



ASYLUM MANUAL

2nd Edition

June 2021

**A STEP-BY-STEP GUIDE FOR
SAFE PASSAGE PROJECT
PRO BONO ATTORNEYS**

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All Materials in the 1st (2017) Edition were written and compiled by Safe Passage Senior Attorney and New York Law School Adjunct Professor, Bethany L. Ow, and Safe Passage Deputy Executive Director and Co-Founder, Gui Stampur.

INTRODUCTION TO THE SAFE PASSAGE PROJECT AND THE LEGAL NEEDS OF UNACCOMPANIED IMMIGRANT CHILDREN

Safe Passage Project is a 501(c)(3) non-profit organization that provides legal representation and social work support to unaccompanied immigrant children facing deportation. Safe Passage began as a clinic at New York Law School that sought to train and mentor attorneys aiding unrepresented immigrant children.¹ Since the formation of the clinic in 2006, the need for *pro bono* representation of child respondents in immigration court has grown exponentially. Today, Safe Passage Project is both an independent non-profit housed at New York Law School serving nearly 700 young clients, and a law school clinic training law students to serve this population.

Safe Passage Project conducts legal screenings at immigration court and then matches children with *pro bono* attorneys and with in-house staff attorneys. Having legal representation in immigration proceedings is absolutely essential. Without a lawyer, a child is unlikely to be able to defend herself effectively, even if she is eligible for relief that would allow her to stay in this country. Based on our experience and review of data published by the Executive Office for Immigration Review,² we estimate that with legal representation, over 90% of children in immigration proceedings are permitted to remain in the United States. Without representation, almost 85% are ordered deported.

New York State has several immigration courts hearing non-detained cases. These are located in New York City and Buffalo. While Safe Passage Project accepts cases of children who reside throughout New York State, our focus is on the children scheduled to appear at the New York City Immigration Courts located at 26 Federal Plaza, 290 Broadway, and 201 Varick Street in lower Manhattan. Safe Passage Project conducts monthly and sometimes bi-monthly screenings of child respondents at the New York City Immigration Court to identify the forms of possible immigration relief available to these children. Due to the COVID-19 global pandemic and related court closures, screenings are currently being conducted virtually. Once screened, Safe Passage Project either accepts cases in-house or recruits *pro bono* attorneys to work directly with the children. Safe Passage Project mentor attorneys work side by side with *pro bono* attorneys, volunteer interpreters, and law students in order to provide comprehensive legal services to our clients. In addition to legal services, Safe Passage Project has a social work team which coordinates the provision of essential social services in order to help children access medical and mental health care, enroll in school, and navigate their new home.

¹ This manual provides detailed information and instructions on how to work with a child and prepare her asylum application. Additional materials are available when an attorney accepts a case for *pro bono* representation. We regret that we cannot share sample documents or pleadings under any other circumstances. We do not post our pleadings, samples, or other similar information on the public website.

² TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC), REPRESENTATION FOR UNACCOMPANIED CHILDREN IN IMMIGRATIONCOURT, <http://trac.syr.edu/immigration/reports/371/> (last accessed June 1, 2021).



In the spring of 2008, the New York State Bar Association recognized Safe Passage Project's innovative work by awarding it the President's Pro Bono Award. Safe Passage Project has additionally received a "Pro bono Hero" Award from the American Immigration Lawyers Association (AILA). In 2014, Safe Passage was selected to receive grants from New York City Council, Robin Hood Foundation, the Justice AmeriCorps program, and private foundations. Today, Safe Passage Project's work is made possible by the generous support of numerous foundations, trusts, and private donors, as well as local, state, and federal grants. Safe Passage Project is extraordinarily grateful for the financial and in-kind support we have received from New York Law School.

This is a moment of unprecedented uncertainty for our clients. The Trump administration spent four years attempting to dismantle all forms of humanitarian protection for immigrants, in particular Central Americans entering at the southern border. Case law at the Board level, often through the Attorney General "certifying" settled precedent to himself and reversing it, regulations making asylum eligibility unreachable and expanding bars to asylum, and policies such as the "Remain in Mexico" program that sent asylum seekers back to Mexico and made them litigate their cases from there, have all deeply impacted the way immigration attorneys practice and work with clients. Many of the regulations are currently enjoined by Federal Courts. We do not know what, if anything, the incoming Biden administration will do to reverse these changes though we remain hopeful. On top of that, the non-detained docket in New York has been closed since March of 2020 due to the COVID-19 Global Pandemic and we do not know when it will reopen. Amidst this uncertainty, however, we must continue to competently and compassionately represent the children that have continued to come, fleeing violence, neglect, and abuse. It is more important than ever that we continue to show up for these young people whose eligibility for protection from removal is often time-sensitive and untethered to the existence of a functioning immigration system.

For more information about the Safe Passage Project, or to volunteer, please visit our website at www.safepassageproject.org. Lawyers and students can complete the online volunteer registration forms to be added to our email lists or may reach out directly to Safe Passage Managing Attorney for Training and Partnerships, Alexandra Rizio, arizio@safepassageproject.org. We also welcome bilingual volunteers who can serve as interpreters.



HOW TO USE THIS MANUAL

This manual is designed to help attorneys understand how to work with children who are seeking asylum in the United States. While our focus is on assisting pro bono attorneys who have little or no experience working with children or asylum law and procedure, we hope that all attorneys benefit from these pages.

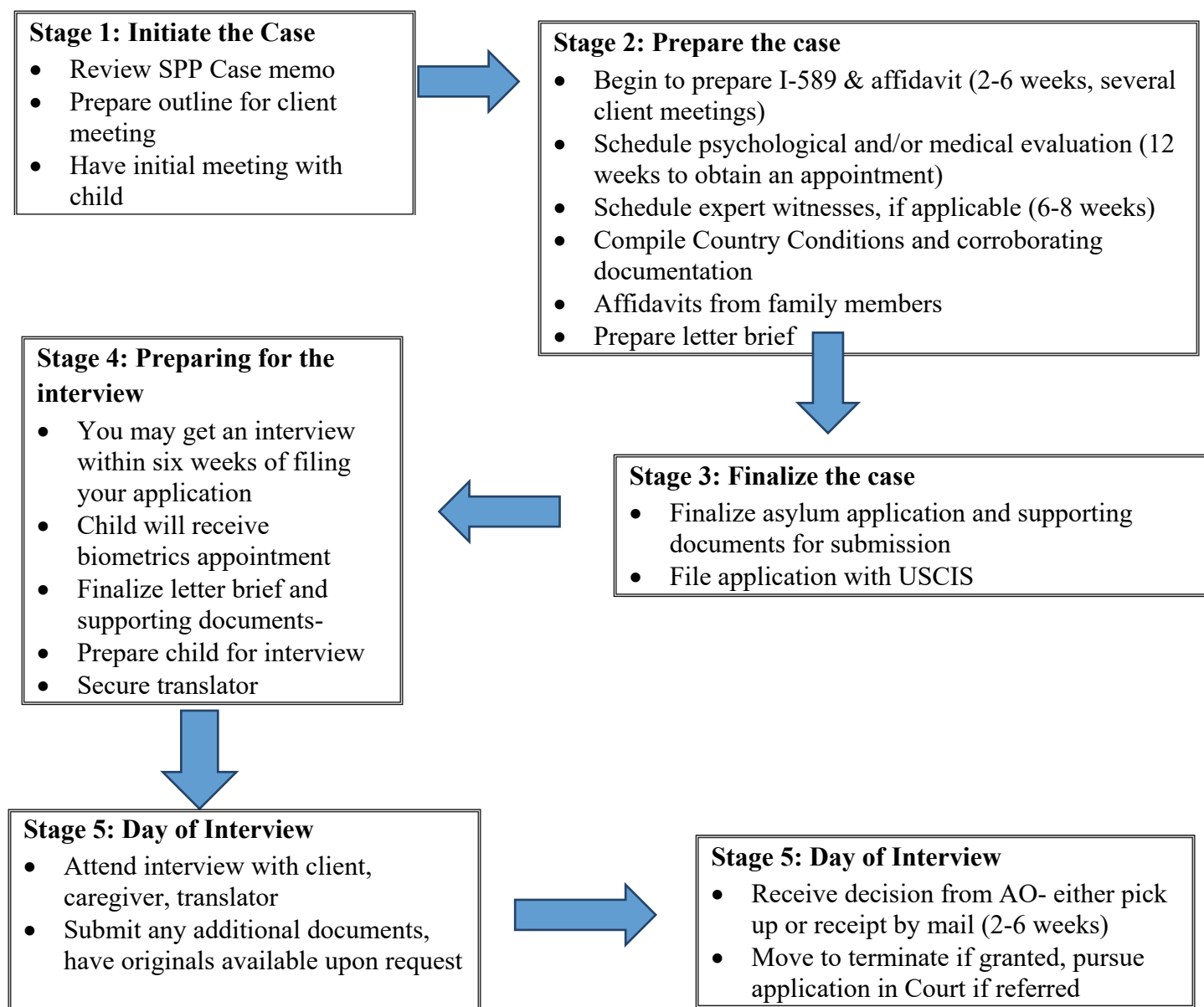
Please note that the content of this manual should not be construed as legal advice and is not a substitute for advice from a licensed attorney.

We have organized the material in this manual into seven steps with a Resource Appendix at the end.

Please take the time to read through each step, especially Steps One to Three, before your initial interview with your client.

THE LIFE CYCLE OF A CHILD'S ASYLUM CASE

Below you will find the life cycle of a child's asylum case. Many steps in the process occur simultaneously. While the listed timing is approximate, you can see that it takes months to work with a child to present a well-prepared asylum claim.



STEP ONE: BECOMING FAMILIAR WITH ASYLUM FOR CHILDREN

Under U.S. immigration law, any person fleeing persecution who arrives at our borders, or is already in the United States, may seek asylum protection.³ While this premise is simple, the process an asylum-seeker must navigate in order to obtain such protection is incredibly complex.

In order to qualify for asylum, an applicant must prove that she meets the definition of a refugee, that she is statutorily eligible to apply for asylum, and that she should be granted asylum as a matter of discretion.⁴ While an individual does not need to obtain legal assistance to file for asylum, applicants with legal counsel are much more likely to receive a favorable decision.⁵ This is especially true for child applicants.⁶

The majority of the children we work with come from the Northern Triangle of Central America, which includes Guatemala, Honduras, and El Salvador. This area is one of the most dangerous in the world with incredible rates of homicide and gender-based and sexual violence. The rise of violence is linked to gangs that have grown increasingly powerful and use violent means to control the areas in which they operate.⁷ This has led a huge number of young people to flee the area and seek protection in the United States.⁸

International and U.S. asylum law recognize that children are at greater risk of suffering abuse, persecution, and torture and thus are in need of greater protection.⁹ Children are afforded several

³ INA § 208(a)(1). We use the Immigration and Nationality Act citations throughout this document as these are the preferred citation forms for practice before the agencies and the immigration court. You can find the INA in its codified form within 8 U.S.C. §§ 1101, et seq.

⁴ INA §§ 101(a)(42)(A); 208(b)(1)(B)(i).

⁵ See TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC), REPRESENTATION FOR UNACCOMPANIED CHILDREN IN IMMIGRATION COURT, <http://trac.syr.edu/immigration/reports/371/> (last accessed June 1, 2021).

⁶ See *Id.* (compiling data from FY2012-FY2014 showing that 73% of children were allowed to stay in the United States in cases where unaccompanied children were represented versus only 15% in cases where unaccompanied children were unrepresented).

⁷ See COUNCIL ON FOREIGN RELATIONS, “Central American’s Turbulent Northern Triangle,” <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle> (last accessed June 1, 2021).

⁸ See SONIA NAVARRO, ENRIQUE’S JOURNEY (2007) (a detailed account of how unaccompanied children travel from the Northern Triangle to the United States).

⁹ See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS (2011), <https://www.unhcr.org/en-us/publications/legal/5ddfcde47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html> (hereinafter UNHCR HANDBOOK) (last accessed June 1, 2021); USCIS ASYLUM DIVISION, ASYLUM OFFICE BASIC TRAINING COURSE GUIDELINES FOR CHILDREN’S ASYLUM CLAIMS (2009), Asylum Officer Basic Training Course, Guideline for Children’s Asylum Claims, (hereinafter AOBTC GUIDELINES), <https://www.refworld.org/docid/4f3e30152.html> (last accessed June 1, 2021).



additional safeguards when they are apprehended at the U.S. border.¹⁰ For our purposes, the three most important of these safeguards, “unaccompanied alien child” designation, USCIS Asylum Office jurisdiction, and the One-year Bar Exemption are discussed below.

A. UNACCOMPANIED ALIEN CHILD” DESIGNATION

The majority of the children Safe Passage works with have been classified by the U.S. government as “unaccompanied alien children” (UACs or UCs), a legal designation given to them upon their apprehension at the border.¹¹ To be considered a UC at the time of apprehension, a child must

- 1) Be under the age of 18;
- 2) Have no lawful immigration status in the United States; and
- 3) Have neither a parent nor a legal guardian available to provide them with care or physical custody.¹²

Under current policy, once a child has been designated a UC, she continues to be a UC throughout her immigration removal proceedings, even if she reunites with a parent or has an adult appointed as her legal guardian.¹³

HOWEVER, in February of 2017, President Trump instructed the federal agencies to consider altering the treatment of UC cases. In 2019, the Department of Homeland Security (DHS) issued new guidance, stripping UC protections from children who turn 18 or reunite with parents upon arrival in the United States.¹⁴ A number of organizations sued to stop USCIS from applying this new policy in a case called

¹⁰ See Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044; MINOR CHILDREN APPLYING FOR ASYLUM BY THEMSELVES, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves> (last accessed June 1, 2021).

¹¹ We prefer the acronym “UC,” for while the term “alien” is part of the statute, it is also dehumanizing. Recent guidance from the Biden administration instructs government agencies to use language other than “alien,” despite the statute.

¹² See 6 U.S.C. § 279(g)(2). Note this statute is not integrated directly into the Immigration and Nationality Act. For a useful summary of the evolution of the term “UAC” and the safeguards available once a child has been deemed a UAC, see DREE K. COLLOPY, AILA’S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE 884-898 (7th ed. 2015). See also 6 U.S.C. § 279(g)(2), MIGRATION POLICY INSTITUTE, “UNACCOMPANIED IMMIGRANT CHILDREN: A GROWING PHENOMENON WITH FEW EASY SOLUTIONS,” <https://www.migrationpolicy.org/article/unaccompanied-immigrant-children-growing-phenomenon-few-easy-solutions> (last accessed June 1, 2021).

¹³ See “Q&A: UPDATED PROCEDURES FOR DETERMINATION OF INITIAL JURISDICTION OVER ASYLUM APPLICATIONS FILED BY UNACCOMPANIED ALIEN CHILDREN,” <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/minor-children-applying-for-asylum-by-themselves> (last accessed June 1, 2021).

¹⁴ See TVPRA § 235(d)(7)(B); USCIS ASYLUM DIVISION MEMO: UPDATED PROCEDURES FOR DETERMINATION OF INITIAL JURISDICTION OVER ASYLUM APPLICATIONS FILED BY UNACCOMPANIED ALIEN CHILDREN, MAY 31, 2019 <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/minor-children-applying-for-asylum-by-themselves> (last accessed June 1, 2021).



J.O.P. et. al. v. Department of Homeland Security. The plaintiffs won a preliminary injunction on October 15, 2019 and that injunction remains in effect as of the date of this writing. You can find case updates on the website of CLINIC one of the plaintiff organizations, at <https://cliniclegal.org/resources/litigation/jop-v-dhs-class-action-lawsuit-seeks-protection-asylum-seekers-who-arrived>.

In September 2017, the Chief Counsel for the Executive Office for Immigration Review (EOIR) issued a legal opinion determining that immigration judges have the authority in some instances to determine whether or not a child is still a UC and thus still eligible for certain protections under the statute. Thanks to the preliminary injunction in place in *J.O.P v. DHS*, some judges have been willing to continue to allow UC's time to apply for asylum with the asylum office prior to scheduling an individual hearing, or to grant a continuance where a child is awaiting an interview with the asylum office.

As the changing government policies create insecurity in the UC definition, it is important to not rely too heavily on the benefits children obtain by being UCs, and to work diligently to prepare and file all application for relief as expeditiously as possible.

1. FILING WITH USCIS ASYLUM OFFICE VS. EOIR IMMIGRATION COURT

Unlike adult asylum seekers in immigration removal proceedings, children designated as UCs have a choice of jurisdiction. UCs are able to have their asylum applications heard by an asylum officer in a non-adversarial interview, instead of presenting their cases in immigration court to an immigration judge, where they are subjected to cross-examination by a government attorney.¹⁵ This does not forego the opportunity to later try your asylum case before an immigration judge. While the asylum office interview is still a stressful experience, it is easier for most children to explain what they have been through in this more intimate and less confrontational setting. If the UC applicant's asylum application is successful before the asylum office and asylum is granted, the government attorney or the child's attorney may make a motion to terminate the removal proceedings.

In general, adults must file for asylum within one year of their arrival into the United States or be barred from seeking asylum.¹⁶ Children designated as UCs are not subjected to this one-year filing deadline.¹⁷ **However**, we strongly suggest preparing and filing a UC's asylum application as soon as possible.

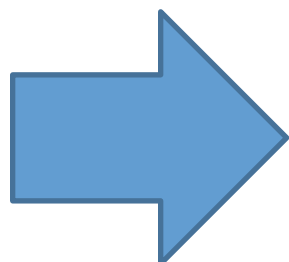
Similarly, if a UC has already turned 18 years of age, we recommend filing her asylum application as soon as possible, and within a reasonable period given the circumstances. There is no clear statutory

¹⁵ <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves> (last accessed June 1, 2021).

¹⁶ INA § 208(a)(2)(B).

¹⁷ INA § 208(a)(2)(E).

language that explains the post one-year filing deadline for UCs over 18 years of age, but USCIS policy has been to accept their filings as long as they were designated as an unaccompanied minor upon their initial entry into the United States.



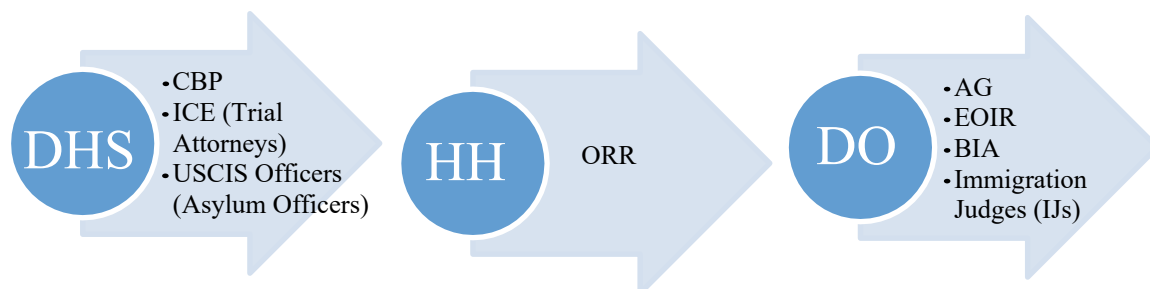
IMPORTANT! If there is concern that your client may lose her UC designation, for example she is turning 18 years old, is reunited with a parent, or the government has indicated they plan to rescind the designation, make sure to contact your Safe Passage mentor attorney. It may be best to make a defensive filing at immigration court in order to lock in a filing within one year of entry. We will work with you on this process if together we determine it might be best for your client.

If a child was never designated as a UC but is under the age of 18, they are likely not subject to the 1-year filing deadline, and you should be able to argue that she qualifies for the extraordinary circumstances exceptions to the one-year filing bar.¹⁸ However, if you have any specific questions or concerns regarding how the one-year filing deadline may apply to your client, please contact your Safe Passage mentor attorney.

STEP TWO: UNDERSTANDING THE LEGAL BASIS OF THE ASYLUM APPLICATION

Asylum is a complex area of immigration law. Before beginning to work on your client's asylum claim, it is important to have a good grasp of the legal basis behind a request for asylum, and which government agencies are involved in the adjudication process. In this step of the manual, we provide a brief overview of the law of asylum.

A. THE GOVERNMENT AGENCIES IN CHARGE OF THE ASYLUM PROCESS



¹⁸ See INA § 208(D); 8 C.F.R. §§ 208.4(a)(4) and 208.4(a)(5). See also 8 C.F.R. § 1208.4(a)(5) (provides that the term “extraordinary circumstances” shall refer to events or factors beyond the alien’s control that caused the failure to meet the one-year deadline. Such circumstances shall excuse the failure to file within one year). See also *Matter of Y-C-*, 23 I&N Dec. 286 (BIA 2002).



The U.S. Department of Homeland Security (DHS)¹⁹ administers and enforces immigration law.²⁰ Customs and Border Protection (CBP) is responsible for inspecting visitors and cargo at ports of entry and trying to secure the U.S. borders. It has the authority to arrest, detain and transport noncitizens, and it operates within 100 miles of any US land or sea border. Immigration and Customs Enforcement (ICE) is in charge of interior enforcement, and care and custody of accompanied minors. Government trial attorneys in immigration court are ICE employees. U.S. Citizenship & Immigration Services (USCIS) is responsible for processing and making decisions on all applications for immigration benefits. Asylum Officers (AOs) adjudicate the asylum applications filed by unaccompanied children (UCs) and all other applicants who are not in removal proceedings.

The U.S. Department of Health and Human Services (HHS)²¹ is tasked with enhancing and protecting the health and well-being of all Americans. The Office of Refugee Resettlement (ORR) is in charge of the care and custody of unaccompanied minors.

The U.S. Department of Justice (DOJ) enforces U.S. law.²² The Attorney General (AG) represents the United States in all federal complaints, and has the power to overrule decisions made by the BIA. The Executive Office for Immigration Review (EOIR) adjudicates immigration court proceedings. The Board of Immigration Appeals (BIA) reviews the decisions made by immigration judges, and has the authority to issue precedential decisions binding on IJs, as well binding on ICE, USCIS, and CBP. Immigration Judges (IJs) adjudicate cases of individuals in removal proceedings.

B. WHAT IS ASYLUM?

Asylum is a form of humanitarian immigration protection for people who are physically in the United States or at a port of entry, and have suffered past persecution or fear return to their home countries where they have a well-founded fear of persecution.²³ In the United States, the law of asylum is governed by section 208 of the Immigration and Nationality Act (INA).

A grant of asylum allows a person to work, travel, terminate removal proceedings, and apply to adjust her immigration status to that of a lawful permanent resident (LPR) after one year as an asylee.²⁴ A

¹⁹ The brief descriptions in this section highlight only the parts of the government agencies relevant to our discussion. Each agency is involved in numerous other functions.

²⁰ U.S. DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/> (last accessed June 1, 2021).

²¹ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, <https://www.hhs.gov/about/index.html> (last accessed June 1, 2021).

²² THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/> (last accessed June 1, 2021).

²³ For a brief history of U.S. asylum law, see DREE K. COLLOPY, AILA'S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE 1-33 (7th ed. 2015).

²⁴ USCIS, BENEFITS AND RESPONSIBILITIES OF ASYLEES (2015), <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/benefits-and-responsibilities-of-asylees> (last accessed June 1, 2021).



grant of asylum also allows the person to access certain public benefits and petition for derivative status for her spouse and unmarried children under the age of 21.²⁵ Upon becoming a United States citizen the person may also be able to sponsor parents to come to the United States.

On December 11, 2020, the Trump administration finalized regulations, known among asylum advocates as the “Death to Asylum” asylum regulations, that would impact essentially every aspect of asylum law and make it virtually impossible for Central Americans to win asylum. On January 8, 2021, three days before the regulations were set to go into effect, a Judge in the Northern District of California ordered a preliminary injunction, barring the regulations from going into effect. That preliminary injunction remains in effect and we hope to never see those regulations go into effect. The asylum law reflected in this chapter is as it is now, absent implementations of those regulations.²⁶

To obtain asylum protection, a person must establish the following:

- 1) Meet the definition of a refugee under INA § 101(a)(42)(A);
- 2) Prove that she is statutorily eligible to apply for asylum; and
- 3) Demonstrate that she should be granted asylum as a matter of adjudicator discretion.²⁷

While simply stated, the process of establishing the above can be very complicated. Under INA § 101(a)(42)(A), a refugee is:

any person who is outside any country of such person’s nationality, or in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself to the protection of, that country because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

We find it useful to break this definition into the following checklist of essential elements to address as you prepare your client’s asylum claim:

²⁵ *Id.*

²⁶ *Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.*, Case No. 20-cv-07721-SI, (N.D. Cal. Nov. 19, 2020).

²⁷ INA §§ 101(a)(42)(A); 208(b)(1)(B)(i).

1. DEFINITION OF A REFUGEE: CHECKLIST

- **Any person who is**
 - **Outside any country of such person's nationality, or**
 - **In the case of a person having no nationality, is outside any country in which such person last habitually resided, and**
- **Who is**
 - **Unable or unwilling to return to, and**
 - **Unable or unwilling to avail himself or herself of the protection of that country,**
- **Because of**
 - **Persecution or**
 - **A well-founded fear of persecution**
- **By the government or a person or group the government is unable or unwilling to control**
- **On account of**
- **A protected basis**
 - **Race**
 - **Religion**
 - **Nationality**
 - **Membership in a particular social group**
 - **Political opinion**

We will discuss each element in detail in sections D-F below. Keep this “Definition of a Refugee” checklist in mind throughout the preparation of your client’s case to help you remain cognizant of how interrelated each element is with the next.



