new G-28 or lawyer-student letters
  - Bring a G-28 with your information as the attorney. If you are a law student, bring G-28 with your supervising attorney's information and law-student letters. Your supervising attorney can help you with these.
- Call and confirm interpreter a day or two before the interview. Confirm where and when you will meet.
- Take verbatim notes during the interview.

## ASYLUM INTERVIEW PREPARATION MEETING

### LOGISTICS: ARRANGE WITH THE CLIENT WHERE AND WHEN TO MEET

- Fill out the Client Asylum Interview Information Sheet
  - Asylum Office Address:
    - **75 Hawthorne Street, 7<sup>th</sup> Floor**
    - **San Francisco, CA 94105**
- Discuss with the client how they will arrive at the asylum office and where you will meet.
  - Generally, meet at least 30 minutes prior to the interview time on the steps in front of the building
- Explain the logistics of the building to the client
  - Explain building, one security check point at the entrance. Do not bring anything that can be construed as a weapon: metal forks, Swiss army knife, knitting needles, etc. Must take off all metal and shoes before passing through security, including belt, high heels, coats with metal buttons, etc.
  - Client will need to bring photo ID to enter the building, or if the client does not have government issued ID, call (415) 865-3547 to ask the Asylum Office to send someone down to escort the client into the building.
  - Family members may enter the building and come up to the Asylum Office waiting room. They must also bring a government-issued ID.
    - Strongly suggest that your client bring no more than one support person. The support person breaks the attorney-client privilege if you talk about the case with your client while the support person is around. Try to speak to your client alone as much as possible.

### FINGERPRINTS, CRIMINAL ISSUES, DOCUMENTS TO BRING

- Confirm that the client has taken their fingerprints and the Application Support Center (immigration office) when they first applied for asylum. (this is different than taking their fingerprints at our office)
  - If not, we may need to request a fingerprint notice from the Asylum Office, or they will give the client a fingerprint notice on the day of the interview.
- Explain that fingerprints and photo will be taken when you check-in at the Asylum Office for their interview.
- Advise the client that the Asylum Officer will have all records of any criminal or immigration encounters generated by the client's fingerprints.
  - Client must be prepared to address any prior arrests, prior contact with police, or immigration.
- Confirm that certified copies of all criminal encounters are in the client's document packet already.
  - If possible, client should bring certified final court dispositions for all criminal encounters anywhere in the country. If the client does not have these, the Asylum Office may delay making a decision in the client's case.
- Confirm with client that they will bring the originals of all submitted personal documents.
- Confirm that client will bring their copy of the Interview Appointment Notice to check in at the Asylum Office.
  - If the client does not have their notice, you may use the file copy to check in at the Asylum Office.

## **TRANSLATION**

- The interpreter who interprets at the asylum interview is hired by Oasis.
- Asylum Officer will likely call a monitor on a speakerphone at the beginning of the interview to listen to the interview and ensure that the translation is correct. This person is called an interpreter monitor.
- The client may only say one or two sentences at a time, and then must wait for the translator. (It is a good idea to practice this during the prep.)
- The client should address all answers and questions to the officer, not the interpreter. The client may not have any side conversations with the interpreter or the attorney during the interview.

## **CONFIDENTIALITY**

- Everything said during the preparation and during the interview is kept confidential by the Asylum Officer, attorney, interpreter and monitor.
- Asylum Office will not inform the client's family, friends, country or government of anything the client says during the interview.

## **CREDIBILITY**

- The most important thing for the client to remember is to tell only the truth.
  - The client will take an oath to tell the truth at the interview.
  - Lies bar immigration relief. If the client lies in the Asylum Interview they will be denied asylum and they may be barred from ALL immigration remedies in the future.
  - If the client lied to immigration officials in the past, it is likely okay, but it is important to be honest about those lies during their asylum interview.
  - The client should tell you now if they are concerned about telling the truth about something at their interview.
- Explain how the client should answer questions:
  - If you don't know, say you don't know.
  - If you do not remember, say you don't remember.
  - If you do not understand, ask the officer to explain the question.
  - There is NO hurry.
- Look credible: Try to look officer in the eye and dress respectably.
  - Client may dress however they feel comfortable, as long as it is respectful (i.e. nothing too revealing or anything with profanity or nudity)
- Client, interpreter, or representative may ask for a bathroom break or water break if they need one.