In order to establish statutory eligibility, your client must prove the following:

- ✓ Cannot be removed to a safe third country (does not apply to UCs)
- ✓ Filed within one-year of entering the United States (does not apply to UCs)
- ✓ Did not previously receive an asylum denial
- ✓ Has not “ordered, incited, assisted or otherwise participated” in the persecution of others
- ✓ Has not been convicted of a “particularly serious crime” in the United States
- ✓ No reason to believe that she has committed a serious non-political crime outside of the United States
- ✓ No reasonable ground for regarding her as a danger to the security of the United States
- ✓ Does not meet the definition of a terrorist, has not participated in terrorist activity, and has not given material support to a terrorist organization
- ✓ Was not firmly resettled in another country before arriving in the United States.²⁸

These bars to asylum will be addressed in detail in section I below. If any evidence indicates that a statutory bar to asylum may be applicable, the child will have the burden to prove that the bar does not apply and that she remains eligible for asylum.²⁹

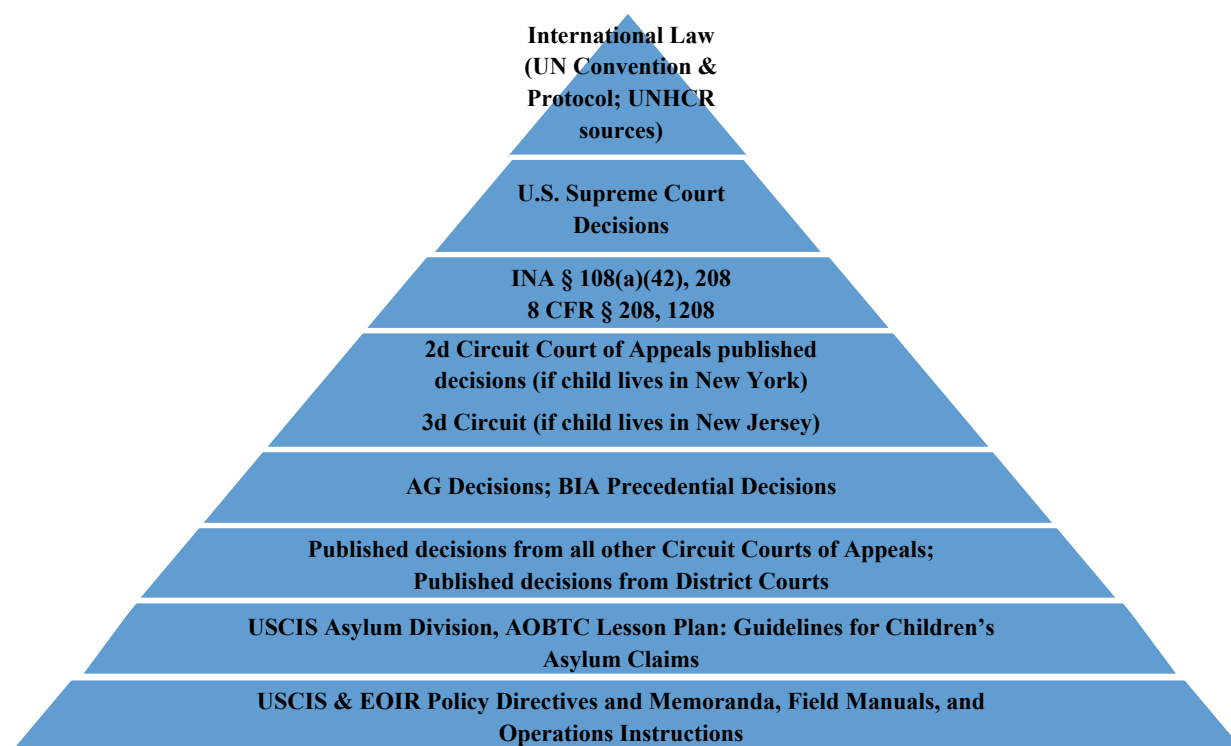
The final piece to the asylum eligibility puzzle is to prove to the adjudicator that the child deserves to be granted asylum protection. This is completely up to the adjudicator’s discretion. Remember that no matter how organized and coherent your written legal arguments and supporting documents are, other factors such as the child’s testimony and demeanor matter just as much if not more in the adjudicator’s assessment of overall asylum eligibility. Discretion will be further discussed in section C.3. below.

2. THE SOURCES OF ASYLUM LAW

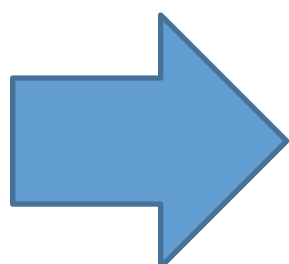
There are several federal bodies that are charged with interpreting the refugee and asylum laws. Within the U.S., the DHS USCIS Refugee, Asylum, and International Operations Directorate (RAIO) manages the affirmative asylum process. If a case is not granted by the RAIO asylum offices, an Immigration Judge (IJ) will review and adjudicate the case *de novo*. IJ’s are bound by the relevant Federal Circuit case law (the Circuit that controls the location of the Immigration Court) and by BIA decisions. As you prepare your client’s asylum application it is important that you cite to the correct source of law in order to present the adjudicator with the strongest legal arguments. Below is the hierarchy of legal sources of asylum law:

²⁸ INA §§ 208(a)(2); 208(b)(2).

²⁹ INA § 208(b)(1).



Though U.S. asylum law is rooted in and stems from the international sources of refugee law at the top of this pyramid, many adjudicators consider these secondary sources. Feel free to cite to these sources, but make sure to rely on U.S. statutes, regulations and case law when available. This pyramid reflects the fact that the law asylum adjudicators considers often begins with Policy Directives and Agency Guides, though the true source is international treaty law.



IMPORTANT: Know your adjudicator. Asylum Offices turn first to relevant Federal Circuit case law and to the BIA cases interpreting statutory and regulatory provisions. While not at the top of the legal source pyramid, BIA precedential decisions are by far the most important to cite or distinguish, as these decisions are binding on asylum officers and immigration judges unless modified or reversed by Circuit or Supreme Court decision.

When preparing your legal brief remember this hierarchy and make sure that you are quoting the highest authority available for both matters of law and fact. For example, for a child living on Long Island, a Sixth Circuit case may have similar facts, but, it will be much more persuasive to the adjudicator to find a Second Circuit case with similar facts to rely on.

C. ASYLUM ADJUDICATION: THE JOB OF THE IMMIGRATION JUDGE AND THE ASYLUM OFFICER

For the purposes of this manual we will focus on the USCIS asylum officer (AO) as the adjudicator of your client's asylum petition. However, do keep in mind that if the AO does not approve your client's case, she will refer the petition back to the EOIR immigration judge (IJ) who will have review the entire application de novo and you will have an opportunity to update and supplement the evidence. Ultimately, if the IJ denies the case, your client will have the right to appeal the decision to the BIA. If the BIA does not grant the case, the client may seek a "petition to review" to the Second Circuit Court of Appeals.³⁰

1. "REFUGEE ROULETTE"

Asylum applications are adjudicated by the immigration court or asylum office with jurisdiction over the geographical area in which the applicant lives. If the applicant is in removal proceedings and is not a UC, she must file a defensive asylum application with an immigration judge. If the applicant is a UC in removal proceedings, or has never been in removal or deportation proceedings, she can file an affirmative asylum application with an asylum office. If an affirmative asylum application is denied it can usually be renewed as a defensive application in removal proceedings.³¹

Applicants cannot choose specific adjudicators and there are no specialized judges or courts for specific countries. This system results in very different outcomes depending on who is randomly assigned to adjudicate your client's asylum application. This arbitrary process is known as "Refugee Roulette."³²

Although your client's case will most likely be heard by an asylum officer, it is instructive to review the research by the Transactional Records Access Clearinghouse (TRAC) regarding immigration judge asylum denial rates.³³ TRAC took the total number of asylum adjudications heard by every immigration judge between Fiscal Years 2011-2016 and determined the denial rates for each immigration judge

³⁰ The INA channels appeals from the BIA to the Circuit Courts of Appeal and bypasses the federal district courts in almost all cases.

³¹ See 8 C.F.R. § 208.2(a) (describing the jurisdictions of immigration judges and asylum officers).

³² See Jaya Ramji-Nogales, Andres I. Schoenholtz, and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STANFORD L. REV. 295 (2007). The authors later published two books on disparities within the asylum offices and the courts. See also, JAYA RAMJI-NOGALES, ANDREW I. SCHOENHOLTZ, AND PHILIP G. SCHRAG, REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM (NYU PRESS 2011) and LIVES IN THE BALANCE: ASYLUM ADJUDICATION BY THE DEPARTMENT OF HOMELAND SECURITY (NYU PRESS 2014).

³³ There are no public records of individual asylum officer denial rates.

across the United States.³⁴ In the New York City Immigration Court, judges denied asylum applications at rates ranging from 59% to 2.2% depending upon the assigned judge. In the Newark Immigration Court asylum denial rates ranged from 98.6% to 15.7%. These numbers demonstrate the level of discretion involved in the asylum adjudication process and how even a well-prepared asylum application based upon a solid asylum claim may face an uphill battle depending upon the asylum adjudicator to which the case is ultimately assigned.

2. BURDEN OF PROOF

The adjudicator is always assessing the asylum application and supporting documents based on the specific burden of proof. As noted above, the burden of proof is mostly on the applicant to prove that she meets the definition of a refugee, that she is eligible for asylum and not subject to any statutory bar, and that she should be granted asylum as a matter of the adjudicator's discretion.³⁵

If evidence is introduced that a statutory bar to asylum may be applicable, the applicant will also have the burden to prove that the indicated bar does not apply and that she remains eligible for asylum.³⁶

Under INA § 208(b)(1)(B) the burden of proof will be satisfied as long as the protected basis was or will be at least one central reason for the persecution.³⁷ The child's testimony is sufficient to sustain the burden of proof without corroboration as long as it is (1) credible; (2) persuasive; and (3) addresses specific facts underlying the asylum claim.³⁸

The burden of proof shifts to the government (the asylum officer or the DHS attorney) in two instances:

- 1) Once your client establishes past persecution based on a protected ground, there is a presumption that she also has a well-founded fear of future persecution.³⁹ The burden then shifts to the government to rebut that presumption by proving by a preponderance of the evidence that:
 - A. There has been a fundamental change in circumstance such that fear of future persecution is no longer well-founded; or

³⁴ JUDGE BY JUDGE ASYLUM DECISIONS IN IMMIGRATION COURTS FY 2015-2020, <https://trac.syr.edu/immigration/reports/judge2020/denialrates.html> (last accessed June 1, 2021).

³⁵ 8 C.F.R. § 208.13(a) (2000).

³⁶ 8 C.F.R. § 208.13(c)(2)(ii).

³⁷ INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007).

³⁸ 8 C.F.R. § 1208.13(a).

³⁹ 8 C.F.R. § 208.13(b)(1).

B. Your client could avoid persecution by relocating to another part of the country and such relocation would be reasonable under the circumstances.⁴⁰

- 2) If the persecution your client suffered was at the hands of the home government or a government-sponsored actor, the asylum officer or DHS attorney must prove by a preponderance of the evidence that your client could avoid future persecution by relocating to a different part of her home country, and it would be reasonable to do so under the circumstances.⁴¹

3. CREDIBILITY AND CORROBORATION

Credibility is critical for every asylum application. In most cases the applicant herself is the only witness to the persecution she suffered. The success of her asylum application relies on her ability to tell her story in a way that the adjudicator finds legally credible. Most adjudicators will look for consistency and details when evaluating an applicant's credibility.⁴² However, her testimony should not be a verbatim recitation of her written declaration and adding additional detail in testimony is not an "inconsistency."⁴³ The adjudicator must consider "the totality of circumstances, and all relevant factors."⁴⁴ Thus, you should help your client convey her case in a manner that avoids small misunderstandings and inaccuracies. We find it useful to think of the credibility factors as a checklist for you to complete as you are preparing your client's affidavit and the legal memorandum of law.

⁴⁰ 8 C.F.R. § 208.13(b)(1)(i).

⁴¹ 8 C.F.R. § 208.13(b)(3)(ii).

⁴² See INA § 208(b)(1)(B)(iii), *amended by* REAL ID Act of 2005, Pub.L. 109–13, 119 Stat. 302 (2005). The same statute applies to credibility determinations by an asylum officer; *see also* AOBTC GUIDELINES, <https://www.refworld.org/docid/4f3e30152.html> (last accessed June 1, 2021).

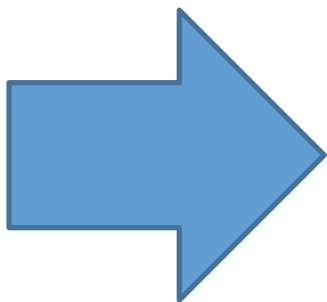
⁴³ *Gao v. Sessions*, 891 F.3d 67 (2d Cir. 2018).

⁴⁴ See INA § 208(b)(1)(B)(iii), *amended by* REAL ID Act of 2005, Pub.L. 109–13, 119 Stat. 302 (2005).

CREDIBILITY CHECKLIST

- ✓ Demeanor, candor, or responsiveness of the applicant
- ✓ Inherent plausibility of the applicant's account
- ✓ Consistency between the applicant's written and oral statements (when made under oath considering the circumstances under which those statements were made)
- ✓ Internal consistency of each statement
- ✓ Consistency of such statements with the other evidence of record
- ✓ Any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

The child's testimony may be enough to meet her burden of proof without corroboration, but only if she can convince the adjudicator that she is credible, persuasive and can refer to enough specific facts to demonstrate her asylum eligibility.⁴⁵ This is a difficult task, which is why the adjudicator must weigh both the credible testimony with other corroborating evidence provided in the asylum application. The child should submit all corroborating evidence that is "reasonably available." Where a piece of evidence is not available, the child should be prepared to explain her attempts to get it and why it was not available.



IMPORTANT: As soon as you begin working on your client's case, start to think creatively regarding possible evidence to corroborate your client's story. For example, news articles, country conditions reports, death certificates, letters from family members at home, etcetera. Plan to request a psychological evaluation appointment now. Think about whether expert testimony may be useful. The bottom line is to begin to assemble your exhibits now. Compiling supporting documentation can be the most time-consuming part of the application process.

⁴⁵ INA § 208(b)(1)(B)(ii).

4. ADJUDICATOR DISCRETION

Ultimately, even if your client establishes her eligibility for asylum, the adjudicator has the authority to refer or deny the application based on her discretion. Your client must prove that she warrants a “favorable exercise of discretion.”⁴⁶ In almost all cases, the agency does positively exercise this discretion. In the summer of 2017, some units of ICE were issuing allegations that youth were alleged to be connected to gangs and flatly stating that USCIS could not approve such cases. However, the Asylum Officer is the finder of fact and must adequately address allegations to determine if there is a statutory bar or facts that warrant a negative exercise of discretion. In our experience, many of the allegations are completely unfounded. If you have such an issue in your case, please alert your Safe Passage Project mentor attorney.

D. ELEMENTS OF AN ASYLUM APPLICATION

Now that you have briefly learned what asylum is and who adjudicates an asylum application, we turn to a discussion of the elements of an asylum claim. This is only a preliminary discussion of each of the elements of asylum. It is designed to help you understand the complexity involved in this area of law and will hopefully help you determine which elements you need to further research and develop in your client’s specific case.

1. PERSECUTION

As an initial step, you will need to determine if the harm suffered by your client rises to a level considered to be persecution under U.S. asylum law. The term persecution has never been fully defined by Congress or the BIA, but, it is generally agreed to be “a threat to the life or freedom of, or the infliction of suffering or harm upon those who differ in a way regarded as offensive.”⁴⁷

For a child, the level of physical or psychological harm they have suffered or will suffer can constitute persecution even if the same amount of harm would not equal persecution to an adult.⁴⁸ Therefore, the

⁴⁶ *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987), *superseded by statute on other grounds*, 8 C.F.R. § 208.14(e) (1995), as recognized in *Andisarian v. INS*, 180 F.3d 1033, 1039 (9th Cir. 1999).

⁴⁷ *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); *see also Aliyev v. Mukasey*, 549 F.3d 111, 116 (2d Cir. 2008).

⁴⁸ AOBTC GUIDELINES, *supra* note 42; *see also Abay v. Ashcroft*, 368 F.3d 634, 640 (6th Cir. 2004) (noting that young children may be unable to articulate fear to the same degree as adults and overturning an Immigration judges finding that a 9 year old asylum applicant only had a “general ambiguous fear” that did not rise to the level of persecution); *see also* UNHCR HANDBOOK, *supra* note 9, paragraph (“ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child”).



adjudicator will need to take into account your client's age when considering whether persecution has occurred, or whether she has a well-founded fear of future persecution.⁴⁹

Persecution “encompasses a variety of forms of adverse treatment, including non-life[-] threatening violence and physical abuse, or non-physical forms of harm such as the deliberate imposition of a substantial economic disadvantage.”⁵⁰ Persecution may include psychological or emotional harm.⁵¹ While the adjudicator will need to consider all harm cumulatively in order to determine whether it constitutes persecution, at least “one central reason” for the persecution must be one of the protected grounds.⁵² (We will discuss this point in more detail in our discussion of nexus in section D.2. below).

When meeting with your client, make note of all harm suffered, including harm to her family members, as the asylum adjudicator should look at all harmful incidents in a cumulative manner in order to determine if a combination of different actions rise to the level of persecution needed in an asylum claim.⁵³ Specific harmful acts that can rise to the level of persecution needed to sustain an asylum claim are discussed in greater details within the protected grounds below. While harm to family members is generally *not* considered persecution of the applicant,⁵⁴ *Jorge-Tzoc v. Gonzales* recognized that for children, where the family members are their center of support, it may be.

I. WHO IS THE PERSECUTOR?

In addition to proving that the harm suffered or feared by your client rises to the level of persecution, you will also need to prove that the persecution was inflicted by the government of your client's home country, or by people or organizations that the government cannot or will not control. Usually in children's cases, non-state actors that the government cannot or will not control--such as gangs, parents, or other caregivers—are the persecutors.

II. PAST PERSECUTION

Asylum is intended to protect people from *future* harm, but much of asylum's analysis is backward-looking. This is because, if your client suffered persecution in the past, the law presumes that she is at

⁴⁹ See *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006) (remanding to an immigration judge to consider harm as perceived by a small child).

⁵⁰ *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 342 (2d Cir. 2006) (citations omitted).

⁵¹ See *Ouk v. Gonzales*, 464 F.3d 108, 111 (1st Cir. 2006); *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004).

⁵² INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007).

⁵³ See *Singh v. INS*, 134 F.3d 962, 967 (9th Cir. 1998) (directing adjudicators to look at the cumulative effect of all harm suffered in order to determine it rises to the level of persecution).

⁵⁴ *Melgar de Torres v. Reno*, 191 F.3d 397 (2d Cir. 1999).



risk in the future: that she has a “well-founded fear of *future* persecution.”⁵⁵ The burden of proof then shifts to government to prove, by a preponderance of the evidence, that despite the fact persecution, country conditions have changed in a way that eliminates the threat of harm, or that the applicant could avoid future persecution by relocating within the home country, and that such relocation is reasonable under the circumstances.⁵⁶

For an applicant to be granted asylum on the basis of harm she has suffered in the past, she must prove the following:

- 1) She has suffered harm that rose to the level of persecution in the past;
- 2) In her country of nationality;
- 3) On account of one of the five protected grounds.⁵⁷

If there are no changed country conditions, and if it was not reasonable for her to relocate within her home country, then she is eligible for asylum.

III. WELL-FOUNDED FEAR OF FUTURE PERSECUTION

Even if your client has never experienced persecution in the past, she may still qualify for asylum if she has a “well-founded fear of future persecution.” She can prove this by showing that:

- 1) She fears harm that rises to the level of persecution;
- 2) The persecution she fears will be on account of a protected characteristic (race religion, nationality, political opinion, or membership in a particular social group);
- 3) The persecutor is aware, or could easily become aware, that she has this characteristic; and
- 4) The persecutor has the means and inclination to persecute.⁵⁸

In order to establish a well-founded fear, your client needs to show a “reasonable possibility,” or a one-in-ten chance of persecution.⁵⁹ Her fear must be both subjectively genuine and objectively reasonable.⁶⁰

⁵⁵ 8 C.F.R. § 208.13(b)(1).

⁵⁶ *Matter of D-I-M-*, 24 I&N Dec. 448 (BIA 2008); *see also Matter of A-T-*, 24 I&N Dec. 617 (AG 2008).

⁵⁷ 8 C.F.R. § 208.13(b)(1).

⁵⁸ *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987).

⁵⁹ 8 C.F.R. § 208.13(b)(2); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987).

⁶⁰ *Cardoza-Fonseca* at 430-31; *Matter of Acosta*, 19 I&N Dec. at 224; *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *see also Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004).

While the subjective fear of persecution can be based solely on credible testimony, we have found in child asylum cases that psychological evaluations greatly assist to document the well-founded fear of the child.⁶¹

In order to meet the objective component, your client must show by specific and concrete evidence in the record that her fear of persecution is reasonable. This can be established by proving a pattern or practice in country of nationality of persecution of similarly situated peoples.⁶²

An example may illuminate when someone is eligible for asylum based on a well-founded fear of future persecution, despite never having been persecuted in the past. Imagine a teenage girl from a deeply homophobic society. She was not “out” when living in her home country, but now that she is in the United States, she is a proud member of the LGBTQ+ community. She posts to social media about her romantic relationships, and she recently got a small tattoo that meaningfully represents her identity. She may fear returning to her small home country because she knows that members of the LGBTQ+ community are persecuted there. Her fear is on account of her membership in a particular social group; her fear is both subjectively genuine and objectively reasonable. Persecutors could become aware of her membership in this particular social group. She cannot reasonably relocate to avoid the persecution, and circumstances have not improved for members of the LGBTQ+ community. She should be granted asylum.

2. NEXUS / “ON ACCOUNT OF”

Your client must also prove that the persecution she has suffered, or fears suffering, is on account of one of the five protected grounds.⁶³ Put another way, she must prove that one of the five protected grounds “was or will be at least one central reason” for the persecution.”⁶⁴ This is called the nexus requirement. The Attorney General established a two-part inquiry into establishing nexus, where your client must establish that (1) a protected ground was a but-for cause of their persecution and (2) the protected ground was a central reason, not incidental or tangential to the motivation of the persecutor.⁶⁵

While this inquiry focuses on the motive of the persecutor, the child does not need direct evidence that the persecutor is targeting the child on account of a protected ground; circumstantial evidence can be

⁶¹ See Step Three, section D of this manual for more information.

⁶² 8 C.F.R. § 208.13(b)(2)(iii).

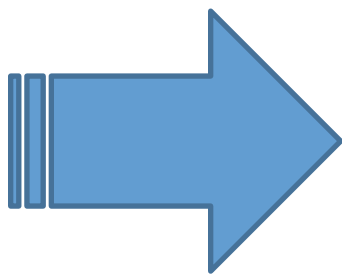
⁶³ INA § 101(a)(42)(A).

⁶⁴ REAL ID Act, Pub. L. No. 109-13, sec 101(a)(3) (2005) (codified at INA 208(b)(1)(B)(i)); see *Acharya v. Holder*, 761 F.3d 289, 297-298 (2d Cir. 2014) (“asylum may be granted where there is more than one motive for mistreatment, as long as at least one central reason for the mistreatment is on account of a protected ground.” (quoting H.R. Rep. No. 109-72, at 65, reprinted as amended in 2005 U.S.C.C.A.N. at 290.)).

⁶⁵ *Matter of A-B-*, 28 I&N 199 (A.G. 2021).

sufficient.⁶⁶ The persecutor does not need to tell your client that he was hurting her because she was a member in a particular social group. Rather, you and your client can present testimony and documentary evidence demonstrating that the persecutor targets the particular sub-set of the community because they are members of that group.

Specifically, your client must show that a protected ground is more than “incidental, tangential, superficial, or subordinate to another reason for harm.”⁶⁷



IMPORTANT: Nexus can be the most difficult element to prove in the entire asylum application. As soon as your client feels comfortable enough to really start talking about the harm she suffered or fears in her home country, think about who the persecutors are in her story and what type of testimony and corroborating evidence is needed to prove that the persecutors were motivated to cause harm to your client because of one or more of the protected grounds.

U.S. asylum law recognizes that many times persecutors harm individuals based on mixed motives. While the adjudicator must take into account all harm cumulatively in order to determine whether it constitutes persecution, the applicant must establish that one of the protected grounds was or will be at least one central reason for persecuting the applicant.⁶⁸

It is important to maintain nexus as a separate point in your analysis and not combine it with the ground for asylum under which your client is seeking protection. For example, you must first establish your client’s particular social group and *then* demonstrate that the government or non-state actor was persecuting your client because of their membership in the particular social group.

As we discuss the protected grounds in the sections below, we will address successful nexus arguments we have been able to make within specific areas of asylum protection. As you review the material, if you believe that something specifically fits your case, please discuss with your mentor attorney as they can share more materials and background on successful strategies.

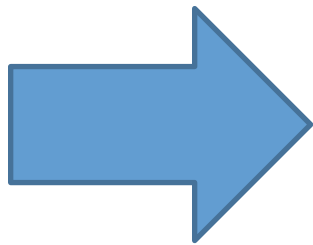
⁶⁶ *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992); *see also* Dep’t of Homeland Security’s Position on Respondent’s Eligibility for Relief at 34; *Matter of R-A-*, 23 I. & N. Dec. 694 (B.I.A. Feb. 19, 2004) (No. A 73 753 922) (“reasonable to expect that a person who is motivated to harm a victim because of a characteristic the victim shares with others would often be prove also to harm others who share the targeted characteristic. But evidence on this point should not be required in all cases in order for the applicant to satisfy the ‘on account of’ requirement.”).

⁶⁷ *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211(BIA 2007).

⁶⁸ INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211(BIA 2007).

3. PROTECTED GROUNDS

It is important to argue that the child suffered persecution, or has a well-founded fear of persecution, on account of as many protected grounds as are implicated in the child's story. All five protected grounds can be imputed upon an asylum seeker.



IMPORTANT: Remember that just belonging to a specific protected group does not automatically provide a basis for asylum. For example, you must still prove that your client was persecuted “on account of” her race, or that there is a pattern or practice of persecution against members of the specific racial group.

Sub-sections A-E below discusses the legally protected grounds of asylum and particular formulations of the grounds that have been used in both successful asylum claims.

I. RACE

The protected ground of race can include ethnic or indigenous groups.⁶⁹ In some of our cases we have seen children targeted by gang members based in part on the child being a member of a minority indigenous group living within the country.

For example, the Garifuna are a minority ethnic group in Honduras descended from African slaves who are regularly subjected to discrimination and violence within their home country. The Garifuna have been ostracized by mainstream society and by the Honduran government, and have had ancestral lands confiscated to make way for tourist developments.⁷⁰ Please contact your mentor attorney for many additional resources regarding the Garifuna ethnic group.

II. NATIONALITY

Nationality includes a person's citizenship or statelessness, as well as her membership in an ethnic or linguistic group.⁷¹ Persecution on account of nationality can be based on adverse attitudes and measures directed against a national minority.

⁶⁹ See UNHCR HANDBOOK, *supra* note 9; see also AOBTC GUIDELINES, *supra* note 42.

⁷⁰ See MINORITY RIGHTS GROUP INTERNATIONAL, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES, “HONDURAS – AFRO-HONDURANS,” <https://minorityrights.org/minorities/afro-hondurans/> (last accessed June 1, 2021).

⁷¹ UNHCR HANDBOOK, *supra* note 9.



Please contact your mentor attorney if you believe your client has been persecuted based on her nationality. We have additional material to assist in the preparation of your case.

III. RELIGION

Most children practice the same religion as their family, whether or not they agree with its tenants. Persecution can arise from certain religious traditions including forced marriage, honor crimes, or female genital mutilation.⁷² Resisting these types of religious customs can itself be a religious belief.⁷³

An example of a winning religious asylum claim: One of our pro bono attorneys worked with a boy who was specifically targeted by gang members for being an Evangelical Christian. The boy and his family were known to be Evangelical and the boy openly carried his bible to school and to church services. Gang members insulted him for being Evangelical Christian, beat him and forcibly pressured him to drink alcohol, which they knew was against his religion, severely damaged his bible, and threatened additional harm if he continued to attend church. The immigration judge found that cumulatively this mistreatment rose to the level of persecution on account of his religion.

IV. POLITICAL OPINION: ACTUAL OR IMPUTED

Political opinion can include many types of views and actions, not just specific opinions regarding political parties or political policies. If your client has acted in some way out of a belief that is contrary or against the state, or an uncontrolled non-state actor such as the criminal gang MS- 13, you should argue that the persecutor has, is, or will inflict harm on the child because of the child's own, individual opinion.⁷⁴ The child's opinion "must be motivated by an ideal or conviction of sorts" and cannot be based solely on fear of general violence or retribution.⁷⁵

For example, a child could demonstrate a political opinion by distributing pamphlets or participating in demonstrations against the government or a powerful organization within the country. A child could also assert a political opinion by refusing to join a criminal gang because he is against the gang's criminal agenda. Such activities are evidence of a child's political opinion even if the child does not think of his activities as such.⁷⁶

⁷² See *Matter of Kasinga*, 21 I&N Dec. 357(BIA 1996).

⁷³ See *Matter of S—A—*, 22 I&N Dec. 1328 (BIA 2000).

⁷⁴ See *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), modified by *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

⁷⁵ See *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005).

⁷⁶ See *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993).



As with every protected ground of asylum, political opinion can be actual or imputed. Children are more likely to have political opinions imputed to them, for example based on their family's political opinions.⁷⁷ Think of what your client said and did? How does the persecutor view your client's actions? What evidence is there of the persecutor's view?

When your client was persecuted by a criminal gang organization, it is important to present the political opinion claim in a way that educates the adjudicator about what is currently happening in Central America. There are many great secondary sources that can help you argue that gangs act as the de facto government in many instances, and control significant amount of territory.⁷⁸ The gangs enforce their own rules, and even El Salvador's president, Nayib Bukele, has admitted that the gangs operate like a "parallel state" in some communities.⁷⁹

Example of a successful gang-related political opinion claim: In a redacted Immigration Judge decision, the judge granted asylum to a young Guatemalan who, as a fare collector, refused to pay his "renta" to the Mara 18 gang. The judge found that the boy's consistent refusal to make these obligatory payments telegraphed an anti-gang political opinion and that he was persecuted based on that anti-gang opinion.

As the above example demonstrates, the reason your client was first targeted might not be on account of protected ground, but, the subsequent reason could be. For example, a gang member approaches and says pay me. Your client says no and continues to say no. The gang then targets and harms your client because of that no. That act of defiance can be a political opinion.

Make sure to work closely with your Safe Passage mentor attorney when developing the legal analysis to support your client's political opinion claim. The Second Circuit⁸⁰ and the Fourth Circuit⁸¹ have both recently recognized that resistance to gang authority may telegraph a political opinion or cause the gangs to impute to someone an anti-gang political opinion. As the Second Circuit explained, taking a stance against the abuse of power, even non-governmental abuse of power, can constitute an expression of political opinion. Several recent expert declarations in the Center on Gender and Refugee Studies (CGRS) database speak to the "with us or against us" mentality of the gangs and note that those who do

⁷⁷ See *Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011); *Matter of S—P—*, 21 I&N Dec. 486 (BIA 1996).

⁷⁸ See Insight Crime's investigative reports on criminal organizations within the Northern Triangle of Central American. For example, the following report on Gangs in Honduras: <https://insightcrime.org/investigations/gangs-in-honduras> (last accessed June 1, 2021).

⁷⁹ "'Our Whole Economy is in Shatters': El Salvador's President Nayid Bukele on the Problems Facing his Country," 60 Minutes Interview, Dec. 15, 2019, transcript available at <https://www.cbsnews.com/news/el-salvador-president-nayib-bukele-the-60-minutes-interview-2019-12-15/>. See also Kirk Semple, "Fleeing Gangs, Central American Families Surge Toward U.S.," N.Y. TIMES, Nov. 12, 2016, <https://www.nytimes.com/2016/11/13/world/americas/fleeing-gangs-central-american-families-surge-toward-us.html?mcubz=0&r=0> (last accessed June 1, 2021).

⁸⁰ *Hernandez-Chacon v. Barr*, 948 F.3d 94, 97 (2d Cir. 2020).

⁸¹ *Alvarez-Lagos v. Barr*, 927 F.3d 236 (4th Cir. 2019).

not cooperate with them are seen to be dissidents. In developing this line of argument, you must be clear about what your client did or said that caused the gang to become aware of their resistance. Did the gang members say something to indicate that they saw their actions or words as opposition? Did the severity of the harm against the child indicate that the gang was targeting them for punishment because they saw them as an opponent to gang hegemony?

V. MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

The majority of the children we work with have suffered persecution or have a well-founded fear of future persecution based on their membership in a particular social group (PSG). The PSG ground continues to be one of the most heavily litigated areas of asylum law. Under the seminal BIA case of *Matter of Acosta*, the members of the group must share a “common, immutable characteristic” that they “cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”⁸² Over the years the BIA has added to the PSG definition; currently an asylum applicant must demonstrate that her PSG meets each prong within the following framework:

⁸³*Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) is probably the most helpful case to read to understand the current iteration of “Particular Social Group.”

1) **Group members must share a common IMMUTABLE CHARACTERISTIC**

- a. Something they cannot change or should not be required to change
- b. **Examples:** gender, sexual orientation, family ties, age or race

2) **Group must be defined with PARTICULARITY**

- a. The group is not overly broad and has definable boundaries
- b. **Examples:** children within a particular family; phrases in common language that refer to group (phrases can be derogatory in nature)

3) **Group must be SOCIALLY DISTINCT within the society in question**

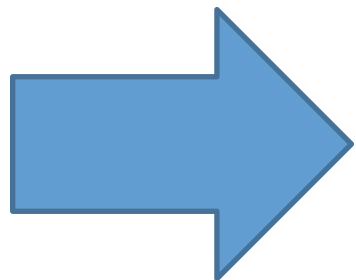
- a. The group and its shared characteristic is recognized by the society at large as distinct
- b. Literal ocular visibility is not required
- c. **Example:** Discrimination and harassment of group members show that society recognized this as own group

While the BIA has outlined the above three-step particular social group analysis, legal advocates continue to challenge the definition. Courts are constantly refining the analysis adjudicators must use in order to determine whether an asylum seeker is part of a particular social group. As this is such a case-

⁸² *Matter of Acosta*, 19 I&N Dec. at 233.

⁸³ *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *see also Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007).

specific area of the law, even if a PSG loses with one court in one case, you can likely distinguish it by noting that analysis is completed on a case-by-case basis and your particular case is different based on the arguments you lay out in your memorandum of law.



PLEASE NOTE: Circuit case law is binding on the asylum offices and immigration courts unless the BIA specifically says that it is overruling that the circuit court’s holding. Thus, if the Second Circuit comes to a different conclusion than the BIA on a specific part of the PSG analysis, and the BIA did not specifically overrule this point, you should cite to and follow the Second Circuit analysis.⁸⁴

As you work with your client to determine her particular social group, pay attention to the developing case law as it could affect your analysis. Remember that your Safe Passage mentor attorney is always available to help refine your legal analysis.

As you know, your legal analysis must be tied to the actual facts of your client’s case. We have found the following types of evidence are especially useful to establish the problematic elements of social distinction and particularity:

- Specifically address these ideas in your client’s affidavit
 - Remember that your client is an expert in how the government or gangs treat her PSG within her community.
 - “People with this characteristic are seen as a group in my community because...”
 - “Everyone knows that we are a group because...”
 - “Everyone in my community knows who the children are whose parents are in the United States because...”
- Country condition expert testimony⁸⁵ and/or crime statistics
 - For example, explain that the gang is targeting your client for a specific reason and then cite to the testimony and/or statistics which demonstrate how the conditions within the country show that gangs target members of your client’s PSG for this specific reason
 - An expert can give the adjudicator sociological information that shows the specific gang violence against this subset of the community
- Cite to laws in your client’s country of origin that supposedly protect your client’s PSG

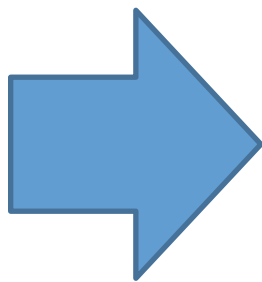
⁸⁴ See *Ucelo-Gomez v. Mukasey*, 509 F.3d 70, 73 (2d Cir. 2007) (deferring to the BIA’s “social visibility” criterion by explaining that a reasonable requirement of societal perception would protect groups “comprised of individuals who possess some fundamental characteristic in common which serves to distinguish them *in the eyes of a persecutor*—or in the eyes of the outside world in general.”) (emphasis added).

⁸⁵ There are many excellent expert witnesses. We highly recommend contacting the Center for Gender and Refugee Studies (CGRS) for case-specific research and guidance. See Step Three section A.1. for a description of CGRS and how to contact them regarding your client’s case.

- For example, laws regarding domestic violence, and then discussing evidence regarding their lack of enforcement or police and community disregard for the laws

While particular social groups are determined on a case-by-case basis, the following is a list of some social group categories that we have found to form the basis of some child asylum claims:⁸⁶

- Family Groups
- Children in Abusive Relationships
- Girls
- Children of Business Owners
- Gang-Related Claims
- Children Who Lack Adult Protection



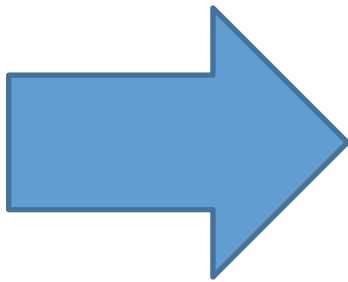
Beware Circularity! Make sure that your client’s particular social group is not defined by the persecution and thus impermissibly circular.⁸⁷ The client is not persecuted because she is being abused; the abuse is the persecution, and we have to show that the persecution is tied to a specific ground.

EXAMPLE: “Honduran women,” NOT “Young Honduran women forced into an abusive relationship and hurt by gang members.”

Remember you can present multiple social groups, perhaps including your client within one general group and one more specific group. For example, the general group may be “Honduran children who are viewed as property” and then more specifically, “Honduran children who are viewed as property by their family and are unable to leave.” Once you and your client have a list of all the possible characteristics that work for your client’s group and you know the reasons that gave rise to the persecution, you will need to formulate the groups and then check them against the complicated circuit and BIA case law. Please discuss any questions or concerns you have regarding how to formulate your client’s particular social group with your Safe Passage mentor attorney.

⁸⁶ Each of these particular social group categories are discussed in more detail in sub-sections E.I-IV. below.

⁸⁷ *Ucelo-Gomez*, 509 F.3d at 73 (citing *Matter of A-M-E & J-G-U-*, 24 I. & N. Dec. 69, 74 (B.I.A.2007) (holding that a social group cannot be defined exclusively by the fact that its members have been subjected to harm.)



Important Practice Pointer: If your client was persecuted by non- state actors such as organized criminal gangs, you can use non- gang-based case law where someone resisted a group to support your analysis. For example, take the analysis from *Matter of Kasinga* where a PSG was found for resisting the practice of FGM, or *Delgado v. Mukasey*, a case finding that resistance to joining an internal armed group (the FARC) may be basis for imputed political opinion⁸⁸, and apply it to your gang-based case.

Finally, remember that there are four other protected grounds for asylum that do not require the additional three-step analysis required to establish a PSG. The harm your client suffered may be on account of multiple grounds of asylum. Sometimes a child with a particular social group claim can also claim protection under race, nationality, religion or political opinion where the required analysis and corroboration may not be quite so onerous.

In each sub-section below we briefly discuss particular social group categories that are common in child asylum cases.

FAMILY

Family and kinship ties are recognized as particular social groups.⁸⁹ Many times, a child’s claim to asylum is based on harm suffered by family members due to the dependence of children upon their families for care and protection.⁹⁰ Courts have found that the harm need not always be directed at the child applicant.⁹¹

In order to meet the test for particular social group, we have argued the following:

- 1) Children are biologically related to the other members of their family and this characteristic is one they cannot change.
- 2) Their nuclear family is particular as it is only limited to people who make up the group and there are clear benchmarks for who is part of the family.
- 3) Family units are socially distinct within their society, as in all societies.

⁸⁸ *Delgado v. Mukasey*, 508 F.3d 702 (2d Cir. 2007).

⁸⁹ *Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017).

⁹⁰ See *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d. Cir. 2006) (finding that applicant was a “child at the time of the massacres and thus necessarily dependent on both his family and his community” and determining that the “combination of circumstances could well constitute persecution to a small child totally dependent on his family and community.”).

⁹¹ See *Rusak v. Holder*, 734 F.3d 894 (9th Cir. 2013) (persecution claim of child based upon harm suffered by parents due to their religious beliefs); *Mendoza-Pablo v. Holder*, 667 F.3d 1308 (9th Cir. 2013) (child’s asylum claim based on persecution of the Guatemalan Army against mother’s village).

In these cases, it is important to focus on the particularity and social distinction requirements of the social group as courts are most likely to reject the particular social group formulation based on these two elements of the claim, rather than on the immutability requirement.

Every Circuit that has considered the issue has found that the family unit may comprise a particular social group.⁹² Acknowledging as much, in 2017, the Board issued *Matter of L-E-A-*, explicitly finding the nuclear family to be a cognizable social group.⁹³ While the Board noted that nuclear family living together is the most obvious PSG, it stated that it would consider other family relationships on a case-by-case basis "that will depend on the nature and degree of the relationships involved and how those relationships are regarded by the society in question."⁹⁴ Inexplicably, the Attorney General certified a subsequent decision in the same case to himself, and in 2019 issued "*L-E-A- II*," *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019), vacating portions of the BIA's 2017 decision. The Attorney General was clear that his decision "does not bar all family-based social groups from qualifying for asylum" but also that "unless an immediate family carries greater social import, it is unlikely that a proposed family-based group will be 'distinct' in the way required by the INA." In other words, only some families, families of "social import" are cognizable particular social groups. The Attorney General's decision is being challenged at the circuit court level as being completely inconsistent with prior precedent on the issue, and you should preserve that argument but, in the meantime, this case is binding. You want to make sure that you have a number of facts that go towards establishing your client's family unit as a PSG. Questions to ask and have answered by your client: Does the family live together? Nearby? Do they spend a lot of time together? Do they share surnames? Are they known as a family within the community? Is there anything special about the family that makes them stand out in their community? (perhaps a family member is a police officer or politician, or a pastor at a local church, or the family runs a well-known business in the community).

Part of *L-E-A- I*, the 2017 BIA decision, was not vacated. It focused heavily on the "one central reason" nexus ground in order to deny asylum protection because the family PSG was not "one central reason" for the persecution. The BIA found that Mr. L-E-A- was being targeted by gang members because they

⁹² *Aldana-Ramos v. Holder*, 757 F.3d 9, 10 (1st Cir. 2014) ("It is well established in the law of this circuit that a nuclear family can constitute a particular social group"); *Vumi v. Gonzales*, 502 F.3d 150, 155 (2^d Cir. 2007) ("The Board has held unanimously that membership in a nuclear family may substantiate a social group basis of persecution"); *Singh v. Gonzales*, 406 F.3d 191, fn. 5 (3rd Cir. 2005) (acknowledging that Singh might also have a strong nexus argument based on membership in his family); *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015) ("Hernandez claims, and the government correctly acknowledges, that membership in a nuclear family qualifies as a protected ground for asylum purposes"); *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009) ("The first characteristic of their proffered social group- membership in the same family- is widely recognized by the case law"); *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008) (finding that Honduran man targeted by military because of the desertion of his brothers had a family based social group claim); *Malonga v. Mukasey*, 546 F.3d 546 (8th Cir. 2008) (recognizing kinship ties as the type of characteristic that is likely to distinguish a group); *Flores Rios v. Lynch*, 807 F.3d 1123, 1126 (9th Cir. 2015) ("Even under this revised framework, the family remains the quintessential particular social group".)

⁹³ See *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017).

⁹⁴ *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019).



wanted him to help them sell drugs out of his father's store, not because of his relationship to his father.⁹⁵ The Board stated that if a persecutor still would have targeted the respondent *even if* the familial relationship did not exist, then the family PSG is not one central reason for the persecution.⁹⁶ *Matter of L-E-A-* demonstrates how important it is to establish that the facts of your case demonstrate as clearly as possible that the familial relationship was one central reason for punishment by the persecutor.

Safe Passage has won cases on family-based grounds since issuance of *L-E-A- II*. For example, in an unpublished IJ decision, a family fled El Salvador after the Mara Salvatrucha kidnapped and killed one of its members. When the young man went missing, there was a community wide search for him, and the whole community mourned when he was found deceased. The MS later started threatening the rest of his family. They sought police protection but were told there was nothing they could do. The Judge found that the community-wide search and public mourning for the kidnapped family member elevated the “social import” of the family and gave them the requisite “social distinction” to establish a cognizable particular social group.

GENDER-BASED CLAIMS

Gender is an immutable characteristic and is widely recognized as the basis for many social groups.⁹⁷ Many of our young clients have been persecuted based on the following immutable characteristics:

- ✓ Being female or a young girl
- ✓ Sexual orientation, including transgender or perceived gender
- ✓ Claims involving domestic violence, where the situation in the particular country creates a gendered claim.⁹⁸

Remember, you should continuously evaluate your client's asylum claim and determine her strongest particular social groups (PSGs). Elements of gender-based claims are often a part of Family and Gang-related PSGs. Keep an ongoing list of the characteristics of your client's social groups within her home community in order to create PSGs that focus on the key arguments of your client's claim.

⁹⁵ *Id.* at 46-47.

⁹⁶ *Id.*

⁹⁷ See *Matter of Kasinga*, 21 I&N Dec. 357(BIA 1996); *Fatin v. INS*, 12 F.3d 1233 (3rd Cir. 1993) (recognizes women as a particular social group).

⁹⁸ We also discuss these types of PSG claims within the sub-section III. based on children in abusive relationships as well as sub-section IV. based on gang-related claims. See also *Domestic Violence-Based Asylum Claims: CGRS Practice Advisory*, CENTER FOR GENDER AND REFUGEE STUDIES, https://cgrs.uchastings.edu/sites/default/files/DV_Advisory_9-12-2014_FINAL_1.pdf (last accessed June 1, 2021) (an in-depth guide to preparing gender and domestic violence-based asylum claims).

Whether survivors of domestic violence may be eligible for asylum has been a topic of litigation for decades. In 1999, the Board issued *Matter of R-A-*, 22 I&N 906 (BIA 1999) finding that a Guatemalan survivor of severe domestic violence had not established the requisite “nexus” for asylum. That decision was vacated by then Attorney General Reno in 2001. In 2014, the Board issued *Matter of A-R-C-G-*, recognizing the PSG of “married women in Guatemala who are unable to leave their relationship.”⁹⁴ Asylum seekers fleeing a variety of types of domestic violence won asylum at the NY asylum office and NY Immigration Court based on that decision. Then, in 2018, then Attorney General Sessions certified a case called *Matter of A-B-* to himself, using it as a vehicle to vacate *Matter of A-R-C-G-*. *Matter of A-B-*, 27 I&N 316 (A.G. 2018). This case has made it much more difficult to establish “nexus” in cases involving domestic violence.

Because of *Matter of A-B-*, it is important to offer a number of different paths to establishing nexus in gender-based claims. Some circuit courts have begun to recognize that gender + nationality alone may be a cognizable particular social group in certain cases.⁹⁹ The Second Circuit found in *Hernandez-Chacon v. Barr*¹⁰⁰ that a woman who was persecuted because of her opposition to entrenched machismo societal practices may be eligible for asylum based on her actual or imputed political opinion. Obviously, these cases are very fact specific and secondary sources are crucial to obtaining a positive outcome in your client’s case. Following are areas of analysis to focus on and types of evidence that can be used to prove your legal argument:

- Important evidence for every gender-based claim:
 - Client declaration regarding how she tried to establish rights or stop the abuse. And what the abuser said to these declarations.
 - Witness declarations or testimony (especially for establishing reasons why abuse occurred shows nexus).
 - Any forensic evidence or medical reports if any continued symptoms or any scars that can describe as coming from violence.
 - Psychological evaluation of your client.
- Regarding particularity and social distinction:
 - Country condition reports.
 - Laws that criminalize activity against the group shows that group recognized as distinct within society.
- Regarding the home country’s governmental response and ability to protect:

⁹⁹ The Board has explicitly declined to decide whether gender + nationality alone can constitute a cognizable PSG. *Matter of A-C-A-A*, 28 I&N 84 (A.G. 2020) at fn 4. The Second Circuit noted in *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008), that “[a]s some of our sister circuits have found in cases involving claims of female genital mutilation, it appears to us that petitioners’ gender- combined with their ethnicity, nationality, or tribal membership satisfied the social group requirement.

¹⁰⁰ *Supra* note 81.

- Look at expert reports.
- Are there any police reports. If yes, did the police say they would not get involved.
- Research country's domestic violence laws. While many countries have DV laws, they are not followed or implemented.
- Regarding Internal relocation:
 - Include maps that show size of country and/or distances between villages. Many countries are very small, geographically speaking, and the next village could be very close by and thus hard to get away from a persecutor.
 - Also show external issues that make a move away from abuser difficult and/or impossible: internal strife, gang everywhere, no family to help take care of children, no schooling opportunities in other area.
 - Think of societal context – In most countries it would not be safe for a child to relocate alone anywhere.

Ultimately, remember that many times gender-based PSGs cross over to other grounds of asylum. A girl may be targeted because of her race, or because a non-marital relationship would be against her religion. Gather all the facts in your client's case and then discuss with your Safe Passage mentor attorney in order to determine that you choose to argue your client's asylum eligibility based on the strongest legal grounds.

And always remember the importance of nexus. It is not enough to have a certain opinion or belong to the group; you must show that the protected ground is WHY your client is being targeted.

CHILDREN IN ABUSIVE RELATIONSHIPS

The BIA has recognized child abuse to be persecution of an "atrocious" nature.¹⁰¹ Unfortunately, many of the children we work with have been persecuted because of their membership in an abusive relationship.

Being a child is an immutable characteristic. Children are easily distinguishable within any society based upon their physical development, legal status, and societal status. In many of our cases we have successfully argued that being a child that is unable to leave her abuser is also an immutable characteristic. Children most often do not have a choice over familial relationships or the domestic situation they are in.