## **ASYLUM LAW OVERVIEW**

- Explain the basics of Asylum to the client.
  - Key issue is fear of returning to your country
  - Two ways of getting asylum – past persecution and/or well-founded fear
  - Harm must be on account of, five grounds (race, religion, nationality, political opinion, and particular social group)
  - One-year bar and exceptions
  - Credibility
  - Discretion

## **OVERVIEW OF INTERVIEW**

- The interview will primarily be a conversation between the Asylum Officer and the client.
- Explain to the client your role during the interview.
  - You are there to make sure that everything goes smoothly, but that you will not say much during the interview.
  - That you may ask more questions of the client or make a statement at the end of the interview.
  - That you will write notes the whole time.
- The interview conducted in 3 parts:
  1. Asylum Officer will first go through application form with you
    - a. (biographical data/dates/one-year and reasonable time)
  2. Asylum Officer will ask why you do not want to return to your country.
  3. Asylum officer will ask a series of 'yes or no' questions to make sure you are not barred from receiving asylum.
- Asylum Officer must provide opportunity at the end for the representative to ask questions or make a closing statement (to rehabilitate the client if necessary).

*Representative should consider that the officer may not take the declaration at face value. Push back a little bit if there are inconsistencies to see how the client responds. Ask questions based on inferences from what is in the declaration. Ask questions you know are false to make sure client knows his or her declaration.*

## PRACTICE INTERVIEW

### INTRODUCTION

- Applicant, please stand and raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?
- Translator, do you swear to translate everything fully and accurately?
  - ❖ *Officer calls monitor. Swears monitor in.*
- This interview will take place in three parts. First we will discuss your biographical information as listed in your application, then we will discuss why you do not want to return to your country, and lastly I will ask you a series of questions that I have to ask all applicants.
- You will not receive the decision on your case today. At the end of the interview I will give you a letter that tells you you will come back to this office in two weeks to pickup the decision on your case.
- Are you feeling okay to testify today?
- Are you taking any medications or do you have any medical conditions that might prevent you from testifying today?
- Who helped you prepare this application and declaration?/Did anyone help you prepare this application?
  - ❖ *This is not a trick question, the officer is asking who helped the client fill out the forms and who helped the client write the story and submit the documents. Appropriate answers are for example: "my lawyer" or "so and so at Oasis".*
- After the application was prepared were you given a copy of the application in your language, or were the contents of the application read back to you in your language?
- Are you aware of the contents of your I-589 and declaration?
- Is everything in the application true and correct?
- Are there any changes you would like to make to your application today?
  - ❖ *This is the representative's opportunity to politely let the officer know if there are any changes to the I-589 or Declaration. If there are more than a handful of changes it can help to write a list down to hand to the officer or write an addendum to the Declaration if there are more than a couple words to change. If there are many corrections to the I-589, some officers prefer that corrected I-589 pages be submitted so they can just swap out the old pages.*
- Please show me your passport/identity documents.

## **FORM I-589**

**\*\*Go over EACH AND EVERY box on the I-589\*\***

- What is your full name? Have you used any other names? Address? Phone number? Date of Birth? Etcetera
  - ❖ Have you ever used a different name or birthdate? *If yes, the AO will need to run background checks on that information if they are not already listed on the I-589.*
  - ❖ *Some clients may not be familiar with the concepts of race or ethnicity, so this question may require explanation. Same with citizenship.*
- When did you leave your country? How old were you? When did you enter the U.S.? Where? How did you enter the U.S?
  - ❖ *Remember entries include anytime a client attempted to cross, was caught by U.S. immigration officials, and was returned to their country.*
- Etcetera

## **IDENTITY**

*Identity questions are not very common and almost only arise in very specific cases. Your attorney supervisor will likely alert you if this may be an issue in your case.*