¹⁰¹ See *Matter of S-A-K- & H-A-H-*, 24 I&N Dec. 464, 465-66 (BIA 2008).

When *Matter of A-R-C-G-* was binding case law, it provided supportive language and analysis for cases involving child abuse.¹⁰² While *A-R-C-G-* involved domestic violence within a marital relationship, the case was useful to cite where a child has suffered abuse at the hands of a family member because children are similarly situated in abusive relationships that they are unable to leave. That line of argument is complicated by *Matter of A-B-*. Please see our expanded discussion on this topic in the gender-based claims section above.

We have also found it helpful to rely on the government's official position as expressed in *Matter of L-R*.¹⁰³ In this memorandum, the government argued that "Mexican women in domestic relationships who are unable to leave" or "Mexican women who are viewed as property by virtue of their positions within the relationship" could meet the social group standard."¹⁰⁴ The BIA agreed with the government's position and the applicant was granted asylum. While "Women in domestic relationships who are unable to leave" has become a more difficult PSG formulation since *Matter of A-B-*, the attorney general did not address the second formulation, "women viewed as property."¹⁰⁵

Similarly, at times children are viewed as property by family members due solely to the fact that they are children. They are expected to live with and listen to their parents, or other caretakers, due to their young age and inability to provide for themselves. Children are socially, physically, and economically dependent on their families and caretakers for care and a child cannot typically dissolve the custodial relationship with an adult.

Possible PSGs involving children in abusive relationships:

- Children in family relationship that they cannot leave, but distinguish from *Matter of A-B-*.
- Children viewed as property within familial relationship
- Guatemalan children viewed as property by their parents

GANG-RELATED CLAIMS

Many of the children that we work with have fled their home countries due to gang violence. Some have actually been gang members and can only leave the gang by leaving the country. Others have refused to join a particular gang and fled due to violence or the threat of violence by gang members because of their refusal to join.

¹⁰² *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014).

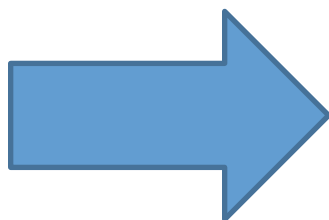
¹⁰³ Dep't of Homeland Security's Supplemental Brief, *Matter of L-R-* (BIA Apr. 13, 2009), https://cgrs.uchastings.edu/sites/default/files/Matter_of_LR_DHS_Brief_4_13_2009.pdf (last accessed June 1, 2021).

¹⁰⁴ *Id.* at 14.

¹⁰⁵ *Id.* at 43.

It is difficult to prove particularity and nexus in many gang-related claims. There is also negative and confusing case law in this area.¹⁰⁶ The best advice we can give is to work with your Safe Passage mentor attorney and pay attention to the case law of the Circuit in which your child lives. Make sure to distinguish your client's asylum claim from any negative case law. The stronger you can make the factual record in your client's case, the better chance you have of convincing the adjudicator that your client's particular case should be granted. It is essential to explore not only particular social group but also whether race, religion, or imputed political opinion may be appropriate in your case and, in Immigration Court, to always make a strong record for protection under the Convention against Torture which does not have a nexus requirement.

While many federal circuit courts have been ruling against particular social groups based on resistance to gang recruitment, *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) reminds us that what constitutes a Particular Social Group is a fact specific inquiry dependent on both the facts of the case and the society in which the child lived in home country. The Second Circuit recently remanded a Board denial in the case of a former gang member from Guatemala, reminding the Board that just because the PSG of former gang members was not cognizable on one record, does not mean it will never be cognizable. In that case, the Board had relied on *Matter of W-G-R-*, a case involving a former gang member in El Salvador, to deny the case of a former gang member from Guatemala. The Board cannot categorically deny PSG's without regard to the specific facts and context in record.¹⁰⁷



IMPORTANT: Present evidence that clearly connects gang member's motivation to persecute your client to the protected group in order to clearly distinguish from what might be seen as generalized gang violence within the society as a whole.

ACTUAL OR IMPUTED POLITICAL OPINION

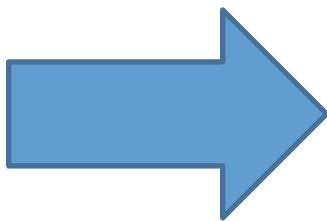
Recent case law in the Second Circuit supports framing cases involving resistance to gang activity as a political opinion, and acts of resistance as a basis for the gangs to impute an anti-gang political opinion to someone.¹⁰⁸ As the Circuit recognized, opposition to abuse of power, including non-governmental power, may constitute a political opinion. In light of this, it is critical to examine whether your client has in some way manifested an opposition to gang authority in her community. Did she refuse to collaborate with the gangs in some way? (Not joining, not paying extortion, refusing to become a gang girlfriend?) Did she make any statements to the gangs about how she did not agree with what they were doing or

¹⁰⁶ See Matthew Lister, Gang-related Asylum Claims: An Overview and Prescription, 38 U. MEM. L. REV. 827 (2008).

¹⁰⁷ See *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N 208 (BIA 2014); *Ordonez-Azmen v. Barr*, 965 F.3d 128 (2d Cir. 2020).

¹⁰⁸ *Hernandez-Chacon v. Barr*, 948 F.3d 94, 97 (2d Cir. 2020).

why she was refusing to collaborate? Expert declarations from the Center for Gender and Refugee Studies offer important insight into the way that those who refuse to collaborate are identified as gang “resisters.” Did the gang members say anything to your client suggesting they perceive them to be such a “resister?”



When making a claim for political asylum, always be sure to identify 3 things:

- In what way (words or actions) did your client telegraph resistance to gang authority?
- What evidence, direct or circumstantial, do you have that the gang was aware of this?
- What evidence, direct or circumstantial, do you have that the gang perceived your client’s words or actions as resistance to their power or authority?

POSSIBLE GANG-RELATED PSGS

- ✓ Honduran boys who have defied the gang
 - Once your client defied the gang by, for example, refusing to pay “rent” or defying recruitment, your client is in a new PSG where the immutable characteristic is defying the gang.
- ✓ Witness of gang violence who reported the crime to the police
 - Once your client witnessed the crime and/or reported the crime he cannot change the fact that he was a witness and/or that he reported the crime.¹⁰⁹
- ✓ Honduran girls being viewed as property by gang members
 - Young women forced to be in a relationship with a gang member or other criminal element has a gender element included within the PSG. Depending on which culture, tradition, or society you are dealing with, this type of harm only befalls one gender more than the other. But, be careful circularity.

REMEMBER NEXUS! Make sure to separate the PSG from the nexus. You must prove both that your client belongs to a particular social group AND that he was targeted because of and on account of his membership in the particular social group. The specific details of your client’s story are incredibly important to the overall success of the case. We have found that the more advocates talk about how endemic and widespread the violence is in the Northern Triangle of Central America, the harder it is for individuals to prove nexus.

¹⁰⁹ *Guzman-Orellana v. Attorney General*, 956 F.3d 171 (3rd Cir. 2020).



It is also important to separate the initial reason for targeting from subsequent reasons for targeting. For example, your client was initially targeted because of the neighborhood he lived in and/or where he went to school. But, it was not until he said no to recruitment that he was targeted physically. In many cases, the subsequent reasons for targeting may be where actual persecution is.

E. FAILURE OF THE STATE TO PROTECT

If your client was persecuted by, or fears persecution from, actors other than the government, you will need to demonstrate that the government of the home country is unable or unwilling to protect your client. This is something that we have seen increasing litigation around so it is important that your record fully address this eligibility requirement. In *Matter of A-B-*, the Attorney General found that one need show more than difficulty to act on a particular report, but rather a government that either “condones or was completely helpless to protect the victims.” The Attorney General’s interpretation has been challenged as being overly stringent, but the Second Circuit deferred to *Matter of A-B-* on this issue in *Scarlett v. Barr*, finding that it did not reflect a meaningful change to the standard but rather a clarification.¹¹⁰ The Second Circuit reminded the Board, however, that this remains a two-part inquiry: Is the government willing to control the persecutor? Is the government able to control? A government that is willing to control but can only offer ineffective assistance is not a government “willing and able to protect.”

Make sure to ask your client whether she ever sought police protection in the home country. Ask about these police encounters; what did the officers tell her or do when they heard about the problem? Did she file any police reports?

If your client does not have any case-specific evidence of the state’s failure to protect, look to secondary sources such as country conditions reports and newspaper articles that document the police inability to protect similarly-situated victims. An asylum applicant is not required to seek protection from the police where they can show that going to the police would be futile.¹¹¹

F. INTERNAL RELOCATION NOT REASONABLE

An applicant is not eligible for asylum if she can reasonably and safely relocate to another part of her country of origin. This is a totality of the circumstances analysis that considers factors beyond whether the child can escape persecution and does not expect a child to live in hiding.¹¹² The AOBT Manual explains that it is generally not reasonable to expect a child to relocate within her country of origin, as factors including age, language, religion, ethnicity, gender, ability to survive and obtain support are all

¹¹⁰ *Scarlett v. Barr*, No. 16-940 (2d Cir. 2020).

¹¹¹ *Matter of S-A-*, 22 I&N 1328 (BIA 2000).

¹¹² 8 C.F.R. § 1208.13(b)(2)(ii); *Matter of M-Z-M-R*, 26 I&N Dec 28, 33 (BIA 2012)



relevant to the reasonable relocation analysis.¹¹³ Additionally, relocation is presumed to be unreasonable when the government in the persecutor or where someone has already been persecuted.¹¹⁴

G. BARS TO ASYLUM ELIGIBILITY

Even if a child can prove that she has a viable asylum claim, she may be barred from receiving asylum protection. Following is a brief description of the mandatory bars to asylum.

If you have any concerns that one of these bars to asylum may be applicable to your client, please contact your Safe Passage mentor attorney for further analysis.

1. PERSECUTOR OF OTHERS

- “Ordered, incited, assisted or otherwise participated in the persecution of others” on account of a protected ground.¹¹⁵
- Second Circuit requires that the conduct be “active,” have “direct consequences for the victim,” and not be “tangential to the acts of oppression [or] passive in nature.”¹¹⁶
- In a child’s case, if they may have hurt or killed someone, ask yourself if the victim was harmed based on one of the five protected groups. If not, then arguably, the child’s actions should not bar him from asylum.
- This bar may apply even if the behavior was coerced.

2. CONVICTED OF A “PARTICULARLY SERIOUS CRIME” IN THE UNITED STATES

- This is a case-by-case inquiry. If your client has any adult conviction, please make sure to reach out to your Safe Passage mentor attorney in order to conduct further analysis as to whether the crime can be considered to be particularly serious. An aggravated felony conviction is automatically considered to be a particularly serious crime.¹¹⁷
- Does not apply to juvenile delinquency records since these are not convictions for purposes of immigration law.¹¹⁸ However, the issue of juvenile convictions is complicated. Please review any juvenile convictions your client may have with your Safe Passage mentor attorney to confirm that they will not cause a problem with the asylum application process.

¹¹³ AOBTC GUIDELINES, PARAGRAPH 42, [Asylum Officer Basic Training Course – Guideline for Children’s Asylum Claims](#).

¹¹⁴ 8 C.F.R. § 1208.13(b)(3)(ii).

¹¹⁵ INA § 101(a)(42).

¹¹⁶ *Yan Yan Lin v. Holder*, 584 F.3d 75 (2d Cir. 2009).

¹¹⁷ INA § 208(b)(2)(B)(i).

¹¹⁸ *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000).



- Note that this inquiry is only for criminal convictions for crimes committed within the United States.

3. COMMITTED A SERIOUS NON-POLITICAL CRIME OUTSIDE OF THE UNITED STATES

- A conviction is not required so this inquiry can look at any criminal conduct the child engaged in before entering the United States.¹¹⁹
- If your client engaged in any criminal activity outside of the United States, please make sure to reach out to your Safe Passage mentor attorney in order to conduct further analysis. Whenever possible, we would want to argue that children lack the capacity to commit crimes.

4. DANGER TO THE SECURITY OF THE UNITED STATES

- If the adjudicator has “reasonable ground” to believe that the child seeking asylum is a danger to the security of the United States.¹²⁰

5. TERRORIST ACTIVITIES

- This bar to asylum is extremely broad. The child must not meet the definition of a terrorist, never participated in terrorist activity, and never given material support to a terrorist organization.
- Providing material support to a terrorist organization can fall under this ground for asylum denial.
- There is no implied exception within the Act for asylum applicants who have provided material support to a terrorist organization while under duress.¹²¹
- If you believe that anything in your child’s history in home country implicates this bar to asylum, make sure to contact your Safe Passage mentor attorney for further discussion and analysis.

6. FIRM RESETTLEMENT

- Refers to actually receiving an offer of permanent residence or citizenship in another country.¹²²

¹¹⁹ INA § 208(b)(2)(A)(iii).

¹²⁰ INA § 208(b)(2)(A)(iv).

¹²¹ *Matter of M-H-Z-*, 26 I&N Dec. 757 (BIA 2016), <https://www.justice.gov/eoir/file/865856/download> (last accessed June 1, 2021). And see *Hernandez v. Sessions*, 884 F.3d 107 (2d Cir. 2018).

¹²² INA § 208(b)(2)(A)(iv); 8 C.F.R. § 208.15.

- Even if such an offer was made, exceptions exist for the person who is just traveling through the country who made the offer 8 C.F.R. 1208.15(a)
- In *Matter of A-G-G*, the BIA established a new framework to determine if an asylum applicant was firmly resettled before applying for asylum protection in the United States.¹²³

7. SAFE THIRD COUNTRY

- Important note: the only Safe Third Country Agreement currently in force does not apply to children the U.S. government has classified as unaccompanied minors. The majority of Safe Passage’s clients have been designated as unaccompanied minors, so in general, the Safe Third Country agreement does not apply to them.
- Until the Trump Administration, the United States only had a Safe Third Country Agreement with Canada.¹²⁴ If a person fleeing persecution arrives in either the United States or Canada, she must seek asylum in the first country (she could not, for example, enter the United States, then enter Canada, and apply for asylum in Canada; she would have to have sought out asylum in the United States first, and she could be expelled back to the United States to do so).
- The Trump Administration entered in similar agreements with Guatemala, Honduras, and El Salvador. For example, A=a Salvadoran asylum seeker who had passed through Guatemala and then arrived at the U.S.-Mexico border could be expelled back to Guatemala to pursue asylum, even though that country’s asylum processing system is vastly underprepared for an influx of asylum seekers, and may in fact be dangerous for them. The Biden Administration ended these agreements on February 6, 2021.¹²⁵

8. PREVIOUS ASYLUM DENIAL

- If previously applied for and then denied asylum, barred from a subsequent grant of asylum.¹²⁶
- However, if applicant can demonstrate changed circumstances in the home country that “materially affect” her eligibility for asylum, she may be able to have her previous denial reconsidered by an immigration judge or the BIA.¹²⁷

¹²³ *Matter of A-G-G*, 25 I&N Dec. 486 (BIA 2011).

¹²⁴ INA § 208(a)(2)(A).

¹²⁵ “Biden Administration Ends ‘Safe Third Country’ Agreements, Feb. 8, 2021, https://immigrationimpact.com/2021/02/08/safe-third-country-agreement-biden/#.YLZ_KJNKjq0 (last accessed June 1, 2021).

¹²⁶ INA § 208(a)(2)(C).

¹²⁷ See INA § 208(a)(2)(D).

9. ONE-YEAR FILING DEADLINE

- Asylum seekers must file their applications within one year of entering the United States.¹²⁸
- Children designated as UCs are not subjected to this one-year filing deadline.¹²⁹
- Please see Step One, Section A.2 for a more detailed discussion of this topic.

H. HUMANITARIAN ASYLUM

In the case of severe past persecution or other serious harm, a child may be granted humanitarian asylum even if the government can prove that there has been a fundamental change of circumstances within the home country and that internal location is possible.¹³⁰

Humanitarian asylum may also be granted upon the discretion of the adjudicator if “the applicant has established that there is a reasonable possibility the he or she may suffer other serious harm upon removal to [his/her home] country.”¹³¹ In *Matter of L-S-* the BIA explained that “other serious harm” analysis is forward looking and should be focused on “current conditions and the potential for new physical or psychological harm that the applicant might suffer.”¹³²

For example, we had a case where the asylum officer granted asylum based on the extreme hunger the child applicant had suffered due to the neglect and abuse of his grandparents. The “other serious harm” need not be related to the initial persecution and need not be on account of a protected ground.

I. WITHHOLDING OF REMOVAL UNDER INA 241(B)(3) AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE

Although you are focusing on your client’s eligibility for asylum protection, it is important to also argue their eligibility for withholding of removal under INA 241(B)(3) and protection under the Convention Against Torture (CAT). Although neither of these forms of relief from removal can be granted by an asylum officer, it is important to preserve the possibility of these types of relief if the asylum application gets referred back to the immigration court.

¹²⁸ INA § 208(a)(2)(B).

¹²⁹ INA § 208(a)(2)(E).

¹³⁰ *Matter of N-M-A-*; *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012); see also *Matter of B-*, 21 I&N Dec. 66 (BIA 1995); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

¹³¹ 8 C.F.R. § 208.13(b)(1)(iii)(B).

¹³² *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

Step Four Section A.3. below explains the specific sections of Form I-589 that must be checked in order to preserve your client's eligibility. You should also include a section in your legal memorandum that briefly addresses your client's eligibility for these forms of relief from removal.

1. WITHHOLDING OF REMOVAL UNDER INA § 241(B)(3)

Your client may be eligible for withholding of removal¹³³ if she fears a threat to her life or freedom on account of one of the five grounds of protection: race, religion, nationality, membership in a particular social group, or political opinion. The child must prove that it is more likely than not that she will be persecuted if she returns to her country of origin. This form of relief is not discretionary; however, there are bars to eligibility. This form of relief may be necessary where your client is not exempt from the OYFD, has an old removal order that has been reinstated, or has adverse equities that may go toward a denial on discretion. Those who are granted Withholding of Removal do not receive the same benefits as asylees. Withholding of removal is not a path to lawful permanent residency and a person with Withholding of Removal may not travel outside the United States. So, it is important to review with your client these important differences prior to accepting an offer of Withholding of Removal instead of asylum. However, there are cases where it is the best option for the child.

2. PROTECTION UNDER THE CONVENTION AGAINST TORTURE (CAT)

Your client may be eligible for protection under CAT¹³⁴ if she can prove that it is more likely than not that she will be tortured in her country of origin. The harm feared in this case does not need to be on account of a protected ground. This form of relief is not discretionary. There are bars to eligibility for withholding under CAT, however, there are no bars to deferral of removal under CAT.

This form of relief becomes essential where your client is not able to establish a nexus between a protected ground and the harm they experienced or fear. There is no nexus requirement. There are many Central Americans fleeing gang violence who have been denied asylum due to the nexus requirement but granted protection under the Convention against Torture. CAT protection has a higher state-action requirement than Asylum or Withholding of removal. In order to establish eligibility for CAT protection, one must show that the government of their home country would either carry out or acquiesce to the likely torture of your client- this means, at a minimum, that the government would turn a blind eye to the torture. This does not require unanimity of action by the government. Where the

¹³³ INA § 241(B)(3).

¹³⁴ UN GENERAL ASSEMBLY, CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 10 December 1984, United Nations, Treaty Series, vol. 1465, available at <http://www.refworld.org/docid/3ae6b3a94.html> (last accessed June 1, 2021).

efforts by some members of the government to prevent torture are undermined by the corruption and complicity with torturers by other members of the government, acquiescence may still be established.¹³⁵

CAT, like Withholding of Removal, offers significantly less benefits than asylum. Regardless, there are many cases where it may be the best option for your client.

STEP THREE: HOW TO WORK WITH YOUR CLIENT

Make sure that you have adequately prepared for your initial client meeting beforehand. In addition to reading through this manual, read the Safe Passage assessment memorandum and case file.

Read country condition information. Learning about the child's home country before you meet with your client will allow you better insight into what her life has been like and the reasons why returning to her home country might be dangerous.

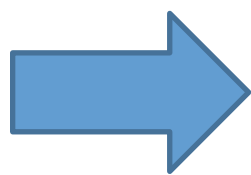


¹³⁵ *De la Rosa v. Holder*, 598 F.3d 103 (2d Cir. 2010); *Matter of O-F-A-S-*, 28 I&N 35 (A.G. 2020)

Take a few minutes to think about the journey your client undertook to leave her home country and travel to the United States to escape danger, reunify with parents or family members, and/or find a safe and secure place to live. Imagine being a child and leaving your home by yourself or with a small group of other young people, and traveling for thousands of miles. What would you take with you? How would you eat? What if you rode on top of a freight train? What if you walked?

Review the materials Safe Passage Project provided on human-centered and trauma-informed lawyering.

Before your initial client meeting, you and your mentor attorney should discuss the legal theory of the case. We suggest to our new *pro bonos* that they create a bullet point outline of the case theory in order to guide their interview questions. If the child is up for talking, an interview outline can be helpful.



IMPORTANT: The goal of your initial client meeting is to build rapport with your client. Remember that you are working with a child who has been through a very traumatic experience. Use your initial meeting to get to know your client. You will then be able to delve more deeply into the theory of the case at subsequent meetings.

Plan to meet with your client 2-3 times before finalizing the asylum application. Memories can take time to unravel and you may find your client saying something that contradicts an earlier meeting. Children who have been through traumatic events need time to open up and work with what is going on in their memory. See Section B. The Client Interview below for a more detailed discussion of this topic.

A. UNDERSTANDING THE ACTUAL FACTS OF YOUR CLIENT'S CASE

Make sure that you understand the actual facts of your case. Do not overemphasize law and under emphasize facts; good facts make good law and bad facts make bad law.

While you will invariably have certain questions prepared that you want to discuss, make sure that you take notes the same way the child tells you their story. Many times, children do not remember events, especially traumatic events, in a linear manner or with a lot of detail. The accuracy of a child's future testimony in front of an asylum officer or immigration judge will depend on how you organize the child's affidavit beginning of your first meeting.

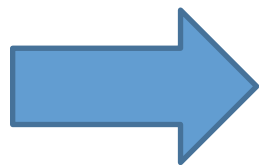
It is important to try and understand how trauma impacts a child's ability to talk about what they have been through. Traumatic events are remembered differently than regular memories, in a more sensorial manner that recalls the sounds, smells, and physical sensations of an event rather than a narrative

memory.¹³⁶ This makes it difficult for survivors of trauma to tell the story of what happened to them in a manner that is not “incomplete, incoherent, fragmented, and chronologically fractured.”¹³⁷ Furthermore, research has shown that the stories of trauma survivors change over time.¹³⁸

As the attorney of a child who has been through traumatic events, try to make your client feel as comfortable and safe as possible during your meetings. Read Step Three Section B below regarding the client interview process and incorporate as many of the points as you can into your own interview techniques. The more comfortable your client is with the process, the better you will be able to work together to completely understand your client’s asylum claim and ultimately prepare the best presentation of that claim.

1. CENTER FOR GENDER AND REFUGEE STUDIES (CGRS)

The Center for Gender and Refugee Studies (CGRS) housed at UC Hastings College of Law is a great source to seek case-specific research and guidance regarding child migration and the trauma experienced by young asylum seekers. You can request assistance with your client’s case by creating an account at <https://cgrs.uchastings.edu/assistance/request> and entering in details regarding your client’s claim.



IMPORTANT: It is important to make your request as soon as possible. CGRS is experiencing a backlog in issuing case-specific research and guidance and it may take several months or longer to receive a response.

If you have been issued a CGRS case number, but, have not received a final response from CGRS by the time you receive your client’s asylum interview notice, make sure to contact your Safe Passage mentor attorney as we have access to a declaration by a well-known expert on mental health and asylum seekers that specifically discusses the impact of trauma on the ability of asylum seekers to disclose certain aspects of what they have experienced. If you have a CGRS case number you will be able to use this expert declaration as corroborative evidence in your case, if you determine it to be helpful.

In late 2017, CGRS launched an Asylum Expert Witness Database, a searchable database of qualified and pre-vetted country specialists and health professionals who serve as expert witnesses to support asylum seekers in the United States. It can be found at: <https://cgrs.uchastings.edu/expert/search>

¹³⁶ See Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 487-90 (2016), <https://digitalcommons.law.scu.edu/lawreview/vol56/iss3/1/> (last accessed June 1, 2021) (describing trauma and how it impacts an asylum seekers story).

¹³⁷ *Id.* at 488.

¹³⁸ *Id.* at 489-90.

B. THE CLIENT INTERVIEW PROCESS

It is important to understand that your client has been through an event so traumatic that it caused her to leave her home country and travel along an incredibly dangerous route to arrive at in the United States. Try to keep your client's trauma in the forefront of your interactions with your client in order convey that you care about her as a person.

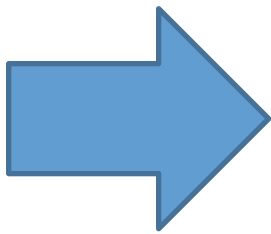
Things you can do before a client meeting to make your client more comfortable and empowered during client meetings:

- ✓ Organize the meeting room in a way that lets your client choose her own seat
- ✓ Plan to sit in a location that does not block the exit to the room
- ✓ Make sure your client knows where the bathroom is and that you can take bathroom or water breaks at any time
- ✓ Have tissues, water, mints available in the room for your client
- ✓ Make sure the clock is visible to your client and make sure that your client is aware of how much time the interview is going to take

Remember that the child is your client, not the adult who accompanies the young person to meetings. Communication is key.

1. At the outset, make sure to introduce yourself, explain why you are meeting, and ask the child for permission to proceed with the meeting.
2. Explain that a bit later, you will excuse the accompanying adults from the room so that you may speak with your client alone. Explain that you will continue to do this at every meeting because it is your role to ensure that your young client is in a safe environment and that anything she tells you will be kept confidential. Make sure they know that at the end of the interview you will have everyone come back together in the same room at the end of the meeting for a quick review of what happened during the meeting and what the next steps will be. This makes the practice of speaking alone with the child a routine pattern, and prepares your client for the actual asylum interview when any accompanying adult will either be in the waiting room, or not at the asylum office at all.
3. Make sure that your client understands what asylum is, in an age-appropriate way. At a minimum, she should understand that asylum is an immigration benefit for people who have been hurt in their country for certain reasons, or who are afraid they would be hurt if they went back to their country. Continue to explain this at subsequent interviews. Asylum is complicated for adults to understand. We should not expect children to understand asylum after having it explained to them once.

4. Your client already answered many basic questions designed to assess her possible eligibility for relief when you met with Safe Passage advocates on the day of her immigration hearing. Review the Safe Passage memorandum with your client in order to check for errors and inconsistencies, and to gather more information as needed.

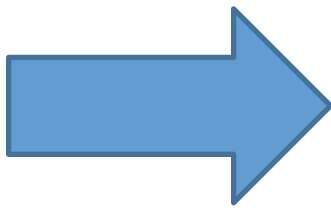


IMPORTANT: Safe Passage advocates frequently find that as the young person begins to trust her *pro bono* attorney, she will share more information which assists to build her legal case. Your Safe Passage mentor attorney is always available to discuss legal strategy as additional facts come forward.

5. Make sure to ask for your client's updated contact information, as well as the contact information of the people with whom your young client lives. This is necessary in the event you need to contact your client and her phone has been turned off due to lack of funds to pay for phone credits, etc. Be sure and ask for email or even "Facebook" messenger access. Also, discuss travel costs with your client. Safe Passage may be able to supply subway cards or train tickets so that young people and their sponsors are able to travel to/from client meetings in Manhattan.
6. Begin thinking creatively about corroborating evidence. Brainstorm a list of possible documents you can compile in order to corroborate your client's testimony. Think ahead to whether expert testimony might be necessary. Do not wait to assemble your exhibits as compiling supporting documents can end up taking longer than any other step in the application process.
7. Following are a list of helpful points to keep in mind when working with your client to develop their asylum application:
 - Children have shorter attention spans, so plan on your initial meeting lasting no more than an hour.
 - Make sure to explain that the child does not need to answer all the questions and can answer "I don't know" or "I don't understand the question."
 - It is important that the child knows at the outset of your attorney/client relationship that the child has the ability to control aspects of your meetings together, like when to end the meeting or whether to discuss certain topics.
 - In order to get the most out of your time with your client, make sure to use simple language and ask open-ended questions. Being patient and empathetic will show your client that you care about what they have been through and respect their feelings.

- For example, rather than asking, “How is everything at home?” ask, “What did you do when you woke up in the morning? What did you eat?” Shorter specific questions can allow the client to open up and give more details that will be easier for you to then ask follow-up questions. You might want to begin with more open-ended questions and then get more specific.
- Balance your interview by asking lighter, easier questions periodically. For example, asking if she likes to play sports or her favorite subject in school may help her to relax and be more open when answering the tougher questions.
- Be creative with your interview techniques. Sometimes allowing a child to draw something that happened along their journey to the United States or to show you on a map the route they took from their home country will allow them to share details that may prove important to the overall case, or help you to develop further lines of questioning.
- When discussing the traumatic event, mitigate your own reaction; do not gasp or appear startled. Be patient and allow awkward silence. After they describe trauma, thank them for telling you what happened. Do not allow your client to feel shamed or worried for telling you. Do not be judgmental. You can say things like “I’m sorry that happened to you,” or “That must have been really hard; thank you for telling me.”
- Remember to take frequent breaks throughout the interview and ask your client if she needs water, tissue or a few minutes to compose herself.
- After your client describes the trauma, try to ask about what happened after the event. Where did they go as soon as the event was over? How did they get home? These types of questions will help the child move beyond the traumatic event and will give you corroborating contextual details surrounding the traumatic event.
- If your client has suffered many instances of trauma, you do not necessarily need to go over in detail every single thing that happened to her. But you should make sure to discuss the first instance of trauma, the worst instance of trauma, and then the last instance of trauma. Depending on the theory of your case, you may need to address other traumatic events that happened, but, at the minimum you need to discuss these three events.
- Try to end your time together on a positive note and make sure that you ask what your client is going to do for the rest of the day. Make sure that they have a plan.

- Perhaps save your photocopying or other mundane tasks to the end of the interview. This would allow your client a few minutes in the room alone to compose herself before she leaves and go about the rest of her day.
- At the end of any client meeting, make sure you share with the child the next steps and ask if she has any questions. If she does have questions, try to find a solution before you end the meeting.



IMPORTANT: Remember that you are not going to get all the necessary information you need to know about what happened to your client in one meeting. Plan to meet several times and use the above techniques to help you work with your client at subsequent meetings.

C. PSYCHOLOGICAL EVALUATIONS

We believe that a psychological evaluation is an important part of a child's asylum petition. This is especially true for younger clients who have experienced significant trauma and are re-traumatized if made to recount what happened. An evaluation with an experienced professional gives the child practice telling her story to someone she has not met before, and the professional will then write a description of the meeting and present findings as to the child's conduct, which can corroborate the child's affidavit.¹³⁹

Every child is different. Some will immediately open up to you and share their stories. Others will not be able to share anything at all. We have found that children younger than 8 years old have trouble even discussing what they spoke about in the psychological evaluation. Thus, we cannot stress enough the importance of collaboration between the psychologist and the child's attorney to determine what the child will actually be able to speak about at the asylum interview. Especially in the cases of young asylum applicants, we will request that the psychologist include 1-2 sentences about how the child is not able to talk about the trauma outside the context of therapy.

It is important to be cognizant of what your client may be feeling when she is telling you about what happened in her home country that caused her to travel to the United States. Understand that in telling you her story, she may be reliving the trauma or triggering symptoms of undiagnosed PTSD or other mental health issues. Please note that Safe Passage staff is always available to discuss any concerns you may have about the physical or mental well-being of your client.

¹³⁹ See Eric Boodman, *Fleeing Violence, Asylum-seekers Rely on Psychologists to Back Up Their Story*, STAT NEWS, <https://www.statnews.com/2017/01/25/asylum-seekers-psychologists/> (last accessed June 1, 2021) (describing the important role that psychological evaluations serve in the asylum application process, and the difficulty asylum seekers face when having to recount the trauma suffered at the hands of persecutors in their home countries).

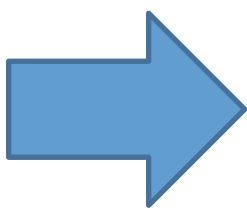
1. SAFE PASSAGE SOCIAL WORK TEAM

Our amazing in-house social work team is available to work with you and your client to access a number of different mental health services. They can explain to the child, and the child's caregiver, the personal benefits of going to see a psychologist, and how meeting with mental health professionals can also greatly assist with the child's asylum case.

While Safe Passage does not conduct psychological evaluations, we regularly refer our *pro bono* attorneys to the following two organizations: Physicians for Human Rights and HealthRight International. We also have partnerships with various mental health clinics throughout the New York area, and can help your client secure a *pro bono* evaluation.

Please see below for detailed information on how to schedule an evaluation with one of these groups. Please remember that this request to schedule should be an initial step taken as soon as you receive your Safe Passage case file as these appointments can take 6-8 weeks to obtain, and the entire process can take 6-8 months to complete.

If your client has been receiving ongoing mental health services with psychologists or clinical social workers outside of these two organizations, the Safe Passage social work team can work with you and these mental healthcare providers in order to obtain detailed background about what the client has been through. For example, Safe Passage regularly works with a spectacular doctor and psychologist at Terra Firma in the Bronx to compile useful affidavits and statements regarding clients receiving services with their organization.



IMPORTANT: Reach out to the Safe Passage social work team before your initial client meeting to see if a team member can briefly meet with your client and her caregiver on the day of your initial meeting. This will assure that a social work team member can meet everyone in person and explain some of the available services.

In addition to mental health services, SPP has a soccer program and other social groups for children to join. Safe Passage can also give general referrals for homework assistance or help the child to pursue other activities and interests outside of their asylum application.

2. PHYSICIANS FOR HUMAN RIGHTS & HEALTHRIGHT INTERNATIONAL

As noted above, it is important to schedule a psychological evaluation for your client as soon as possible. This step must be completed by you the child's attorney. Physicians for Human Rights requires that requests be made at least twelve weeks prior to the date you would like to submit the evaluation.



Safe Passage cannot complete this step for you. This process generally takes 6-8 months from your initial request to receipt of the final psychological evaluation.

Contact Information:

- 1) Physicians for Human Rights: Complete the forensic evaluation request form available at <http://physiciansforhumanrights.org/asylum/for-attorneys.html>. Make sure to read carefully any and all information regarding updated instructions and deadlines.
- 2) HealthRight International: Follow the instructions on how to request an evaluation available at <https://healthright.org/our-work/human-rights-clinic/attorneys/>

In general, these evaluations last 3-4 hours and are conducted by volunteer mental health professionals and physicians. The professionals meet with your client and talk to them about the trauma they have experienced and then prepare detailed assessments of what was discussed in the meeting. The organizations ask that you highlight in advance any specific issues or questions that you would like them to try and resolve. Both organizations request that the attorney arrange for a competent translator to assist where translation is necessary.

3. NYC WELL AND THREAT OF IMMINENT HARM

While we hope that the most traumatic experiences your client has suffered are in her past, your client is likely still processing what they have been through. Sometimes the young people we work with find themselves in a state of crisis in which they threaten self-harm or harm to another.

If any such situation arises, please contact Safe Passage and we will try and work through the problem with you and your client. However, your mentor attorney is not a mental health professional, and we are not able to make a risk assessment or evaluation of a client's mental state. If you think your client is at imminent risk of harming herself or others, we highly recommend that you call NYC Well at 1- 888-692-9355 or 9-1-1 immediately.

NYC well is a free service available in many languages where New Yorkers can call and speak to a mental health counselor directly and confidentially.¹⁴⁰

Our experiences with NYC Well have been positive and we recommend that you utilize the service when necessary. When we called the NYC Well Hotline on behalf of a client who we felt was at imminent risk of hurting himself, we were immediately connected with a mental health counselor. We

¹⁴⁰ <https://nycwell.cityofnewyork.us/en/>; see also <https://www.wnyc.org/story/nyc-mental-health-hotline-more-popular-expected/> (last accessed June 1, 2021).



tried to conference the client in, but he refused to the talk to the counselor. The counselor, with our permission, then called 9-1-1 and requested EMS services (an ambulance, not police) to the client's address.

We were told that the EMTs would assess the client's situation. If they determined that he was a risk to himself and needed immediate care, they would take him to a hospital for evaluation; if he was deemed not an immediate risk, a Mobile Crisis Team (a non-emergency mental health team from a local hospital) would be dispatched to his house within 24-48 hours for a follow-up consultation.

D. STRENGTH OF A MEDICAL EXAMINATION AS EVIDENCE OF PERSECUTION

A medical affidavit can be an important part of an asylum application if your client has a personal history of physical, sexual, mental or emotional abuse. An examination by a medical expert can help to provide a professional medical account of the abuse, which will corroborate the child's affidavit and testimony.

Examples where medical affidavits may be useful corroborating evidence:

- If child has scars that can be attributed to a severe beating by family or gang members;
- Client shot twice; medical exam would clarify that the wounds are consistent with gunshot wounds 18 months old;
- Epilepsy due to physical abuse.

In cases such as these, a medical affidavit will be able to estimate the age of a specific scar or injury and the most likely cause of the injury. Contact either Physicians for Human Rights or HealthRight International (contact information above) to schedule a medical examination. Separately, determine if the child is in existing treatment and if so obtain medical records.

E. THE ROLE OF THE INTERPRETER/TRANSLATOR

The majority of the children we work with only speak Spanish. The majority of the *pro bono* attorneys we work with do not speak Spanish. In these cases, the interpreter will be the link between you and your client. Both you and your client will need to become comfortable using the interpreter in order to effectively communicate and prepare the asylum application.

Interpreters should have enough experience to display empathy and serve as a competent and empathetic link between you and your client. However, there are certain things you should make sure to keep in mind when using an interpreter when speaking with your client:

1. At the beginning of any meeting/interview explain to your client who the interpreter is and what they are there to do.
2. Make sure the interpreter is speaking to you and your client in the first person rather than the third person. For example, to the client: “How are you feeling right now?” NOT “She says, how are you feeling right now?” To you: “I walked to school,” NOT “She walked to school.”
3. Make sure that you look at the client when you are speaking, not the interpreter.
4. Make sure that you speak in terms that a child would understand, and ask short, succinct questions, which are easier for the interpreter to interpret and for the child to answer.
5. Consider pausing if you have a long comment to let the interpreter cover the first part of your comment without trying to remember a very long passage.

It is also important to think about whether the interpreter is a good fit for your client. For example, if you are a female attorney and your female client is describing instances of sexual abuse, it will most likely make sense to have a female interpreter.

STEP FOUR: PREPARING THE ASYLUM APPLICATION

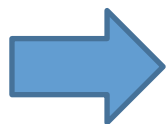
No two asylum claims are the same. However, there is a general form to follow when compiling your client’s application. This step of the manual details each section of an asylum application.

A. FORMS

In order to request that a USCIS asylum office consider your client’s asylum claim, the following three forms must be completed and filed with the USCIS Nebraska Service Center or the Vermont Service Center if it is an affirmative asylum application. Upon initial processing, the asylum application will be transferred from the service center to the asylum office presiding over the geographic jurisdiction in which your client resides.

1. UAC ASYLUM INSTRUCTION SHEET

Generally, this instruction sheet¹⁴¹ is given to UAC-designated children in removal proceedings when they indicate that they wish to apply for asylum. However, a child does not need to obtain the document directly from the government attorney in order to file with USCIS.



IMPORTANT: This instruction sheet must be submitted at the front of your client’s asylum application before it is filed with the USCIS Nebraska Service Center.

¹⁴¹ A PDF of the current version of the instruction sheet is available at <https://www.safepassageproject.org/wp-content/uploads/2014/02/UAC-Instruction-Sheet-as-of-2014.pdf> (last accessed June 1, 2021).



The instructions indicate that the following must be sent to the USCIS Nebraska Service Center:

- 1) Form G-28, Notice of Entry of Appearance as Attorney or Representative (Original and two complete copies)
- 2) Form I-589, Application for Asylum and for Withholding of Removal (Original and two complete copies)
 - a. The original Form I-589 must have attached one passport-style photograph of the applicant
- 3) HHS/ORR documentation showing your client was in HHS/ORR custody as a UAC. This may include a UAC Initial Placement Referral Form or an ORR Verification of Release Form. (Three copies, do not submit original document)

This is considered to be a “barebones” asylum filing. If you client has her original passport or birth certificate, three copies of the document(s) should also be submitted with this initial application.

Additional documentation such as the child’s affidavit, the memorandum of law, and corroborating evidence will be submitted after the file has been transferred to an asylum office.

2. PROOF OF UAC STATUS

USCIS requires proof that a child was actually in HHS/ORR custody as a designated UAC in order to accept jurisdiction over the child’s asylum application. Proof of HHS/ORR custody may include a UAC Initial Placement Referral Form or an ORR Verification of Release Form. Samples of both documents are available in Section C. of the Resource Appendix.

3. G-28

Form G-28 establishes your eligibility to appear on behalf of your client in all immigration matters in front of the U.S. Citizenship and Immigration Services (USCIS).¹⁴² You should complete this document at your initial meeting with your client and make sure that both you and your client sign the form.

¹⁴² Instructions and a fillable PDF are available at <https://www.uscis.gov/g-28> (last accessed June 1, 2021).

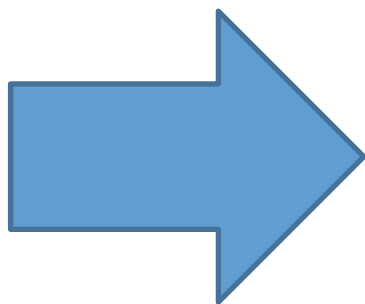
4. FORM I-589

Form I-589 is used to apply for asylum, withholding of removal under INA 241(b)(3) and withholding of removal under CAT.¹⁴³ The same form is used whether you are filing with USCIS or with the immigration court.

Important Tips:

- ✓ Make sure to fill in all the boxes. If the answer is none or not applicable, then write “None” or “N/A” and do not leave any boxes blank. USCIS could actually reject the application for this reason.
- ✓ Make sure to check the appropriate boxes to indicate that your client is applying for withholding of removal under 241(b)(3) and withholding of removal under CAT. Although the asylum officer does not have the jurisdiction to grant either of these types of relief, it will preserve the issues for the future if that case ends up being referred back to the immigration court
- ✓ Make sure to respond to the questions in Part B with an actual concise summary of your client’s claim, written in your client’s voice. DO NOT respond to these questions with “see attached affidavit.” By providing the adjudicator with a summary at this initial stage in their review process, you are giving the adjudicator a road map of the claim and notice of what to focus on in the child’s affidavit and your memorandum of law.

Ultimately, after you complete Form I-589 to the best of your ability, make sure to review it with your SPP mentor attorney.



IMPORTANT! Review Form I-589 with your client (1) before filing it with USCIS and (2) review the form again before the day of the actual asylum interview in order to ensure that the child is familiar with the form and the information it contains. Make sure that your client understands what asylum is, in an age-appropriate way.

At a minimum, she should understand and be able to articulate to the officer that asylum is an immigration benefit for people who have been hurt in their country for certain reasons, or who are afraid they would be hurt if they went back to their country.

¹⁴³ Form I-589 and instructions are available at <https://www.uscis.gov/i-589> (last accessed June 1, 2021).

5. PHOTOGRAPHS

Form I-589 requires that your client submit one passport-style photograph with the original asylum application.¹⁴⁴ Note that neither glasses nor head coverings (including a hat)¹⁴⁵ can be worn in this photograph.

B. MEMORANDUM OF LAW

It is important to pursue alternative and multiple grounds of asylum eligibility within your client's memorandum of law. Lead with the strongest grounds for asylum protection.¹⁴⁶

Your Safe Passage mentor attorney has sample memorandums of law for you to review while crafting your own memorandum in support of your client's application. Following is a general outline of useful sections to include:

- A. Client is Statutorily eligible for asylum because client meets refugee definition.
- B. Client suffered harm that rose to the level of past persecution (or, client has a well-founded fear of future persecution).
- C. That persecution is on account of a protected ground (for example, Particular Social Group [PSG])
- D. The protected ground is cognizable under the law (in example of PSG, include the following sub-sections):
 - a. Immutable
 - b. Socially visible
 - c. Particular

The Asylum Office encourages practitioners to keep these memorandums brief and tightly organized. They prefer letter briefs that help the Officer articulate the key elements of the claim, most particularly how your client can demonstrate a nexus between her fear and one of the protected grounds. We must help demonstrate the legal relationship, or nexus, between the feared harm and a protected ground. Give the adjudicator clear-cut reasons to grant your client relief.

¹⁴⁴ USCIS uses the Department of State's guidance on passport-style photographs. See U.S. DEP'T OF STATE BUREAU OF CONSULAR AFFAIRS, U.S. PASSPORTS & INT'L TRAVEL, <https://travel.state.gov/content/travel/en/passports/how-apply/photos.html> (last accessed June 1, 2021).

¹⁴⁵ Head coverings worn daily for religious purposes are acceptable and should not be removed for the purposes of the photographs, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/photos.html> (last accessed June 1, 2021).

¹⁴⁶ As you organize your memorandum of law, use the Refugee and Credibility checklists provided in Step Two **B.1 and C.3.** to help you address all required elements in a tightly-outlined manner.



Ultimately, you may use your legal memorandum to help you prepare a brief oral summation at the end of your client's interview or to use as a checklist to help make sure that the interview has covered all of the elements of the claim for protection.

Important points to keep in mind when writing your memorandum of law:

- Carefully organize each element of your analysis within its own section in order to maintain a clear, directed argument
- Cite to the strongest legal precedent available
- Include clear descriptive headings for each section
- Present alternate arguments and challenges in order to bolster your current case, create a substantial record, and preserve issues for possible review by an IJ
- Make sure to address and then distinguish bad legal precedent
- Note the asylum bars and discretionary factors and explain why they do not apply to your client
- Although the Asylum Office cannot adjudicate requests for withholding of removal or protection under the Convention Against Torture, make sure to argue your client's eligibility for these protections in order to preserve for future review by an IJ.

C. AFFIDAVIT OF THE CHILD

Your client's affidavit is one of the most important parts of the asylum application. It is also one of the most client-specific documents within the application. The affidavit should explain what happened to your client in her home country that made her feel she had to leave and travel to the United States in order to be safe.

It is important to write in the voice of your client and make sure that the affidavit includes the facts necessary to tell the story, but, not have too many details so that the child is unable to accurately recount these facts during the interview. It can be a delicate balance.

You may choose to write the document chronologically or thematically, whichever makes more sense for your client. Usually child affidavits are 2-6 pages in length; the specificity will depend on the child. While you should begin working on the child's affidavit right away, you will need to wait until you have the psychological evaluation before you finalize the affidavit and file it with USCIS in order to ensure it corroborates the child's affidavit rather than conflicts with it.

Try to talk directly to the child about the issues and let her know that we use the affidavit to help her prepare for her own interview. Based on the specific claim in your client's case, tread lightly as you do not want to re-traumatize the child by making them relive past events. But, general affidavits are not useful and it really does need to be specific to the child. The affidavit must provide enough details to address each requirement element of the asylum claim.



You should not write something that the child will not be able to testify to. Details are helpful for credibility, but, if your client cannot remember dates, then do not include a lot of specific dates in the affidavit because that will take away from her credibility. If they know they were a specific age when something happened to them, then write that. If they remember an event took place in a specific year then use it. Just ensure that the child continues to refer to the events in that same specific manner. For example, if your client remembers that the first time she was threatened by gang members was a few days after Christmas, that is how the incident should be related in her affidavit.

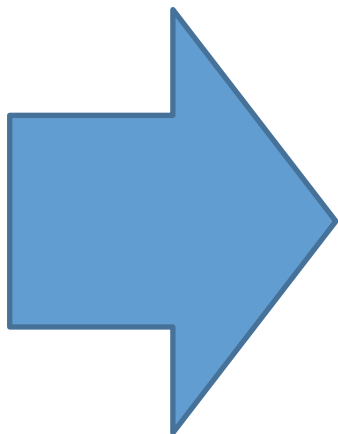
When working with your client on her affidavit make sure you ask follow-up questions when your client explains something in a general manner. For example, if your client explains that the reason she did not file a police report when she was assaulted is because “the police do not do anything,” ask her why and how she knows that. Where is the closest police station? How does someone get to the police station? Does she know of other circumstances where someone tried to report a crime and the police were ineffective?

It may turn out that the expanded reason why your client did not file a police report is because she lives in a small mountain village where there are no cars and no police stations or police presence, and the nearest place to go and report a crime is a three hour walk through dangerous areas. By contextualizing your client’s general answer, you will help to strengthen your client’s story.

Also remember to include more mundane details within your client’s affidavit. If the asylum claim is based in part on your client’s family in the home country, make sure to ask your client about the usual make-up of households where she lived. Who typically lives in the same household? How big are the houses? How close together are the houses situated? Including these details in your client’s affidavit will help the adjudicator understand the context within which your client’s asylum claim arose.

Always keep in mind how your client’s youth may impact her ability to tell her story to you and to others. In general, we have found that children under the age of 10 are unable to talk in detail about the trauma they have been through and are unable to testify to anything more than a very general affidavit. Every child is different. Make sure to discuss this with your mentor attorney.

Please review your client’s affidavit with your Safe Passage mentor attorney for specific suggestions and advice.



IMPORTANT! The government may target parents and other family members who are suspected of helping a child to unlawfully enter the United States.¹⁴⁷ Therefore, it is important to limit both your client’s actual knowledge of the specific details of who paid and planned her trip to the United States, and any mention of known trip details in your client’s affidavit.

It will also be important to consider possible consequences for your client’s parents or family members if they participate in your client’s case by supplying written statements or verbal testimony. Please make sure to discuss these points further with your Safe Passage mentor attorney.

D. SUPPORTING DOCUMENTATION

Some of the documents needed are provided by the child. Prior to your first meeting, be sure to request that your client bring all relevant documents to the appointment. The most important documents to collect include:

- ✓ A copy of your client’s birth certificate;
- ✓ Any identification documents such a copy of your young client’s passport, visa, I-94, National ID cards from home country (“Matricula Consular”), school IDs, medical records, and any documents establishing your client’s age;
- ✓ Copies of school records;
- ✓ Copies of any other evidence your client may have that relates to the persecution in home country (health documents, criminal reports, death certificates, etc.).

As you work through the case, keep a running list of supporting documents obtained and still needed so that you and your client maintain a clear idea of what documents remain outstanding. You may have to obtain some of these records, and Safe Passage can help you obtain official documents if they are available.