*Identity questions arise in our cases mainly with indigenous Guatemalans who were born in Mexico yet have Guatemalan birth certificate. Make sure to submit supporting documents on issue.*

- *Is this a true birth certificate? How were you able to obtain it if born in Mexico? Who got it for you?*
- *Where were you born in Mexico? Were you born in a hospital? Was your birth registered in Mexico? Were there any witnesses to your birth?*

*Sometimes identity questions arise in other areas to verify a particular ethnic group or tribal affiliation.*

- *Expect questions regarding geography or history of country of origin. The flag, currency, clothing, food, language, etc.*

*Sometimes identity questions arise in other areas to verify a particular religious affiliation*

- *Who is the head of the religion? What are the main tenants of the religion? Etc.*

## **PAST PERSECUTION: WHY DID YOU LEAVE YOUR COUNTRY**

- Why are you applying for Asylum?

### **Harm**

- What was the harm that YOU specifically suffered?
  - ❖ *Cumulative effect of harm can rise to level of persecution.*
  - ❖ *Types of harm: physical or other forms of harm (threats, detention, mental, emotional, economic, severe discrimination)*
  - ❖ *Harm when someone is a child may not need to be as severe to rise to the level of persecution.*
- For each instance of abuse ask:
  - ❖ What happened?
  - ❖ When did it happen?
  - ❖ How old were you?
  - ❖ Where were you?
  - ❖ Who was this person?
  - ❖ How did they harm you?
  - ❖ What did they say when they did that to you?
  - ❖ Why did they do that to you?
- What is the worst thing that happened to you?
- Did you ever go to the doctor/hospital? (Have client get these records! Or be able to explain absence.)

### **How to Show Nexus**

- Direct evidence:
  - *For every instance of harm, ask: What did your persecutor or abuser say to you when s/he beat, hit, attack, detain, etc. you?*
  - *What motivated him/them to do this to you? Why would this person harm you? Why you and not another person?*
- Indirect evidence: *Ask questions related to timing or other signs or signals indicating harm because of convention ground.*
  - *LGBTQIA: Did s/he beat/rape/harm you after s/he found out you are LGBTQIA?*
  - *Did your persecutor or abuser's get worse after you did something that might have indicated you are LGBTQIA?*
  - *DV: Did s/he beat/rape/harm you right after you stated your political opinion? Did s/he beat/rape/harm you right after s/he said you belong to him/her or tried to leave?*

## **STATE ACTOR OR NON-GOVERNMENTAL ACTOR STATE UNABLE OR UNWILLING TO CONTROL**

- Did you ever go to the police? (*Have client get these records or explain why they cannot obtain them*)
- If you didn't go to the police, why not? (*Show futile and dangerous*)
- Did police harm you?
- If the client was a child at the time of the persecution:
  - Did you tell your parents? What did your parents do? Did your parents report to the police? Why not? Why did you not want to tell your parents? Do you think your parents would have believed you or would have punished you if you told them?



- Did you tell a teacher? What did the teacher do/say? Why did you not want to tell the teacher? Do you think the teacher would have protected you?

### **WELL-FOUNDED FEAR: WHY ARE YOU AFRAID TO RETURN**

- What would happen if you return to your country?
- Are you afraid to go back to (country)?
- Who specifically would harm you?
- How would they find you?
- Have you received any threats since you left?
- Are you still in contact with your family left behind? Has your abuser tried to contact them?
- How many other people like you have returned and been harmed?
- Have things changed? Is the situation better now? Why are you still afraid?
- Have you ever returned?
  - If so, were you “out” in public? (holding hands with a same sex partner, openly transgender)
  - How long did you stay?
  - How would it be different if you went back permanently?
- Would the police/government protect you if you returned? Why not? How do you know?

### **INTERNAL RELOCATION**

- Why can't you live in another part of your country?
- Were you “relatively safe” when you lived in X location? (Careful of this question!)
- How would you be recognized/found?
- *Mexico:* Have you heard about the “Zona Rosa”? Have you heard about Gay Marriage in Mexico City? Would you be safe there?