Please note that all documents not in English require a certified translation which includes a Certificate of Translation.¹⁴⁸ However, you do not have to hire professional translators for immigration documents. Any person who self-certifies as fluent in English and the translated language is sufficient.

¹⁴⁷ CLINIC PRACTICE ADVISORY, “WORKING WITH CHILD CLIENTS AND THEIR FAMILY MEMBER IN LIGHT OF THE TRUMP ADMINISTRATION’S FOCUS ON ‘SMUGGLERS’”, <https://cliniclegal.org/resources/working-child-clients-and-their-family-members-light-trump-administrations-focus> (last accessed June 1, 2021).

¹⁴⁸ See Resource Appendix Section B for a sample Certificate of Translation.

1. RULES OF EVIDENCE IN ASYLUM -- HEARSAY ALLOWED

In U.S. asylum law, hearsay is allowed.¹⁴⁹ Providing all reasonably available corroborating evidence is very important to the success of your client's case. As you work with your client to gather these documents it will be important for you to log the date and time of failed efforts to obtain evidence as the adjudicator will look at these attempts as part of their analysis of the entire case.

If a family member or friend has actual knowledge about what happened to the child then it can be helpful to build the application around the supporting affidavit of that particular witness. Although the strict rules regarding hearsay do not apply, when offering affidavits of witnesses who will not be accompanying the child, you want to give sufficient context in the opening of the affidavit to explain the competence and basis for the affidavit.

In general, the Asylum Office does not have time to interview witnesses in person. Nevertheless, under the Guidelines, children may have a trusted adult attend the interview with them. If that person will also be a witness you will need to explain that to the Asylum Officer at the beginning of the interview.

2. PARENT AFFIDAVITS

In some cases, statements from a child's mother and/or father are an important way to give a more linear chronology or context to the child's statement of events. If your client's parent(s) are in the United States, try and talk to them and then make a decision about whether or not to put their statements into an affidavit. Sometimes parents of younger kids know more about the situation and have more awareness of what is going on and can articulate the events to a better extent, especially parents of younger kids.

However, for many of the children Safe Passage works with, the claim of asylum is based on what happened to the child after the parent left the home country. In these types of cases the parent is getting information about what happened from a secondary source, maybe a family member who still lives in the home country, or the child herself.

You will need to determine if a statement from your client's parent(s) is useful for the case, or if would be more helpful to get a statement from a family member in the home country who has firsthand knowledge of what actually happened to the child. If you are concerned about including such supporting evidence – given a parent's legal status – please consult your Safe Passage mentor attorney.

¹⁴⁹ See Lilibet Artcola, *In Search of Uniformity: Applying the Federal Rules of Evidence in Immigration Removal Proceedings*, 64 RUTGERS L. REV. 864, 877, n. 94 (2012).

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3. WITNESS STATEMENTS

As previously mentioned, corroboration is a very important component of a successful asylum claim. While it is not legally required to qualify for asylum protection, statements from people who personally saw your client being harmed, or who can speak to the particularity of a particular social group within the society are incredibly useful to support your client's own testimony.

During your initial and subsequent interviews with your client, take note of who in the home country could possibly have witnessed any of the persecution taking place. Remember that a witness is someone who actually saw a thing and the statement is what they actually saw.

Unlike the affidavits of your client and her parent(s), witness statements are most useful when prepared by asking a person a list of questions that address specific parts of the case that need corroboration. You can then use the answers to these questions to prepare a statement for them to sign. We have found this process works best if you are able to speak with the potential witness over the telephone or on a system like Facetime, What's App or Skype. If this proves difficult, you can also prepare and send a questionnaire to the witness that you can use to prepare an affidavit.

Example, if your client's uncle was present many times when abuse by another family member was taking place, try to call uncle in home country and ask directed questions, prepare an affidavit based on his answers, have the document translated into Spanish, and send it to uncle with instructions to send the document back upon signature in front of a notary.



Witness statements and affidavits should reflect what people now remember. They should not include things they imagine might have happened. Sometimes well-meaning friends and family will unconsciously try to insert details or exaggerate details to help the child. But, even slight exaggerations can hurt the child's case if they contradict how the child remembers things.

There may be objective third parties who lived in the vicinity of your client who can help document dangers in the region. Consider asking whether there are other trusted adults such as teachers, religious clergy, aid-workers, whom you might interview to support the client's application. A failed attempt to get corroborating evidence can also be powerful, which means *pro bono* attorneys should make a note of efforts to obtain corroborating evidence. If such corroborating efforts fail, then consider preparing a statement explaining what efforts they took. This includes the child's efforts and efforts by the child's friends and family.

4. COUNTRY CONDITIONS REPORTS

It is important to learn about your client's home country in order to strengthen the asylum application. When reviewing the asylum application, the asylum officer will look to this evidence to learn why the child would be in danger if she returned to her country. You should assume that the asylum officer knows nothing about the child's country. However, you should try and collect only information relevant to your client and the type of harm that the child suffered or fears she will suffer if forced to return rather than information regarding the general conditions within your client's home country.

As an initial research step, familiarize yourself with the country and city your client is from. Try to read a bit of recent news in the child's country, and look for information about the child's culture or the typical lifestyle of a child living in the home country. It can be useful to look at a map of your client's country in order to familiarize yourself with the geographical attributes for where the young person is from. This knowledge can help you understand what type of conditions children live in and how certain activities may be more difficult due to geographical limitations.

If you have Google Earth installed on your computer, you may be able to "see" the topography and development in your client's home town. At times, looking at the map together can help bring out details about the daily life of your client and why protection was hard to find. For example, if your client comes from a very small town with no local law enforcement, you can see and measure how far away law enforcement agencies are located. If your client explains they had a long walk to school, you may be able to explain the distance and why the child was particularly vulnerable during this period without adult supervision.

I. U.S. Department of State Human Rights Reports

One of the most common sources for research on country conditions are the U.S. Department of State Human Rights Reports.¹⁵⁰ State Department researchers and analysts write about the conditions in countries around the world, and these reports are published annually. These reports are particularly helpful because they give an overview about the conditions in the entire country. They highlight the main issues that the country has faced during the previous year and how the government has worked (or not worked) to address the issues. Asylum officers and government officials consider the U.S. Department of State Human Rights Reports to be one of the most credible sources of information.¹⁵¹ Therefore, you may use and reference the most recent report in the child's asylum application where it provides information that is useful for your record. We would not suggest referencing reports further than two years back, if possible, because country conditions change frequently and the information may no longer be relevant. If you submit an entire country report, highlight the relevant portions of information.

It is important to note that, over the past four years, the Human Rights Reports have become increasingly politicized, and elements of the reports have been removed or altered.¹⁵² The Catholic Legal Immigration Network, Inc. (CLINIC) has provided this important resource to highlight the ways that the State Department Reports for Central American have changed to remove or water down language that may be helpful to asylum seekers¹⁵³. This information may be helpful for you to determine whether you want to rely upon the State Department report as well as push back against overreliance on the State Department Report by adjudicators.

Asylum Officers see a large number of cases from the Northern Triangle of Central America and you should assume they have read the basic Department of State report. You, too, need to be familiar with the report's contents. Also visit Refworld¹⁵⁴ to begin your research.

¹⁵⁰ U.S. DEP'T OF STATE, HUMAN RIGHTS REPORTS, <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/> (last accessed June 1, 2021).

¹⁵¹ 8 U.S.C. § 1158(b)(1)(B)(iii) (when making credibility determinations, immigration judges may consider whether an applicant's statement are consistent with "reports of the Department of State on country conditions."); *see also* Rojas v. INS, 937 F.2d 186, 190, n.1 (5th Cir. 1991) (Explaining that the State Department Country Condition reports are the "most appropriate and perhaps the best resource the Board could look to in order to obtain information on political situations in foreign nations").

¹⁵² *See, inter alia*, "Trump Administration alters and downplays human rights abuses in reports," *The Guardian*, Oct. 21, 2020. If your client's information contradicts the DOS report, you should consider explaining why your client's information is contradictory, and provide alternative materials, such as published on Refworld, cited below.

¹⁵³ "Department of State Shifts Human Rights Reports Comparison Charts," March 21, 2021 <https://cliniclegal.org/resources/asylum-and-refugee-law/clinic-department-state-shifts-human-rights-reports-comparison> (last accessed June 1, 2021).

¹⁵⁴ <http://www.refworld.org/> (last accessed June 1, 2021).

II. EOIR

There are many other credible sources about country conditions. An amazing resource is the Executive Office for Immigration Review's (EOIR) Country Conditions Research library, available at <https://www.justice.gov/eoir/country-conditions-research>. EOIR has amassed an extensive list of resources for almost every country in the world. This is a good place to go when you are beginning your country condition research in order to access not only the Department of States Human Rights Reports, but, also reports from many other government agencies and international organizations that record instances of human rights violations around the world.

III. UNHCR

As mentioned above, the United National High Commission on Refugees (UNHCR) has created a similar and even more extensive research library that can be accessed at www.refworld.org. Click on the country information tab, then country reports where you can enter in your client's home country and access an extensive list of secondary sources regarding general and specific country conditions for your review.

UNHCR has also created a research library to specifically help attorneys assisting asylum-seekers in the United States. This research link can be accessed at <http://www.unhcr.org/attorney-resources.html>.

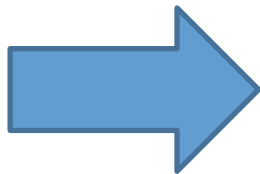
IV. OTHER COUNTRY CONDITION SOURCES

While links to many of the most useful organizations and reports can be accessed by using the EOIR or UNHCR research libraries, below we have included individual links for your convenience:

- U.S. Department of States Human Rights Reports: <http://www.state.gov/j/drl/rls/hrrpt/>
- EOIR Country Conditions Research: <https://www.justice.gov/eoir/country-conditions-research>
- Human Rights Watch Reports: <https://www.hrw.org>
- UNICEF Reports: <http://www.unicef.org/publications/>
- "Children on the Run" Reports by the UNHCR: <http://unhcrwashington.org/children>
- "Women on the Run" Reports by the UNHCR: <http://www.unhcr.org/5630f24c6.html> Amnesty International Reports: <https://www.amnesty.org/en/countries/>
- Insight Crime: <http://www.insightcrime.org/>

Listed below are the websites of several national news organizations that we have found to be useful when researching conditions in the home countries of the young people we work with. These websites are in Spanish, but, they can be changed into English by changing your browser settings.

- *Prensa Libre* (Guatemala): <http://www.prensalibre.com>
- *La Prensa Grafica* (El Salvador): <http://www.laprensagrafica.com>
- *La Prensa* (Honduras): <http://www.laprensa.hn>
- *El Faro* (El Salvador): www.elfaro.net



IMPORTANT: This list of secondary sources is by no means exhaustive. Talk to you Safe Passage mentor attorney, who likely has other sources to suggest, depending on the specifics of your client's asylum claim.

STEP FIVE: PREPARING FOR THE ASYLUM INTERVIEW

Once you have filed the barebones asylum application with USCIS Nebraska Service Center as explained in Step Four Section A. above, you will need to continue to work with your client to finalize her affidavit and gather corroborating evidence, while also completing the memorandum of law.

Refer back to the Life Cycle of a Child's Asylum Case and note the approximate time given for each step of the process. Note that the time between filing the barebones application and receiving the asylum interview notice is only 1-4 months.¹⁵⁵ It is important to diligently work to compile all corroborating documents and necessary translations throughout the life of the case in order to have all additional documentation ready to file by the week of the actual interview.

A. FILING A MOTION TO CONTINUE OR MOTION TO ADMINISTRATIVELY CLOSE WITH THE IMMIGRATION COURT

Remember that although you filed your client's asylum application with USCIS, she is still in removal proceedings before the Immigration Court. As such, it is extremely important that you and if the court requires, your client,¹⁵⁶ plan to attend subsequent hearings in Immigration Court or file motions to continue or administratively close her case.

¹⁵⁵ Times vary, and different offices may prioritize different cases. Check with your mentor attorney to get a sense of wait times.

¹⁵⁶ Most immigration judges will not require the child to appear if you bring current evidence of school attendance, but do not assume the child's presence will be waived. You must affirmatively request that the child's presence be waived if the judge did not so specify.



A motion to continue requests that the court reschedule your client to a master calendar date that is after the asylum interview. If a motion to continue is granted, a new hearing will be scheduled and the original hearing date will be canceled.

Rather than continuing your client's case, the immigration judge and the government attorney may agree to a lengthy adjournment, or to place her case on the "status docket" while her asylum application is pending with USCIS.¹⁵⁷

If a motion for administrative closure is granted, your client's case will be temporarily closed and no master calendar date will be scheduled. If the Asylum Office grants asylum, you will need to file a motion to re-calendar and terminate the removal proceedings. If a case is referred, at times the ICE Counsel or the Court personnel will re-calendar the case on the immigration judge's active docket. You and your client will receive a new master calendar date without filing a motion to re-calendar.

For sample motions to continue and administratively close and additional details regarding filing procedure, please contact your Safe Passage mentor attorney.

B. BIOMETRIC FINGERPRINT APPOINTMENT

Your client will receive a biometrics appointment notice to have her fingerprints taken approximately two weeks before the asylum interview date. With their appointment, they will receive a form that needs to be filled out with their biographical information. This should be completed prior to the appointment and brought to the appointment. This appointment will be at the USCIS Application Service Center closest to where your client lives. Be sure your client attends the appointment and brings the appointment slip with her, as it has a barcode on it which the immigration official will need to scan in order to complete the fingerprints.

You do not need to attend the appointment with your client, but make sure that you discuss this appointment process with your client before she has to attend the appointment. Make sure she understands what the fingerprint appointment is for, and that it is a part of the asylum application process and she will not have to tell her story to anyone. Make sure that the child and the adult

¹⁵⁷ In 2018, the Attorney General issued *Matter of Castro-Tum*, 27 I&N 271 (A.G. 2018), which held that Immigration Courts may not administratively close cases, barring very few exceptions. Prior to this, administrative closure had been an important docket management tool in cases where Respondent was waiting on a decision from USCIS (for instance, UC asylum or SIJS). Subsequently, EOIR set up a "status docket" to serve essentially the same purpose without administratively closing cases. Cases on the status docket remain open, but are set for a Master Calendar Hearing one to two years out, with a call-up date for Respondent to update the Court on the status of the case. EOIR and individual judges have been inconsistent about when the Status Docket is an appropriate tool. *Castro-Tum* is currently being challenged in the Second Circuit. Advocates also hope that under the new Biden administration, we will see increased use of these important docket management tools. As of this Manual's writing in June 2021, the use of docket management tools is in flux.

accompanying them to the appointment understand the importance of attending and how to arrive to the facility.

Sometimes, *pro bono* attorneys will accompany their clients to the biometric appointment if the client is very young.

C. SECURING INTERPRETER FOR ASYLUM INTERVIEW

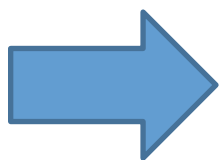
Clients must provide their own interpreters for the asylum interview. Ideally, you will use the same interpreter with whom you have been paired for the entire case so that the client feels comfortable.

It is important that your client is comfortable with the interpreter. At times, there are sensitive issues in a case that would suggest an interpreter of the same gender, or a person who has had experience in working with asylum applicants, is the best choice.

Though the client must bring an interpreter to the interview, all interviews are “monitored” by a separate interpreter, usually on a telephone, to ensure that the statements are being accurately translated in the interview. This monitor is arranged for and paid by the Asylum Office. Some Asylum Officers are also bilingual. Consult your Safe Passage Mentor Attorney for specific tips about the particular office where your client will be interviewed.

D. WORK PERMIT WHILE ASYLUM PENDING

Asylum applicants are eligible to receive employment authorization 180 days after the filing of the asylum application.¹⁵⁸ However, the 180-day period (known as the “Asylum Clock”) is interrupted by any delays that the applicant causes, for example requesting that the asylum interview be rescheduled for a later date.¹⁵⁹



IMPORTANT: Upon filing the asylum application, calendar the 150-day mark so that you can file the employment authorization application if the adjudication is not complete or the Asylum Office refers the case back to immigration court.

Even if your client is quite young, you may want to secure this document for it serves as a federally issued Identification card and also allows the individual to obtain a temporary social security card.

¹⁵⁸ INA § 208(d)(2).

¹⁵⁹ The rules around eligibility for Employment Authorization are in flux right now. The Trump administration issued regulations in 2020 that make significant changes, such as delaying eligibility for an EAD from 180 days to one year, among other changes. You should consult with your SPP mentor attorney regarding the specific facts in your client’s case. Asylum applicants who are 18 or older can become members of ASAP, an asylum advocacy organization, so that they can benefit from a court order enjoining implementation of these new regulations.

E. MOCK INTERVIEW AND YOUR CLIENT'S TESTIMONY

An important part of your preparation for the asylum interview is participating in a mock asylum office interview. Work with your client and your Safe Passage mentor attorney to determine when this interview will take place. During this mock asylum office interview, we will help to explain what to expect at the asylum office interview and play the role of the asylum officer to practice asking questions to your client. We have found that this process goes a long way to alleviating many of the fears of the unknown that your client may be feeling. It will also help your confidence in the process on the day of the interview.

In preparation, you should review the sample asylum interview worksheet in Section A of the Resource Appendix of this manual.

Throughout the mock interview process make sure that your client knows that she should speak up if she does not understand what a question means and that if she is unsure of an answer, it is ok to say "I do not know" or "I do not remember."

Emphasize that there is no right or wrong answer, only the truth. They should not embellish. Make sure that your client works on answering the question being asked rather than launching into a long story.

In addition to practicing to answer questions about her asylum claim, make sure that your client also understands the following:

- She will be sworn in at the beginning of the interview. Make sure your client understands that this oath is a promise to tell the truth and that deliberately providing false information can lead to civil, criminal, and immigration penalties.
- The interview will be conducted through the interpreter you bring in the room and an interpreter listening in on the phone.
- The asylum officer will show your client the actual written asylum application and ask her if she recognizes it. (make sure to review the entirety of your client's application and affidavit with her in a language she understands. She should also be familiar with the supporting documentation). The asylum officer will ask if someone assisted her in preparing the application. Make sure your client understands that it is ok to say that her attorney assisted her in preparing the application and read back everything in a language she understands.

Conducting a mock interview should also help you better understand your role on the day of interview. Usually the attorney cannot ask questions in asylum office adjudications. The asylum officer will be asking your client questions and you will be listening and taking notes. The officer should allow you a few minutes at the end of the interview for a brief summation and possibly allow you to ask your client a few follow-up questions. (Refer to Step Six section C. below for a more in-depth discussion of your role in the asylum interview).

STEP SIX: THE ASYLUM INTERVIEW

A. THE ASYLUM INTERVIEW

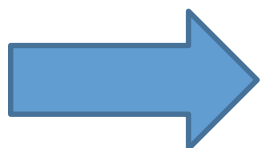
You must attend the asylum interview with your client. This is one of the most important parts of the legal services you are providing to your client.

The asylum interview will be scheduled based upon the place of residence of your client. New York City is divided into two jurisdictions:

1. Residents of Staten Island, Brooklyn, and Queens will have their interviews scheduled at the New York asylum office located at 1065 Stewart Avenue, Suite 200 Bethpage, NY 11714. All other residents of the state of New York (excluding Manhattan and the Bronx) will also have their asylum interviews scheduled at the New York asylum office.
2. Residents of Manhattan, the Bronx, and the state of New Jersey will have their interviews at the New Jersey asylum office located at 1200 Wall St W, Lyndhurst, NJ 07071.

While the overall interview process is generally the same, each office has a few office- specific procedures (listed in sub-sections 1. and 2. below) to keep in mind.

Be prepared for a long day and bring an ample supply of patience. Asylum interviews are often scheduled early in the morning and both Asylum Offices serving the New York City area are difficult to access using public transportation.



IMPORTANT: In advance of the day of interview, make a travel plan for yourself, your interpreter, and most importantly, your young client and any trusted adult about how everyone will get to the Asylum Office on time.

General asylum office guidelines:

- Be on time and encourage your client to dress nicely, as first impressions matter.



- Food and drink are generally not allowed in the waiting room. Encourage your client to eat breakfast before arriving at the interview.
- Phones are generally collected by security and given back at the end of the interview.
- Bring non-electronic items to read (books, magazines, homework).
- Make sure to bring a notepad/pen for notes as computers are usually not allowed in either the waiting room or the interview itself.
- Bring originals or certified copies of all documents (Make sure to get any originals back from the asylum officer at the end of the interview. It is very difficult to get them back unless you do so at the actual interview)

When you arrive at the asylum office waiting room, check in at the front desk with your client and interpreter. Submit any additional evidence you may have. The clerk will give you a copy of a written oath form to review with your client. Do not have her sign the form until the asylum officer directs her to do so during the actual interview.

When it is your client's turn to be interviewed, the asylum officer will come out and call her case, usually by saying the last three digits of her alien registration number ("A" number). You, your client, the interpreter, and possibly the accompanying adult, will follow the asylum officer back to her office. The office will be a private space with a desk, computer, and phone, and chairs for you, your client, the interpreter, and any others. The asylum officer will take extensive, detailed notes on her computer throughout the interview.

If you are running late or become ill:

- The asylum office may automatically reschedule the appointment and may not take you if you arrive later than your scheduled appointment time.
- If you must reschedule for some reason, you can email, phone, or fax the asylum offices.
- In an emergency, you can go in-person to either office to fill out a request to reschedule interview.

1. BETHPAGE, NEW YORK

- ✓ 1065 Stewart Avenue, Suite 200 Bethpage, NY 11714
- ✓ Allowed to submit legal memorandum and final supporting documents **on day of interview**
- ✓ Children's asylum cases scheduled first thing in the morning
- ✓ Cannot use your cell phone or computer at all in the waiting room. You will get one warning, and then the guard will take it. Bring a book and be prepared to wait.
- ✓ Most asylum officers do not allow attorneys to take notes on computers during the asylum interview. Plan on taking written notes only

2. LYNDHURST, NEW JERSEY



- ✓ 1200 Wall St W, Lyndhurst, NJ 07071
- ✓ Must submit legal memorandum and final supporting documents as soon as possible after you are scheduled for the interview, and **at least a week before day of interview**
- ✓ Not necessarily scheduled for beginning of the day
- ✓ Bus from Port Authority that leaves you almost at the door of the asylum office

B. WHAT TO EXPECT DURING THE ASYLUM INTERVIEW

Following is a general outline of what occurs during an asylum office interview.

The asylum officer will introduce herself and ask for identification from everyone in the room. She will explain the interview process to the client and interpreter, including confidentiality. Then, the asylum officer will put both your client and the interpreter under oath. Your client and the interpreter will be asked to sign the written oath form.

The asylum officer will review the evidence, and may request to review original documents. She may stamp her copies to indicate that she has seen originals. She may ask the client chain of custody questions to determine how the client obtained the documents.

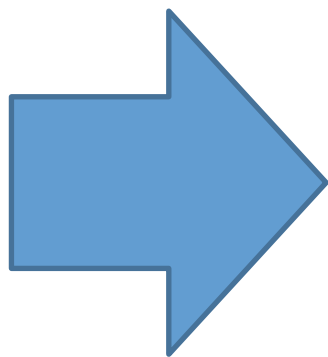
Next, the asylum officer will call an interpreter monitor on the phone. This monitor will listen to the interview on speakerphone to make sure the interpretation is correct. If you believe something has been misinterpreted, you can ask the officer to ask the monitor to confirm or clarify the interpretation.

The asylum officer will review the entire form I-589, marking up the application as she goes. Please advise your client before the day of the interview that this will occur; there are always some notes and minor changes that must be made to the application. The asylum officer will ask your client several questions designed to find out if she is familiar with the application. For example, the officer may ask if the application was read back to her in a language she understands; how her affidavit was prepared; and whether everything contained in the application is true and correct.

The asylum officer will compare information contained in the I-589 with other evidence. She may ask additional questions about issues that arise during the I-589 review. If there are discrepancies between any of her documents and the application, the asylum officer will ask for an explanation.

The officer will ask questions about your client's trip to the United States- where they traveled through, with whom, how long they stayed in each country. If your client previously obtained a U.S. visa, the asylum officer will ask questions about the visa application and interview, and will have access to that application. Prepare your client to answer questions about whether or not she told the truth on her visa application and/or interview, and to provide an explanation for why any false information was provided.

A young client may not know what process was used and she should answer honestly. It is an appropriate answer to say “I don’t know or I don’t recall.”



IMPORTANT: We have noticed recently that some asylum officers will ask children questions about child smuggling. Officers will ask who paid for the child’s travel to the United States, who actually smuggled the child, how the money was sent to the smuggler, or how much money was paid.

We believe that these questions are not relevant to an asylum claim and are only relevant to the current safety of the child in the United States or if there was a past trafficking event when she traveled to the United States. Be prepared for these questions by having the following documents prepared:

- Proof of child’s school registration and attendance.
- Explanation of who lives in your client’s residence and how your client is related to these individuals.
- Any other information that you can prepare showing that you are confident that your client currently lives in a safe environment.
- If the child is no longer living with their ORR sponsor

After this initial review, the asylum officer will move on to more substantive questions that get to the heart of the asylum claim. The officer will ask your client a series of questions designed to understand her story and to develop the factual record in order to determine whether your client is eligible for, and should be granted, asylum.

Some questions might include:

- Why are you applying for asylum?
- Why did you leave your country?
- Were you ever hurt in your country? How many times were you hurt? Who hurt you? Why did they hurt you? What kind of injuries did you have? Did you see a doctor? (If no, why not?) Did you report this incident to the police? (If no, why not?)
- Did anyone threaten to hurt you in your country? Who threatened you? Why did they threaten you? What did they want you to do? Did you do it? (If no, why not?)



- Was anyone in your family or any of your friends ever hurt or threatened in your country? (Same questions as above—who hurt them/why/etc.)
- What would happen if you went back to your country now? Is there any part of your country where you could live safely? (If no, why not?) If you returned to your country now, where would you live? How would you support yourself?
- If you asked the police for help, would they protect you?

At the end of the interview, the asylum officer will ask age-appropriate versions of questions designed to determine whether any of the mandatory bars to asylum apply, including whether your client has ever hurt anyone; has ever been arrested; has ever participated in terrorist activities; has ever learned how to use a weapon; has ever supported terrorist groups; and similar questions. Please note that the current USCIS policy excludes gangs and organized criminal groups from the definition of “terrorist group,” so any support provided to a gang will not bar your young client from asylum under the terrorism bar.

The asylum officer will give you, the attorney, an opportunity to ask additional questions and/or make a summation. Safe Passage coaches all Pro Bono attorneys to prepare and practice a summation. The goal of asking additional questions is to ensure that everything relevant has made its way into the record. For example, if you believe the officer did not ask enough questions about nexus, you may ask some questions to ensure there is sufficient testimony on that issue. Similarly, if your client failed to testify about an important event, you may ask him questions about it.

Finally, you may need to ask additional questions to help your client resolve any credibility issues that arose during the interview. For example, if there were inconsistencies in his testimony, you may ask some questions to give him the opportunity to provide an explanation.

At the conclusion of your client’s interview, the asylum officer will provide her with a piece of paper to sign, informing her of how she will receive a decision in her case. The asylum officer will then make a copy for your client to keep as well.

C. INTERPRETATION ISSUES

Unfortunately, interpretation issues can arise during the asylum interview. If you see a problem with the interpretation at any point, say so immediately. Do not allow further testimony to continue without clarification.

As an initial step, ask the interpreter monitor listening on speakerphone to clarify the misinterpretation. Make sure to take notes regarding the issue and ask additional questions of your client at the end of the



interview to clear up the issue. Offer to submit additional evidence or briefing on any issue asylum officer requests.

These types of issues will be up to you to spot on the day of the interview. If the interpretation seems insufficient you can ask to reschedule the interview. You could also ask to speak with a supervisor if there are significant problems. We have had cases where a supervisor scheduled a new interview with a new officer due to interpretation issues in the initial asylum interview.

D. YOUR ROLE AS THE APPLICANT'S ATTORNEY

You play an important role on the day of your client's interview. You should act as a monitor, and make sure that questions are non-adversarial and appropriate for the child's age. You will attend the interview, take copious notes during your client's testimony, and at the very end of interview be prepared to give a brief summation of your client's asylum claim.

As your client's attorney, you are there to supervise the interview and ensure that the questioning is appropriate and proper. You are there to observe the translation and make sure, to the best of your ability, that it is proper and not causing confusion. You are there to take notes in order to clarify any possibly confusing statement made by your client. And you are there to provide the asylum officer with a brief but useful outline of your client's eligibility for asylum. Be as prepared as possible and do not underestimate the importance of your role.

- ✓ Make sure to take note of the officer's name at the beginning of the interview.
- ✓ Listen to everything, and try to write all questions and answers. Mark with asterisks any answers that need follow-up, for example, if unclear, or if something conflicts with written testimony.
- ✓ Avoid interrupting the asylum officer's line of questioning. Keep in mind - most of these interviews the asylum officer does without an attorney, and they have their own thread of questions they are trying to get through; try not to interrupt that flow.
- ✓ The asylum officer can choose to pursue any line of questioning, even something that you did not anticipate. However, if you think a line of questioning is harming the client or is touching on particularly sensitive information in a hostile manner, for example asking for graphic details regarding an instance of sexual assault or rape, you can ask the officer to pause and ask to discuss the appropriateness of that line of questioning with the officer, or ask for a supervisor.
- ✓ If you believe the asylum officer has not allowed your client to fully explain her case, has acted in a discriminatory, hostile, rude, or intimidating manner, the time to object is immediately at the interview. Requesting supervisory review may result in a new interview or a correction and



augmentation of your client's record. Do not be intimidated. Be polite but firm. This process has been repeatedly affirmed at CLE trainings by supervisors at the Asylum Office. We discuss this as well below in section E.

E. SUMMATION

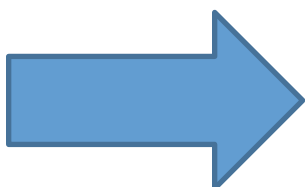
Below you will find sample summation language to use as a guide as you prepare for the day of your client's interview. The summation helps to give you a sense of possible problems that may arise during the interview, and offers ways that you can clarify your client's statements within the few minutes the adjudicator allots you at the end of the interview. This list is not exhaustive and you should not feel compelled to use any of the bullet points verbatim.

Have a version of the language below prepared before the day of the interview. At the interview take detailed notes and highlight any specific areas where the adjudicator asked follow-up questions or there seemed to be confusion. Make sure to address these specific moments in your summation period.

The best advocate you can be for your client on the day of the interview is a prepared advocate.

- My client has **testified credibly** today. He was truthful, specific, and persuasive, and described in detail his experiences in [country]. He testified **consistently** with his application, declaration, and supporting evidence.
- **In case of potential credibility problems:**
 - **If general concerns about credibility:** Please keep in mind that my client is only [age] years old, as you consider his testimony. At the time of the harm he discussed, he was only [age] years old. The USCIS Children's Guidelines remind us that the age of a child at the time of harm and at the time of the interview should be considered when evaluating testimony. [If harm affected development: Please also consider the effect that the abuse/violence my client experienced has affected his emotional and psychological development, and that it is difficult for him to discuss these painful matters, which is corroborated by the psychological evaluation we submitted.]
 - **Lack of detail/difficulty remembering:** Although there were some moments during which my client was unable to provide certain details, this should be considered in light of the trauma he experienced and his age today and at the time of the incident [and, if relevant, by his diagnoses of Post-Traumatic Stress Disorder and Depression, discussed in his psychological evaluation].

- **Inconsistencies or discrepancies:** My client provided reasonable explanations for the [minor] inconsistencies that arose during the interview. In addition, none of the inconsistencies are material to his claim for asylum. Considering the totality of the evidence, including his detailed statement, all of his testimony, the supporting documents, and country conditions evidence, and his age, I would ask you to find that he was credible.
- **Corroboration:** If there is any additional evidence you need to make your decision, please let me know and I'd request an opportunity to submit it to you after the interview.
- Through his credible testimony, along with his supporting evidence, [including the psychological and medical evaluations,] my client has **met his burden** to prove that he is **eligible for asylum**.
- My client suffered **past persecution** in light of the psychological, emotional, and physical harms he endured in [country], particularly in light of his age at the time the harms occurred. As the USCIS Children's Guidelines remind us, the harm that a child experiences may be relatively less than that of an adult, but still constitute persecution. [Summarize harm very briefly, highlighting worst harms.] The only way he could be safe was to flee. He continues to suffer the effects of the harm he endured, including [name current effects] **Considered cumulatively, this harm is serious and constitutes persecution.**
- **One central reason** for the persecution my client suffered was because of [identify protected grounds, and best evidence supporting nexus]. The country conditions evidence indicates that [identify protected ground] are targeted in [country].
- Because he has established that he suffered past persecution, my client is entitled under the regulations to the **presumption that he has a well-founded fear of future persecution on the same basis**. As the country conditions evidence demonstrates, there has been **no change in conditions in [country]**. The **risk of persecution is country-wide** for my client, in light of the extensive societal violence in [country]. There is no safe for my client to relocate, and because he is a minor it is not reasonable to expect him to relocate on his own.
- My client has suffered significant trauma. He is only [age] years old, and undertook a dangerous journey to reach the United States, because he felt that his life was at risk in [country]. He therefore respectfully requests that the U.S. government grant him asylum. Thank you.



IMPORTANT: It can be helpful to end the interview by asking the asylum officer if there is anything more for you or the child to do other than wait for the final decision. Doing so allows the asylum officer to end the interview on their own terms.



F. ISSUES THAT MAY ARISE—WHAT CAN YOU DO?

If you are concerned about the tenor of the interview or the nature of the questions being asked, you can interrupt the interviewer; ask her to stop and to call in the supervisor. This is a judgment call you will need to make during the interview. While you do not want to overreact, Safe Passage attorneys and *pro bono* attorneys have had to do this on occasion.

Most importantly, do not wait until after the interview is over. You want to make sure to catch the problem before the line of questioning results in contradictory or incorrect testimony by your client.

Alternatively, if a child contradicts her affidavit during the interview, you can ask leave for follow-up questions at the end of the interview. At times, your client can help explain what appears to be contradictory.

Finally, if something egregious happens, it is possible in rare circumstances to ask the asylum officer to reconsider or to conduct a re-interview. You may have to make a formal request to a supervisor.

F. THE ROLE OF THE PARENTS OR LEGAL GUARDIANS

In general, we recommend not having the parents accompany your client to her asylum interview.

As mentioned in Step Four Section C, above, the government has, at times, targeted parents and other family members who are suspected of helping a child to unlawfully enter the United States.

¹⁶⁰Therefore, it is important to consider possible consequences for your client's parents or other family members if they choose to participate in your client's case by supplying written statements or verbal testimony. Please make sure to discuss these points further with your Safe Passage mentor attorney.

If the asylum officer asks where the parents are, just say that they are not the asylum applicant and thus, are not at the interview. Many times, the asylum officer will require that a trusted adult be present with the child at their interview. You should explain that you are your client's trusted adult.

¹⁶⁰ See CLINIC PRACTICE ADVISORY, "WORKING WITH CHILD CLIENTS AND THEIR FAMILY MEMBER IN LIGHT OF THE TRUMP ADMINISTRATION'S FOCUS ON 'SMUGGLERS'", <https://cliniclegal.org/resources/working-child-clients-and-their-family-members-light-trump-administrations-focus> (last accessed June 1, 2021).

It is important to prepare your client to not have a parent in the room with them while they are testifying about their asylum claim. Make sure you practice asking the child questions without her parent or guardian present, and make sure she is as comfortable as possible with this process.

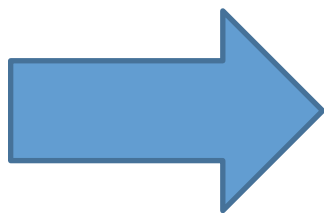
Thus, if a parent is undocumented, unless the parent has critical testimony to share, or there is another very compelling reason (such as a very young asylum applicant who experienced significant trauma in her home country and has just been reunited with her mother), keep the parent away from the asylum office.

STEP SEVEN: RECEIVING AN ASYLUM DECISION

At the conclusion of the interview, the asylum officer should have instructed you and your client how to receive the asylum decision. There are two options: coming back in 2-3 weeks to pick up the decision or receiving the decision by mail. The asylum officer will choose the way in which your client receives her decision.

A. PICK-UP OR BY MAIL

In many instances, your client will be instructed to return to the Asylum Office two weeks later to pick up her decision. She should do so, with a trusted adult and/or individual who can act as her translator, at the date and time specified on the letter. We strongly encourage you to accompany her to the office in order to help her to understand the decision she receives.



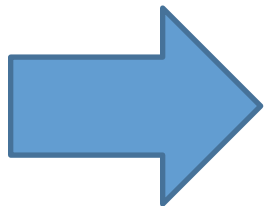
PLEASE NOTE: In Fall 2017 the **Lyndhurst Asylum Office** indicated that it would no longer ask asylum applicants to pick up a decision from their office. Instead, they plan to mail out all decisions. The asylum officers hope to mail out their decision within two weeks of the interview.

Sometimes the asylum officer needs additional time in order to reach a decision, or receive the appropriate supervisory sign-offs, on a decision. In these situations, the asylum officer will typically call you, as the attorney of record, a few days before the scheduled pick-up date to alert you that there will be a postponement and that the decision will instead come in the mail. This does not necessarily mean that there is a problem with your client's case, but, simply that more time is needed. Please let your Safe Passage Mentor Attorney know should this change occur in your case.

On the day of the interview, if the asylum officer indicates that she will mail the decision to your client, make sure to calendar a 1-2 month date to follow-up with your client to see if they have received the decision. If you have not received a decision within 30 days or at least notice of a delay, please talk to your mentor attorney about submitting an inquiry to the Asylum office.

B. APPROVAL OF ASYLUM APPLICATION

If your client receives an approval letter from the Asylum Office, congratulations! As an asylee, your client is allowed to live and work legally in the United States. She will be able to apply for lawful permanent residence after one year in asylee status.¹⁶¹



IMPORTANT! The asylum approval letter is a very important document. Please make to make multiple copies of the document for you and your client, as well as your Safe Passage mentor attorney. Please instruct your client to keep the letter in a safe place as this is the proof of her new legal status within the United States.

Your client is authorized to work immediately upon being granted asylee status. Although your client does not need an actual employment authorization document (EAD) to work, USCIS automatically generates an EAD and mails it to your client's address. This card will be valid for a two-year period.

Your client will also be able to obtain a social security card upon obtaining her asylum approval.¹⁶² She will need to complete Form SS-5 and go in-person to a Social Security Administration (SSA) office in order to apply for her card.¹⁶³

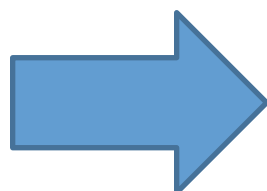
As an asylee, your client has indicated to the U.S. government that she fears returning to her home country. Therefore, your client should not travel back to her home country, as such a trip may adversely affect her grant of asylum in the United States. There are certain circumstances, such as a brief trip to visit a dying close relative, in which such return to her country of origin might be able to be explained on future immigration benefit applications.

As a best practice, instruct your client not to travel to her country of origin and to check in with you or with Safe Passage before traveling should a need for such a journey arises. She will need to obtain a Refugee Travel Document in order to travel outside of the United States.

¹⁶¹ For in-depth descriptions of benefits of asylee status, see DREE K. COLLOPY, AILA'S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE 884-898 (7th ed. 2015), at 1029-1060; see also USCIS, BENEFITS AND RESPONSIBILITIES OF ASYLEES, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/benefits-and-responsibilities-of-asylees> (last accessed June 1, 2021).

¹⁶² For great practice pointers on how to apply for a social security card and deal with any employer questions regarding employment eligibility, see *Id.* at 1042-1044; see also SOCIAL SECURITY ADMINISTRATION, "FOREIGN WORKERS AND SOCIAL SECURITY NUMBERS," (Jul. 2017 edition), <https://www.ssa.gov/pubs/EN-05-10107.pdf> (last accessed June 1, 2021).

¹⁶³ Form SS-5 is available at <https://www.ssa.gov/forms/> (last accessed June 1, 2021). It should also be available in hard copy at SSA offices.



IMPORTANT! If your client changes her address while in asylee status, she will still need to update USCIS by completing Form AR-11. If her removal proceedings have not yet been terminated, she will also need to update her address with the Immigration Court by filing Form EOIR-33.

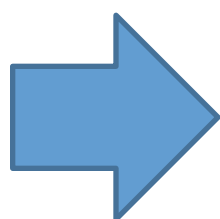
1. TERMINATING REMOVAL PROCEEDINGS

Once your client is granted asylum, her removal proceedings can be terminated. A motion to terminate these proceedings can be filed by the client's attorney or the government attorney. In most cases, we find the government attorney files a motion to terminate within a month of the approval itself.

If not, please contact your Safe Passage mentor attorney for a sample Motion to Terminate, or if the removal proceedings were previously administratively closed, a sample Motion to Re- Calendar and Terminate.

2. ACT FAST! LIMITED ACCESS TO PUBLIC BENEFITS

Upon approval of her asylum case, your client will have access to a wide range of public benefits, assuming that she meets income-eligibility criteria. In New York State, these benefits include Medicaid, the Supplemental Nutritional Assistance Program (SNAP, formerly referred to as Food Stamps), cash assistance, and shelter allowance, to name a few.



IMPORTANT! WITHIN 30 DAYS! "Refugee Resettlement Benefits" must be applied for within 30 days of being granted asylum. This is a strict deadline. We generally refer clients to Catholic Charities to assist the child with public benefits enrollment. Make sure to contact your Safe Passage mentor attorney as soon as possible after your client receives her asylum approval in order to discuss public benefits eligibility.

3. MAINTAINING ELIGIBILITY FOR ADJUSTMENT OF STATUS

It is important to emphasize to your client that her grant of asylum comes with important responsibilities that must be taken seriously. Asylum is discretionary and can be taken away for failing to follow the rules and for bad behavior.

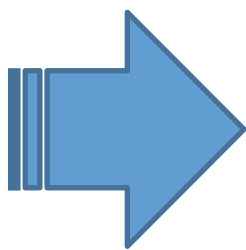
Your client must do the following:

- ✓ Notify UCIS within ten (10) days of moving to a new address by completing Form AR-11¹⁶⁴ and sending it the government address provided.
- ✓ If your client is a male between the ages of 18 and 26 he must register for the Selective Service.¹⁶⁵
- ✓ Not engage in any criminal activity and notify you immediately if ever arrested or given a bench ticket for any offense.
- ✓ Not travel to home country (unless for an extreme emergency, such as death of a family member, see section B above).

C. REFERRAL OF ASYLUM APPLICATION TO IMMIGRATION COURT

If the asylum officer does not approve the asylum petition, your client will receive a notice of “non-eligibility.” This notice will be a referral of her case back to the immigration judge. This notice may or may not have specific reasons as to why the case was referred. If her case was administratively closed by the immigration judge, it will now be re-opened and put back on the judge’s active docket.

At her next hearing in front of the judge, your client will have a chance to renew her application for asylum, or to seek another form of immigration relief. Please consult with your Safe Passage mentor attorney in order to discuss the next steps and a plan of action should your client’s case be referred back to immigration court.



IMPORTANT: While a referral may be disappointing, particularly for a case which you thought was very strong or in which the child answered questions very well, it does not mean that your client’s case will not be successful in front the immigration judge. The approval rates at both the NY and NJ asylum offices are low, meaning that there are many applicants who are not granted asylum at the asylum office.

While you and your mentor attorney will have much to discuss if your client’s case is referred, please note that as part of your preparation process you should prepare a Freedom of Information Act (FOIA) request to the asylum office. The complete files are presented to the ICE attorney and some parts of the file are made available to the immigration judge. You will have to take affirmative steps to try and

¹⁶⁴ Form AR-11 is available on the USCIS website: <https://www.uscis.gov/ar-11> (last accessed June 1, 2021).

¹⁶⁵ Asylees are often automatically registered upon being granted asylum. You may verify that your client has already been registered by going to <https://www.sss.gov/Home/Verification>. If your client’s name is not found in the system, he may register online by going to <https://www.sss.gov/Home/Registration>.



obtain all of the notes of the asylum officer by filing a FOIA request to the Asylum Office as soon as a referral is received.

PLEASE NOTE: There may be instances where an asylum denial and referral to the immigration court does not seem appropriate and you may wish to file a request to reconsider with the asylum office. While this is unusual, we have had a few cases where the written referral seems to be missing a key part of the client’s legal argument that the attorney knows was extensively testified to as well as being discussed in detail within the client’s affidavit and the attorney’s memorandum of law.

If you believe this has occurred in your case, please discuss immediately with your Safe Passage mentor attorney so that together you can decide what the next steps will be in your client’s case.

GENERAL GUIDANCE ON REPRESENTING YOUTH

Your Role as Counsel for a Young Person

In the course of representing your client, you may struggle with defining your role, especially if your client is very young and unable to clearly state how they would like to proceed in their immigration case. This issue presents often when representing noncitizen children and may be complex to navigate, so it is important that you understand the applicable ethics rules. You should also, of course, consider reaching out to your Safe Passage Project mentor for a more in-depth discussion.

Despite the young age of your client, it is important to remember that as with any other client, it is essential to provide your client with all relevant information about their case, explain available options for immigration relief, abide by your client’s wishes regarding how to proceed, and keep your client informed about any and all material developments in their case.

The Federal Professional Conduct for Practitioners (“FPCP”) establishes a code of ethics for attorneys practicing immigration law and imposes on the attorney an affirmative ethical obligation to communicate with and follow the directions of their client. Pursuant to these regulations, an attorney is required to “abide by a client’s decisions concerning the objectives of representation” and must “consult with the client as to the means by which they are to be pursued.”¹⁶⁶

Determining Capacity

But what if your client is very young or otherwise seems unable to fully understand the legal process? In that case, the central question is as follows: When is a minor legally capable of directing their

¹⁶⁶ 8 C.F.R. § 1003.102(p).

representation? There is no simple answer. The law does not outline a specific age at which a minor achieves the capacity to engage a lawyer and direct their own representation. Instead, courts generally assess noncitizen youths' "capacity,"¹⁶⁷ to establish whether the noncitizen youth meets the requisite standard to act independently and/or direct the outcome and strategy of their case. Generally, the factors relevant to assessing capacity make clear that capacity is contextual and incremental and can be intermittent.

If a client's capacity to make adequately considered decisions in connection with representation is diminished, whether because of minority, mental impairment or for some other reason, ethics rules maintain that the lawyer shall, as far as reasonably possible, maintain a normal client-attorney relationship because even a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting their well-being. Noncitizen children as young as four or five years of age may be able to demonstrate capacity to direct at least some of their representation (by saying, for example, that they want to stay in the United States with their parent or caregiver, and not return to their home country).

It may be obvious that a noncitizen youth has diminished capacity (e.g., the noncitizen youth is too young to make informed and voluntary legal decisions, is nonverbal, or has a severe disability). Capacity is not always clear, however, and in those circumstances, an attorney may need additional guidance to establish their client's capacity.

The ABA¹⁶⁸ has set out a test that lawyers can use to determine a client's capacity. Factors to consider include:

1. The client's ability to articulate the reasoning leading to a decision;
2. The variability of client's state of mind and their ability to appreciate the consequences of a decision;
3. The substantive fairness of the client's decision; and
4. The consistency of the client's decisions with the known long-term commitments and values of the client.

¹⁶⁷ Legal capacity is the attribute of a person who can acquire new rights, or transfer rights, or assume duties, according to the mere dictates of his own will, as manifested in juristic acts, without any restraint or hindrance arising from his status or legal condition. Ability; qualification; legal power or right. Applied in this sense to the attribute of persons (natural or artificial) growing out of their status or juristic condition, which enables them to perform civil acts; as capacity to hold lands, capacity to devise, etc. *Burgett v. Barrick*, 25 Kan. 526 (1881); *Sargent v. Burgett*, 90 Ga. Ill, 22 S. E. COT. Blacks law Dictionary, 2nd. Ed.

¹⁶⁸ Model Rule 1.14, Comment 6. ABA Model Rule 1.14 governs a lawyer's relationship with a client with diminished capacity, whether resulting from minority, disability, or otherwise. Under this Rule, an attorney is ethically obligated to follow the directions of a minor client who can effectively direct his or her own representation. Model Rule 1.14, Comment 1 further explains that the obligation to maintain a regular relationship with a noncitizen child client "implies that the lawyer should continue to treat the client with attention and respect, attempt to communicate and regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."



More specifically, the ABA Commission on Immigration sets out factors for use in assessing the competence of an unaccompanied immigrant noncitizen youth¹⁶⁹:

1. Their ability to make decisions including: the ability to understand information relevant to the specific definitions at issue; the ability to appreciate one's situation with respect to the legal decisions to be made; the ability to think rationally about alternative courses of action; and the ability to express a choice among alternatives.
2. Legal ability, including functional abilities, understanding of the legal process, the ability to assist their attorney in support of their claim, and the ability to participate in the hearing.
3. Intellectual, social and emotional development, considering such factors as age, interest, interaction with peers, psychosocial judgment, and cognitive maturity.

If you are uncertain about your client's capacity, please reach out to your Safe Passage Project mentor to discuss the situation before deciding how to proceed. Your mentor will aid you in carefully considering the factors above and determining whether intervention is necessary to protect the client's interests. If, however, you reasonably believe that your client is competent, Model Rule 1.14 requires the attorney to abide by their client's wishes and directions, even if they are opposed by, for example, the client's parent or guardian.¹⁷⁰

Understanding Trauma

Given that most of Safe Passage Project's clients are eligible for a humanitarian form of relief, your client likely will have suffered some form of trauma. It is important to understand how trauma exposure may affect your client and how you may be affected by the retelling of that trauma by your client in the course of your representation.

Trauma Exposure and Its Effects on Your Client

The significant role that trauma plays on the human brain is well-documented. Trauma exposure can significantly interfere with the way children and adolescents' brains assess threat, which, in turn, can affect how they respond to stress, and how they record memories.

¹⁶⁹ For an in-depth reading of these rules and discussion please see American Immigration Lawyers Association, *Ethical Issues in Representing Children in Immigration Proceedings* (January 29, 2015), <https://www.aila.org/practice/ethics/ethics-resources/2012-2015/ethical-issues-representing-children> (last accessed June 1, 2021).