### **OTHER SERIOUS HARM**

*Important if: client has established past persecution and if they may not be able to establish a Well Founded Fear, they can show Other Serious Harm.*

- Do you own a house?
- How is your health?
  - HIV: Meds, therapy, quality of care here, versus being unable to live without medication in X country*
- Bad memories, nightmares triggered by going back?
- Current violence in country of origin?
- Difficulty getting a job, especially in own profession in country of origin? Being unable to make enough money for food or shelter. Do you have a job here? Has it been easy to find work here?
- Discrimination, lack of education, impoverished home conditions?

## ONE YEAR/ENTRY QUESTIONS

Depending on the officer, one-year questions either come just after the I-589 is reviewed or at the end of the interview.

### Within One Year – HAS PROOF

- Visa: What did you tell the embassy about why need visa to come to the United States? Did you make any false statements in order to get visa?
  - ❖ *Usually the answer is YES unless asylum based on changed circumstances (because they lied about intending to stay in the United States) A client must tell the truth; lies with the Embassy is **no big deal if client comes clean now**. Lies at the Asylum Office are a **huge deal**.*
- In-status: Are you still in valid status? If on F-1, are you no longer taking classes or are you working?
  - ❖ *A yes to either part of question, may mean the client is no longer in status. Discuss this issue with supervising attorney.*
- Entry without inspection: How know entered on date on the day you say you entered? Any proof?
- False documents: Did you enter using false or fraudulent documents? Did you make a false claim to U.S. citizenship or use a U.S. passport to enter? What did you say at the border?
  - ❖ *Again, lies to CPB are **no big deal if client admits them now**. Lies at the Asylum Office are a **huge deal**.*
  - ❖ *Discuss false claims to citizenship with your supervising attorney.*

### Within One Year - NO PROOF

- When did you leave your country? Where did you go when you left your country on [DATE]? How old were you? How do you know that was the date you left your country?
- How cross? How long did it take you? (dates, cities/towns, walk/bus)
- How many times did you enter the US? What date(s)? How do you know you entered on the day you said you did?
- Where did you enter? What is the closest border town?
  - ❖ *Phoenix, AZ is not on the border, so have the client explain where think entered and why. Find out if after crossed desert, picked up by car and driven to Phoenix.*
- Picked up by immigration: Did you lie to immigration? What country did you say you were from? Did they ask you if you were born somewhere else? What name(s) did you use? What birthday did you use?
- Coyote: Who made arrangements? Name of coyote? Coyote work for an agency? Were you given false documents?

### Over the One Year

- How enter (see Qs above)? When? Where? Caught?
- The law states that an applicant has one year to file for asylum after entering the United States. Did you file within one year?
  - ❖ *This is about credibility. Client must answer no.*
- Why not?
  - ❖ *This is where your client must explain to the asylum officer why they qualify for an exception to the one-year rule. See 1-3 below.*
  - ❖ *I did not know about asylum IS NOT an exception to the one year rule*
  - ❖ *I was afraid of deportation IS NOT an exception to the one year rule*

### 1)Extraordinary Circumstances: Mental Disability

- *The mental disability must have been continuous from the time they entered the United States until they decided to apply for asylum. They must file within 6 months from the end of the disability. Usually this is calculated from the date the client first contacted Oasis.*
- **Emotional timeline:** How did you feel when you first arrived in the United States? Tell me more about that. Did you feel sad? Did you cry? Did you feel depressed? In what way? Did you trust people? Were you out of the closet?
- **'First learn' Qs:** When was the first time you talked about everything? When did someone first tell you that you can get help? What kind of help? When did you first learn about asylum? When did you first talk to a lawyer?
- **Avoidance:** Has the trauma you experienced made you want to avoid talking about what happened to you? Avoid the authorities? Were you able to work? Go to school? Attend church? Other activities? If you were able to do these things, why couldn't you apply for asylum? First time talk about what happened with someone? First time talk about past in detail?
- **Psych evaluation:** Have you seen therapist? How make you feel when talk about past? PTSD? Depression?
- **Other Qs:** Do you have nightmares? Do you startle easily? Did you have family support here?
- **What Changed:** What changed to allow you to apply for asylum on [Date]?

## **2) Other Circumstances That Explain The Reasonableness Of The Delay.**

- ❖ *Enumerated exceptions are specifically non-exhaustive by regulation.*
- ❖ *Must file within 6 months from the end of the circumstance that is preventing the client from applying.*
- In lawful immigration status (student visa, work visa, TPS) (DACA may not qualify)
- Physical illness
- Taking care of ill partner or child
- Client was under 18 years of age
- Shifted from one agency to another (?)
- Pregnancies/young children (?)
- Cultural isolation (?)

## **3) Changed Circumstances**

- ❖ *Must file for asylum within 6 months of triggering event/change in circumstances*
- **Gender Transition:** When did you start transitioning? How did you start transitioning? Have you had any recent surgery? Are you taking any medications? What are the dates? What are the steps in transitioning? What steps do you personally plan on taking? Do you have proof that you have discussed these steps with a licensed physician?
  - ❖ *Always Get Medical Records of a Transition.*
- **HIV:** Date of diagnosis? Why did you get tested for HIV on that date? Are you taking medications? When did you start taking medications? Has your disease progressed?
  - ❖ *Always Get Medical Records of an HIV/AIDS client. These records will show a change in circumstances AND extraordinary circumstances in re: physical and mental disabilities. Especially highlight for the officer any opportunistic infections and get a letter from the treating physician about how these physical symptoms impaired the client's ability to apply for asylum.*
- **Other Changed Condition** Examples: New threat directed at the client. For example, family recently began receiving death threats to the whole family.

- ❖ *Any change that materially affects the client's ability to qualify for asylum or makes it more probable that the client will be harmed if they return to their country.*

## STATUTORY BARS

### One-year bar

- See section above

### Firm Resettlement

- Did you have any legal status or an offer for legal status in any other country? Why did you leave (third country) where you remained for a while?
- Have you ever been to any countries besides your country and the United States?
- Have you ever applied for immigration status in any other country?

### Persecution of others:

- Have you ever ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group or political opinion?

### Criminal Acts:

- Have you ever been arrested anywhere in the world? Convictions by court?
- Have you ever spoken with or had any interactions with police anywhere in the world?
- Have you committed any crimes anywhere in the world for which you were not arrested?

### Military/Police:

- Have you ever been a member of a military or participated in any kind of military training? Did you ever receive any kind of weapons training?
- Have you ever been a member of the police or received any kind of police training?

### Violent Groups:

- Have you every been a part of a gang or cartel or given any support to a gang or cartel?
- Have you ever been a part of or given any support to a group that advocates violence?
- Have you ever recruited anyone to be a part of a group that advocates violence?

### Terrorism:

- I will now give you a definition of terrorism and then I will ask you some questions...
- Have you ever been a member of a terrorist organization?
- Have you ever given any support or aid to a terrorist organization even if it was against your will?
  - ❖ Support can include giving money, food, water or shelter.

## **CLOSING**

- Is there anything else we have not talked about that you would like to tell me?
  - *You can instruct your client that they do not need to add anything at this point.*
- *Attorney/Representative can now ask questions of the client.*
  - *Make sure to ask nexus questions, especially if Asylum Officer used legalese, or if the answers were weak.*
- *Attorney Representative can ask to make a closing statement or can request to send the officer a closing statement in writing within the next few business days.*
- *Attorney/Representative can ask the officer if they have any particular issues or concerns about the case that the attorney can help address.*
- *Asylum Officer should give client and attorney any Requests for Evidence at this point.*
- *Officer will have client sign the Application and will give the client an appointment to come back for the decision pick-up. Representative should make a note of the date and time. Representative can explain to client after the interview that the representative will not go with the client to pick up the decision and that the client will not need an interpreter unless they would feel more comfortable bringing someone with them.*

## **FINAL COMMENTS**

- ❖ *Tell client to try to relax the night before*
- ❖ *Tell client not to memorize declaration*

## DAY OF INSTRUCTIONS FOR REPRESENTATION AT THE ASYLUM OFFICE

- Before entering the building, practice any problem questions that came up during the prep session.
- Go through security on the 1<sup>st</sup> floor. Everyone will need government issued photo ID. It is okay if the ID is expired. If the client does not have ID then call the Asylum Office at 415-865-3547 and someone will come down to escort the client up.
- Go to waiting room on 7th floor and check in at the window:
  - Show appointment notice
  - Submit G-28 or law student representation letters. Submit interpreter's ID (they will take it and the officer will make a copy and give it back at the end of the interview.)
  - DO NOT submit supporting documents at the window; if you do your case will be rescheduled.
  - Receive interpretation oath form. Sit down and wait. Interpreter should fill out the top portion of the form and read the oath to the client while waiting for the case to be called. DO NOT sign until in front of the officer.
  - The office will use the last three digits of the client's A-number to call the case.
- Client will be called to another window to take photo, prints, and state name and birthday.
- Wait to be called in by the officer. If the wait is more than an hour, check in with someone at the window to find out the timeline. There is a cafeteria on the first floor if they tell you to come back in an hour or two.
- During interview:
  - Use Oasis cover sheet.
    - Write down your name, date, start time of the interview, client's name, officer's full name.
  - Take **VERBATIM** notes.
    - i. Write down all questions and all answers.
    - ii. Note any problems or concerns officer has.
    - iii. Note if the officer is not taking any notes.
    - iv. Note major emotional responses of the client (e.g. if a particular question or issue makes the client break down crying); asides from the officer to the representative; breaks taken; improper behavior on part of the officer
  - Interrupt if necessary (use careful judgment):
    - v. Officer misunderstanding client -> Try to politely clarify.
    - vi. Officer being abusive -> Ask to speak to a supervisor.
  - At the end of interview:
    - vii. Address any questions or concerns of officer
    - viii. Ask Client follow up questions to fill gaps with more testimony.
    - ix. Make Closing Statement or ask to submit a Closing Statement in writing.
      - 1. Use careful judgment whether to make a formal statement or not
      - 2. Keep it brief – under 2 minutes. Time yourself when rehearsing.
      - 3. Address any troublesome issues first
      - 4. If submitting a statement in writing, have your supervising attorney review it before submitting it to the Asylum Office.

## Domestic Violence

Nexus is usually the big issue here. The client can have suffered harm and be in a social group or have a political opinion, but if the harm is not on account of the social group or the political opinion, the AO will deny for lack of nexus. Spend time preparing with the nexus questions.

### HARM

- How was it being married/together with this person?
- How did you meet?
- When exactly did you meet/begin relationship?
- When did things begin to change?
- What else did s/he do to you?
- What happened the first time s/he harmed you?
- What was, in your opinion, the worst thing that s/he did to you?

### CONVENTION GROUNDS

#### Political Opinion

- What was your political opinion? What did you think your rights were in the relationship?
- Did you try to defend yourself? What happened when you did?
- Did you say anything about how you as his/her partner should be treated and what was his/her reaction?
- What rights did s/he think you have? How did s/he introduce you to others?
- What if you disobeyed?

#### Particular Social Group

- Did you ever try to leave/escape? What did you try to do to escape? What happened?
- What did s/he do to you after your escape/ escape attempt?
- Why did you go back?
- Have you tried to get/gotten a divorce? Separation? Restraining order? Why not?
- Is s/he still after you? How?

### NEXUS

- What *motivated* him to do this? What was his “primary motivation?”
- Why did he do this to you?
- Did he say anything to you when he did this?
- What did you say? What did he say in response?
- Did s/he threaten/harm you when you stood up to him/stated your views/disobeyed?
- Do you know if he treated others the same way?
- Why did s/he harm you and no one else?
- Things to keep in mind:
  1. Make sure there is a cause-effect relationship between the PSG status or PO and the harm inflicted.
  2. Emphasize any temporal connection – harm came as retribution *right after* a Political opinion or PSG type trigger.
  3. Emphasize any dialogue that occurred
  4. Emphasize the impunity that this kind of abuse meets in the local society
  5. De-emphasize any substance abuse that was involved in abusive episodes
  6. De-emphasize any characteristics that sound like marital squabbling





## LGBTQIA and HIV/AIDS Cases

*Social Distinct of the PSG can be an issue in LGBTQIA and HIV/AIDS cases. Matter of C-A-, 23 I&N Dec 951, 956-957 (BIA 2006) and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014); Matter of M-E-V-G-26 I&N Dec. 227 (BIA 2014) require that (1) the characteristic is immutable, (2) the PSG is actually perceived as a group by society and that (3) the group has discrete and definable boundaries. Can be hard to show social distinction of "People with HIV"; thus in LGBT and HIV cases it is best to use HIV as other serious harm. With straight HIV cases you must demonstrate social distinction. Also note, often LGBT and HIV cases overlap with Domestic Violence case. Either ground can win asylum.*

### HARM

*The Officer will parallel the declaration. The officers all know that LGBT and HIV/AIDS cases generally have a lot of past persecution.*

- Why did you leave your country?
- When was the first time you were mistreated?
- How many times were you mistreated?
- Who mistreated you?
- How did this person mistreat you?
- What was, in your opinion, the worst thing that s/he did to you?

### CONVENTION GROUNDS

#### Political Opinion

- What is your political opinion? How do you believe LGBTQIA and people living with HIV/AIDS should be treated? What rights do LGBTQIA and people living with HIV/AIDS have?
- Have you joined any groups in your country which reflect these rights?
- Have you expressed this opinion to another person? What happened when you did so?

#### Particular Social Group

- What evidence do you have to show that you are LGBT or a person living with HIV/AIDS?
- LGBT
  - ❖ **Note:** *The 9<sup>th</sup> Circuit has said that the AO cannot use the client's appearance as a factor to prove membership in a PSG; however, the AO does. Clients should dress how they feel comfortable and be themselves.*
  - ❖ What does it mean to be gay?
  - ❖ When did you first realize you were gay?
  - ❖ Who have you told that you are gay?
  - ❖ Have you gone to any gay establishments? When? What is the establishment's name? Where is it?
  - ❖ Have you had any homosexual relationships? When were they? What was the name of your partner? How long were you together? Were you together openly? What types of things did you do together? Are you still together or have you broken up?
  - ❖ Have you ever had a relationship with a member of the opposite sex? Did you marry that person? Why?
  - ❖ Does the gay community have any large events in the San Francisco Bay Area? Which ones? Where are they located? When are they held
    1. San Francisco Pride – Civic Center – Last Sunday in June

- 2. Folsom Street Fair – Folsom Street in SOMA – Fourth Sunday in September
- HIV/AIDS
  - ❖ When were you diagnosed?
    1. Always get a letter of diagnosis
  - ❖ How would people in your country know of your HIV status?
    1. Does the country respect medical confidentiality?
    2. Are there separate clinics for persons living with HIV/AIDS?

#### **NEXUS**

- What *motivated* him to do this? What was his “primary motivation?”
- Why did he do this to you?
- Did he say anything to you when he did this?
- What did you say? What did he say in response?
- Did he threaten/harm you when you stood up to him/stated your views/disobeyed?
- Do you know if he treated others the same way?
- Why did he harm you and no one else?
- Things to keep in mind:
  - ❖ Make sure there is a cause-effect relationship between the PSG status or PO and the harm inflicted.
  - ❖ Emphasize any temporal connection – harm came as retribution *right after* a PO or PSG type trigger.
  - ❖ Emphasize any dialogue that occurred
  - ❖ Emphasize the impunity that this kind of abuse meets in the local society
  - ❖ De-emphasize any substance abuse that was involved in abusive episodes

#### **FUTURE HARM**

- Who will hurt you?
- Why will they hurt you?
- Could you move to another part of the country and be safe?
  - ❖ If Mexican – Why can’t you move to the Zona Rosa?

#### **ANYTHING ELSE TO ADD?**

*The officer will ask the client if she would like to say anything else that has not already been discussed. You should explain to the client that they can just say, “Thank you,” unless she feels like something big is missing. This is not an opportunity for a client to re-tell what has already been told.*

#### **ADDITIONAL TESTIMONY/ CLOSING STATEMENT**

- The one year bar is always the most important issue in LGBT cases. Make sure the officer is okay with it.
- Other than that, be sure and rehabilitate the client if any credibility issues arise.

For complicated narratives, make sure to prepare a timeline before the interview.

## Gang Cases

Gang cases can be difficult because often there is not a clear nexus. Below are some samples of possible nexus for gang cases.

### HARM

- Why did you leave your country?
- When was the first time you were mistreated?
- How many times were you mistreated?
- Who mistreated you?
- How did this person mistreat you?
- What was, in your opinion, the worst thing that they/he/she did to you? *Be careful of this question. Answer truthfully, but make sure to tie in to nexus ground.*

### CONVENTION GROUNDS

#### Political Opinion

- What was your political opinion? Did you tell the gang that you did not want to join them? Did you tell them why you did not want to join them? How did they react when you told them your reasons?
- Did you ever speak out against the gang or gang activities in general?
  - ❖ *Make sure that the applicant has stated what their own personal PO is!*
- Did anyone in your family ever speak out against the gang or gang activities in general?
  - ❖ *Imputed political opinion*

#### Particular Social Group - Family

- Did the gang ever extort or threaten anyone in your family? What would have happened if that family member did not do what the gang wanted? Would the gang have hurt you because the family member did not do what the gang wanted?
- Did the gang recruit anyone else in your family? Did this family member join or did they run away? Did they do this before or after they threatened you?
- When the gang approached you did they say anything about your family or any family member?
- Do you think the gang members targeted you because of something that your family member did or did not do? Why do you think this? What did the gang say to make you think this?

#### Particular Social Group – Women who are viewed as property by the gang (Not being recognized currently by the AO as a valid PSG)

- What did the gang members say to you?
- Did the gang members say anything about the fact that you are a woman?
- Did the gang members say why they thought they could do this to you?
- Did the gang members say what would happen if they saw you with someone else? Did they say they would do this to you again?

#### Religion

- Did you go to church? What kind of church?
- Did the pastor or anyone at the church say anything about the gang? What did they say? Do you think the gang members knew what the church said? Why do you think they knew? Was there a loud speaker at the church?

- Did the gang members see you going to church? Did they ever approach you/attack you on your way to or from church?
- Did the gang members ever say anything to you about the church, the pastor, god, or religion? How did you respond when they said that?
- Did you ever say anything to the gang members about the church, the pastor, god, or religion? How did the gang members react when you said that?

#### **Race – Indigenous**

- What is your race or ethnicity? Do you or your family wear traditional clothing? Do you speak [indigenous language]? How would someone be able to tell that you are indigenous?
- What race or ethnicity were the gang members? Were they Ladino? How do you know? What kind of clothes were they wearing? What language did they speak?
- Did the gang members speak to you in [indigenous language] or in Spanish?
- Did the gang members say anything about the fact that you are indigenous or say any insults to you?
- Do you think that the gang members targeted you or hurt you more because you are indigenous?
- Do the police in Guatemala protect indigenous people from the gangs? How do you know?

#### **Other**

- Did the gang think you were a member of or supported another gang?
- Did you ever report any of the gang's threats, harm, or activities to the police or other authorities? If so, did the gang know you had done so?

#### **NEXUS**

- What *motivated* them to do this? What was their “primary motivation?”
- Why did they do this to you?
- Did they say anything to you when they did this?
- What did you say? What did they say in response?
- Did they threaten/harm you when you stood up to them/stated your views?
- Do you know if they treated others the same way?
- Why did he harm you more than other people?
- ❖ *Things to keep in mind:*
  - ❖ *Make sure there is a cause-effect relationship between the Convention Ground and the harm inflicted.*
  - ❖ *Emphasize any temporal connection – harm came as retribution right after a political opinion is stated, right after or before church, right after or before a family member acts or does not act.*
  - ❖ *Emphasize any dialogue that occurred*