¹⁷⁰ ABA Model Rule 2.1 calls upon an attorney to provide independent advice should the attorney disagree with the client's wishes, but ultimately, the client directs the representation, and the attorney's loyalty must lie with her client. In interactions with unrepresented members of the client's family, the attorney must comply with Model Rule 4.3 by making clear that she does not represent them and may be obligated to take actions on behalf of her minor client that are adverse to the family's interests or desires.

Trauma not only affects the way that your client may remember events relevant to their case,¹⁷¹ but also how they relate to you and the legal system. Trauma, and the distrust it creates in others, or the desire to avoid discussing matters related to it, may account for, for example, your client missing appointments with you, coming to court on time, or difficulty discussing particular events in their past.

At Safe Passage Project, we seek to employ a trauma-informed approach to lawyering. This approach requires you to consider the role trauma exposure may play in a client's behaviors and memory. It will also require that you counter those signs of trauma by—in your interactions with your client—providing structure, predictability, and opportunities for the client to exert control over decisions in their case to the degree that it is possible for them to do so. Please contact your Safe Passage Project mentor for further resources on how to implement a trauma-informed approach to lawyering.¹⁷²

Trauma Exposure and Its Effects on You

Exposure to your client's trauma may also deeply impact you. Vicarious (or secondary) trauma¹⁷³ is the “emotional residue” of exposure to stories of trauma and to being witness to the pain, fear, and terror that trauma survivors have endured, and it is not uncommon.

Symptoms of vicarious trauma may include:

- Difficulty falling asleep and/or staying asleep
- Dreaming about their clients/their clients' trauma experiences
- Dealing with intrusive thoughts of clients with severe trauma histories
- Losing sleep over clients
- Being worried that they are not doing enough for their client

We ask that you please be aware of your mental state as you undertake this incredibly important work.

¹⁷¹ Trauma has a deep effect on memory. For a detailed discussion, see Paskey, Stephen, *Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Asylum*, Santa Clara Law Review, Number 3 Article 1, Volume 56, June 2016.

¹⁷² For more information, see, Public Interest Pro Bono Association, Working with Survivors of Abuse: A Trauma Informed Approach, https://www.probono.net/ny/library/item.746013-Working_with_Survivors_of_Abuse_A_Trauma_Informed_Approach (last accessed June 1, 2021).

¹⁷³ For a detailed description of vicarious trauma, please see, Joyful Heart Foundation, *Vicarious Trauma*, at <https://www.joyfulheartfoundation.org/learn/vicarious-trauma> (last accessed June 1, 2021).

Working with Low-Income Youth

In addition to the challenges that Safe Passage Project clients face in their immigration case, most Safe Passage Project clients are also confronting other challenges in their day-to-day lives in New York. The majority of our clients have recently arrived in the United States and may be living with family or friends they have never met or have not seen in a long time. It is common for our clients to experience housing and food insecurity. Our clients also struggle with difficulty accessing health insurance and health care, language barriers, racism and discrimination.

It is essential that you keep in mind the issues that your client may be facing on a day-to-day basis, especially if you encounter any issues with your client's responsiveness, such as not returning calls and coming late to or missing appointments. Please also keep in mind that your role is to provide legal advice and representation. If your client is in need of social services, please reach out to your Safe Passage Project mentor, who can connect with our Social Work team.

Please contact your Safe Passage Project mentor for further resources.¹⁷⁴

¹⁷⁴ See also, Public Interest Pro Bono Association, *Troubleshooting Pro Bono Relationships with Low-Income Clients* at <http://pipba.org/resources/> (last accessed June 1, 2021).

RESOURCE APPENDIX

There are many useful resources to assist in the preparation of an asylum application. Below are a few items that we find especially useful when assisting children and *pro bono* attorneys to prepare for asylum interviews.

A. SAMPLE ASYLUM INTERVIEW WORKSHEET

Applicant: _____ Asylum Officer: _____
 A number: _____ Interview date: _____
 Country: _____ Interview Location: _____

INTERVIEW START TIME:
LANGUAGE:

Introduction & Identification

- Applicant
- Dependents
- Interpreter
- Attorney, (present/not present)
 - Waiver signed if not present?

Confidentiality, Purpose/Structure of Interview Oaths

- Oath administered to applicant, interpreter
- Oath form signed?

Documents

- Any original documents? (review chain of custody)

Officer	Applicant

I-589 REVIEW

Officer	Applicant
Did anyone help you fill out your application?	
Who?	
Are you familiar with the contents of your application and all supporting documents?	
Was the application read back to you in a language you understand?	
Are there any changes or corrections you'd like to make now?	
To the best of your knowledge, is everything in your application true and correct?	
[Reviewed and marked changes on I-589]	
We made ____ changes to your application for asylum. At the end of the interview I'll have you look them over them, make sure everything is correct, then you will sign your application.	

MONITOR CALLED, placed under oath

INTERVIEW

(notes are not verbatim unless otherwise noted)

PRELIMINARY QUESTIONS

Officer	Applicant
Are you a citizen of any country other than X?	
Have you ever been offered any kind of legal status in any other country?	
Have you ever filed an asylum application in the US, apart from this one?	
Has anyone in your family ever filed an asylum application in the US?	
Have you ever filed for any other US immigration benefit?	
Did you complete your own visa application to come to the US, or did someone help you?	
When you were filling out the visa application, did you have to provide any untrue information?	
Did you go to the consulate for an interview?	
During your interview did you have to provide any untrue information?	

ELIGIBILITY

Officer	Applicant
I've looked over your application and all of your documents. I'm familiar with what you've said. I have a few questions to start. Can you tell me in your own words why you are applying for asylum? [or why you left X?]	

Address all of the following:

- Were you ever harmed? How many times?
- Type of harm/injuries?
- Who harmed you?
- Why did they harm you?
- Did they say anything while harming you?
- Any medical treatment? (If no, why not?)
- Report to police? (If no, why not?)
- Any other harm, for any reason?
- Any friends or family who was harmed in the same or similar way?
- If gap between last harm and departure: Why did you wait until [date] to leave? Or, what happened that made you decide to leave X?

WFF/RELOCATION

Officer	Applicant
What do you think would happen if you returned to X now? [Why/who/how?]	
Is there anywhere in X where you think you could live safely? [Why/why not/how support self/job, family]	
Do you think the police or government could protect you if you returned to X? [Why not?]	
I'm almost done with my questions, but I have a few more things to ask. Before we go on, is there anything we haven't talked about yet that you'd like me to know?	

MANDATORY BARS

Officer	Applicant
I have to ask these questions of everyone that applies for asylum. Most of them can be answered with "yes" or "no," but they're very important, so I want you to listen and answer carefully.	
Other than the United States, have you ever traveled to or through any other country, for any amount of time? [transit?]	
Have you ever harmed anyone?	
Have you ever helped someone harm anyone for any reason?	
Have you ever committed a crime in any country?	
Have you ever been convicted of a crime in any country?	
Have you ever been arrested or detained in any country?	
Have you ever been in the military, police or any other armed group?	
Have you ever received military-type training?	
Have you ever belonged to any groups or organizations?	
Have you ever been a member or representative of a group that advocated or used violence?	
Have you ever committed a terrorist act, such as kidnapping, hijacking, assassination, sabotage, or any act of violence with the intent to hurt a person or property?	
Have you ever attempted or planned to do any of those things?	
Have you ever been accused of doing any of those things?	
Have you ever publicly stated that you approved of terrorist activities?	
Even if you didn't want to, have you ever helped a person or organization involved in violent activities, for example, by giving money, food, transportation, shelter?	
Even if you didn't want to, have you ever tried to convince other people to join or give anything to a group that used violence?	



CONCLUSION

Officer	Applicant
Do you have any questions for me?	

MONITOR RELEASED

Thank you for your testimony today. I appreciate you talking with me. Now we're just going to review the changes we made to your application, and we'll both sign it.

Reviewed changes to I-589

- **Applicant signed I-589**

I-72

- **Any?**

Decision information

- **Pick-up or Mail-out**
- **Two types of decisions**
- **Applicant signed notice**



B. SAMPLE CERTIFICATE OF TRANSLATION

On the next page is a sample certificate of translation. This document should be attached to any foreign language translation completed in support of your client.



Certificate of Translation

TO THE [SPECIFY COUNTY IN WHICH CASE IS FILED] FAMILY COURT OF NEW YORK: I, [FULL NAME OF TRANSLATOR], being duly sworn, depose and say that I am qualified to translate the attached [DESCRIBE DOCUMENT IN DETAIL]. I am a bilingual LAW STUDENT/PARALEGAL/LAWYER and am fluent in both the English and Spanish languages. I swear, under penalty of perjury, that I translated the attached [DESCRIBE DOCUMENT IN DETAIL] from Spanish into English and hereby certify that it is an accurate and complete rendering of the content of the original document to the best of my knowledge, ability and belief.

Signature of Translator: _____ Date: _____

Subscribed and sworn before me this _____ day of _____ of the year _____.

Signature of Notary _____

My commission expires on _____

C. SAMPLE PROOF OF UNACCOMPANIED ALIEN CHILD (UAC) STATUS



U.S. Department of Health and Human Services
PROGRAM NAME

Office of Refugee Resettlement
Placement Authorization, Rev. 10/29/2012

OFFICE OF REFUGEE RESETTLEMENT Division of Children's Services PLACEMENT AUTHORIZATION

The U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), Division of Children's Services (DCS) is responsible for coordinating and implementing the care and placement of (6 U.S.C. 279 (b)(1)(A)):

Minor's Name: [REDACTED] Alien Number: [REDACTED]
Date of Birth: [REDACTED] Nationality: Guatemala

Hereby authorizes, hereinafter "care provider," to provide 24 hour care for the minor. Care and placement will include, but is not limited to:

care provider: IES Brownsville

1. Custody.

The minor is in the legal custody of the Federal government and is placed in the care provider's physical custody for care and shelter. The care provider must provide for the minor's daily care and protection, which conforms to all applicable ORR instructions and minimum standards based in statute or law. The minor's placement with the care provider is based on the care provider's compliance with the requirements set forth in the contract or cooperative agreement with ORR. ORR, at its sole discretion, may remove the minor from the care provider at any time.

2. Authority.

The care provider will adhere to all Federal and State licensing laws, rules, and regulations. Additionally, the care provider will adhere to all ORR policies, guidance, and instructions. Failure to adhere to State licensing or ORR requirements will result in corrective action up to and including termination of the grant or contract.

3. Education.

The care provider must enroll the child in an educational program(s) as directed by ORR. This may include educational programming created by the care provider if approved by ORR. The care provider may sign any documents needed to enroll the child in an educational program. The care provider may also receive and review all of the minor's educational records.

4. Travel.

The care provider may provide routine transportation for the minor, including transportation to and from medical, mental, and dental care; court hearings; transfer to other care provider programs; trips, outings, or other travel pertinent to the minor's educational, social, and emotional development.

5. Photographs and Videotapes.

The care provider may take photographs and record videotapes of the minor for the minor's personal use and for purposes of identification. The care provider may not release any photographs or videotapes of the minor for public use without ORR's prior written permission.

6. Medical Care.

The care provider may consent to the child's medical, dental, and mental health care as specified in the Authorization to Consent to Medical, Dental, and Mental Health Care. The care provider may receive, review, and maintain all of the minor's medical, dental, and mental health records in a separate medical file.

7. Files/Confidentiality.

All records maintained by the care provider in reference to the minor are considered ORR property. Under penalty of law, the care provider must not release information about the minor to any individual, organization, or entity without the prior



U.S. Department of Health and Human Services
PROGRAM NAME

Office of Refugee Resettlement
Placement Authorization, Rev. 10/29/2012

- The care provider may provide information about the minor to the minor's educational program, medical, mental health, dental, and other service providers to the extent that the information is needed for the minor's education, recreation, social development, medical, dental, or mental health treatment.
- The care provider must give ORR and its designees, as directed by ORR, unrestricted free access to information about the minor at all times.
- All case file information maintained under grants or contracts with the Federal government are the property of the Federal government and are fully accessible to ORR/DCS, or any of their duly authorized representatives, in accordance with applicable federal law, regulations, and OMB circulars. The records should be retained in accordance with these applicable laws, regulations, OMB circulars, and ORR policies.

8. Contact with the Family.

The care provider must permit the minor and the minor's family (as well as other individuals at ORR's discretion) to maintain contact through direct visitation, telephone calls, mail, and gifts under the terms and conditions specified by applicable law, regulations, and ORR policies.

9. School Programs and Extracurricular Activities.

The care provider may authorize the minor to participate in routine school programs as well as social and extracurricular activities that do not involve an unusual risk of injury to the minor unless otherwise specified by ORR.

10. Reason for Placement.

An unaccompanied minor who meets the definition of an unaccompanied alien child, 6 U.S.C. 279 (g)(2), and is in Federal custody by reason of his or her immigration status.

11. Time in Care.

The care provider's care giving authority will terminate upon the minor's physical discharge from the care provider's custody. The care provider will still have legal obligations for maintaining the minor's property if it is still in the care provider's custody and case file as directed by ORR.

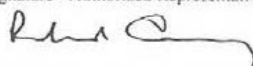
12. Financial.

ORR agrees to provide financially for the care of said minor according to the financial agreement between ORR and care provider or subsequent agreements agreed to by ORR and the care provider.

13. Restraints.

The care provider must exhaust preventive, de-escalative, and less restrictive techniques before it uses any type of restraint. Should physical restraint be necessary for the safety of the minor or others, the care provider must use

Signature - Authorized Representative of Care Provider



Date

10/31/2016

Telephone Number



Signature - Official Representative

Office of Refugee Resettlement

Administration for Children and Families

U.S. Department of Health and Human Services

Date

Telephone Number





U.S. Department of Health and Human Services

Office of Refugee Resettlement
Verification of Release, Rev. 05/29/2015

OFFICE OF REFUGEE RESETTLEMENT
Division of Children's Services
VERIFICATION OF RELEASE

Name of Minor: [REDACTED] Aliases (if any): [REDACTED]

Minor's Date of Birth: [REDACTED] Minor's A#: [REDACTED]



The Office of Refugee Resettlement (ORR) has released the above named minor from Federal custody pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to the care of:

Name of Sponsor: [REDACTED]

Aliases (if any): [REDACTED]

Address: [REDACTED]

Tel#: [REDACTED]

City: [REDACTED]

State: NJ

Zip Code: [REDACTED]

Relationship to Child: Grandmother

Acknowledgement of the Sponsor Care Agreement

The above named sponsor has agreed to the provisions set forth in the *Sponsor Care Agreement*, pertaining to the minor's care, safety, and well-being, and the sponsor's responsibility for ensuring the minor's presence at all future proceedings before the Department of Homeland Security and the Department of Justice/Executive Office for Immigration Review (EOIR).

For Internal Use Only

Name ORR care provider Facility	IES Brownsville
Date	[REDACTED] 2016

This official U.S. Department of Health and Human Services (HHS) Verification of Release form, issued by HHS's Office of Refugee Resettlement (ORR), should be considered as evidence that the above named sponsor was given physical custody of the above named minor on the date indicated on this form, and that the above named sponsor agreed to conditions outlined in a sponsor care agreement, including housing the minor at the address reflected on the form. The Verification of Release form also indicates the date of birth of the above named minor, as determined by HHS based on official documents or, in cases involving missing documentation, on other measures to determine probable age.

According to the Department of Education, all children in the United States are entitled to equal access to a public elementary and secondary education, regardless of their or their parents' actual or perceived national origin, citizenship, or immigration status. This includes recently arrived unaccompanied children, who are in immigration proceedings while residing in local communities with a parent, family member, or other appropriate adult sponsor. While residing with a sponsor, these children have a right under federal law to enroll in public elementary and secondary schools in their local communities and to benefit from educational services, as do all children in the U.S.

Department of Education Guidance can be found at: <http://www2.ed.gov/policy/rights/euei/unaccompanied-children-2.pdf>

D. LINKS TO IMPORTANT SOURCES OF ASYLUM LAW

In this section we have provided links to the majority of the sources that we cite throughout the manual. Of particular use are links to the PDF versions of the Board of Immigration Appeals (BIA) decisions we discuss and cite to in this manual, available in section D.3. below. Please note that the links are to the original decisions. Parts of some of these decisions have been overruled or modified by subsequent case law. As always, make sure to shepardize the cases you cite in order to ensure that you are using the most current authority on any given topic.

1. INTERNATIONAL LAW

Guidelines on International Protection: Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UNHCR

<http://www.unhcr.org/en-us/publications/legal/50ae46309/guidelines-international-protection-8-child-asylum-claims-under-articles.html>

UN Convention on the Rights of the Child (1989)

The United Nations has proclaimed that childhood is entitled to special care and assistance. Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

UN Convention Relating to the Status of Refugees (1951)

The core principle is non-refoulment, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This is now considered a rule of customary and international law.

<http://www.unhcr.org/en-us/1951-refugee-convention.html>

Universal Declaration of Human Rights (1948)

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political,

jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

<http://www.un.org/en/universal-declaration-human-rights/>

UN Protocol Relating to the Status of Refugees (1967)

A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement (non-return).

<http://www.unhcr.org/en-us/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

UN Convention Against Torture (1984)

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

2. SELECTED SECOND CIRCUIT COURT OF APPEALS CASES

Acharya v. Holder, 761 F.3d 289, 297-298 (2d Cir. 2014)

<http://caselaw.findlaw.com/us-2nd-circuit/1674680.html>

This court held that IJ applied incorrect and overly stringent legal standard on denying asylum. IJ made an illogical leap by recasting inquire as one into “the central” as opposed to at least one central reason for persecution.

Aliyev v. Mukasey, 549 F. 3d 111, 116 (2d Cir. 2008)

<http://caselaw.findlaw.com/us-2nd-circuit/1390812.html>

This court held that BIA had failed to use the proper framework and that Aliyev had ample evidence to forge the link between private conduct and public responsibility. BIA was not supported by substantial



evidence in its finding that Aliyev did not show that the government was unwilling to protect him from private persecution.

***Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006)**

<http://caselaw.findlaw.com/us-2nd-circuit/1476120.html>

Finding that where the applicant “was a child at the time of massacres and thus necessarily dependent on both his family and his community . . . This combination of circumstances [displacement – initially internal, resulting economic hardship, and viewing the bullet-ridden body of his cousin] could well constitute persecution to a small child totally dependent on his family and community.

***Ivanishvili v. U.S. Dep’t of Justice*, 433 F.3d 332, 342 (2d Cir. 2006)**

<http://caselaw.findlaw.com/us-2nd-circuit/1301592.html>

This court held that the alien failed to show that ineffective assistance of counsel excused the untimely filing of her asylum application. The IJ was required to consider aliens testimony in determining her claim of persecution on account of her religion for purpose of application withholding and removal and the court of appeals would not consider aliens claim for relief under CAT.

***Osorio v. INS*, 18 F.3d 1017 (2nd Cir. 1994)**

<http://openjurist.org/18/f3d/1017/osorio-v-immigration-and-naturalization-service>

Guatemalan union leader sought asylum. To establish eligibility need actual past persecution or well-founded fear of future persecution on account of political opinion. This court held that “An applicant who proves he or she is eligible for asylum but is denied asylum in the BIA’s exercise of discretion, remains eligible for withholding deportation”. BIA interpretation of political asylum was incorrect and contradicts the Immigration and Nationality Act.

***Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004)**

<http://caselaw.findlaw.com/us-2nd-circuit/1253774.html>

This court held that BIA was entitled to rely on applicant’s airport interview in determining whether he was credible. BIA could not deny CAT claim solely on basis of adverse credibility determination made in determining asylum claim.

Vumi v. Gonzales, 502 F.3d 150 (2d Cir. 2007)

<http://caselaw.findlaw.com/us-2nd-circuit/1038947.html>

The applicant applied for asylum due to threats in the Democratic Republic of Congo. The Second Circuit Court of Appeals held that the BIA and IJ failed to examine the political context or country conditions in DRC and the IJ conducted no mixed motive analysis based on the allegations. The case was remanded back to BIA so that they can properly examine the allegation in light of the agency's own established standards for mixed motive.

3. SELECTED BIA CASES

These decisions are organized chronologically. Please note that the links are to the original decisions. Parts of some of these decisions have been overruled or modified by subsequent case law. As always, make sure to shepardize the cases you cite in order to ensure that you are using the most current authority on any given topic.

Matter of L-E-A-, 27 I&N Dec. 571 (A.G. 2019)

<https://www.justice.gov/file/1187856/download>

- 1) Whether a particular social group based on family membership is cognizable depends on the nature and degree of the relationships involved and how those relationships are regarded by the society in question. Family must have some level of “social import” in the community to satisfy social distinction requirement.
- 2) To establish eligibility for asylum on the basis of membership in a particular social group composed of family members, an applicant must not only demonstrate that he or she is a member of the family but also that the family relationship is at least one central reason for the claimed harm. This part of *Matter of L-E-A-, 27 I&N 40 (BIA 2017)* not disturbed.

Matter of M-H-Z-, 26 I&N Dec. 757 (BIA 2016)

<https://www.justice.gov/eoir/file/865856/download>

The “material support bar” in section 212(a)(3)(B)(iv)(VI) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (2012), does not include an implied exception for an alien who has provided material support to a terrorist organization under duress.

***Matter of A-B-* 27 I&N Dec. 316 (AG 2018)**

<https://www.justice.gov/eoir/page/file/1070866/download>

- 1) Overturns *Matter of A-R-C-G-*, the precedent that “Married Guatemalan Women in Relationships they are unable to leave” was a cognizable Particular Social Group.
- 2) Where the persecutor is a non-state actor, Respondent must show that government is “unwilling or unable” to control, meaning that the State either condones or is completely helpless to protect.
- 3) This case has negative dicta that “generally” cases involving gang violence and domestic violence will not qualify for asylum.

***Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014)**

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3795.pdf>

An applicant for asylum or withholding of removal seeking relief based on "membership in a particular social group" must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. Whether a social group is recognized for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.

***Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011)**

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3717.pdf>

Opposition to state corruption may, in some circumstances, constitute the expression of political opinion or give a persecutor a reason to impute such an opinion to an alien. In making the nexus determination, an Immigration Judge should consider: (1) whether and to what extent the alien engaged in activities that could be perceived as expressions of anticorruption beliefs; (2) any direct or circumstantial evidence that the persecutor was motivated by the alien's actual or perceived anticorruption beliefs; and (3) any evidence regarding the pervasiveness of corruption within the governing regime.

***Matter of A-T-*, 24 I&N Dec. 617 (AG 2008)**

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3622.pdf>

The Attorney General vacated the decision of the Board of Immigration Appeals and remanded the record for reconsideration of questions relating to the respondent's eligibility for withholding of removal pursuant to 8 C.F.R. § 1208.16(b)(1) (2008) based on her claim that she has been subjected to female genital mutilation.

Matter of E-A-G, 24 I. & N. Dec. 591 (2008)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3618.pdf>

The respondent, a young Honduran male, failed to establish that he was a member of a particular social group of "persons resistant to gang membership," as the evidence failed to establish that members of Honduran society, or even gang members themselves, would perceive those opposed to gang membership as members of a social group. Because membership in a criminal gang cannot constitute membership in a particular social group, the respondent could not establish that he was a member of a particular social group of "young persons who are perceived to be affiliated with gangs" based on the incorrect perception by others that he is such a gang member.

Matter of S-E-G, 24 I. & N. Dec. 579 (2008)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3617.pdf>

Neither Salvadoran youth who have been subjected to recruitment efforts by the MS-13 gang and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang's values and activities nor the family members of such Salvadoran youth constitute a "particular social group."

Matter of D-I-M-, 24 I&N Dec. 448 (BIA 2008)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3599.pdf>

When evaluating an application for asylum, the Immigration Judge must make a specific finding that the applicant has or has not suffered past persecution based on a statutorily enumerated ground and then apply the regulatory framework at 8 C.F.R. § 1208.13(b)(1) (2007). If the applicant has established past persecution, there is a presumption of a well-founded fear of persecution in the future and the burden shifts to the Department of Homeland Security to prove by a preponderance of the evidence that there are changed country conditions, or that the applicant could avoid future persecution by relocating, and that it would be reasonable to do so under all of the circumstances.

In re J-B-N- & S-M-, 24 I&N Dec. 208, 211(BIA 2007)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3569.pdf>

Under section 101(a) (3) of the REAL ID Act of 2005, Div. B of Pub. L. No. 109-13, 119 Stat. 302, 303, in mixed motive asylum cases, an applicant must prove that race, religion, nationality, membership in a



particular social group, or political opinion was or will be at least one central reason for the claimed persecution.

Matter of A-M-E- & J-G-U-, 24 I. & N. Dec. 69, 75 (BIA 2007)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3550.pdf>

Factors to be considered in determining whether a particular social group exists include whether the group's shared characteristic gives the members the requisite social visibility to make them readily identifiable in society and whether the group can be defined with sufficient particularity to delimit its membership. The respondents failed to establish that their status as affluent Guatemalans gave them sufficient social visibility to be perceived as a group by society or that the group was defined with adequate particularity to constitute a particular social group.

Matter of Y-C-, 23 I&N Dec. 286 (BIA 2002)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3465.pdf>

An unaccompanied minor who was in the custody of the Immigration and Naturalization Service pending removal proceedings during the 1-year period following his arrival in the United States established extraordinary circumstances that excused his failure to file an asylum application within 1 year after the date of his arrival.

Matter of S-A-, 11 I & N. Dec 1328 (BIA 2000)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3433.pdf>

A woman with liberal Muslim beliefs established by credible evidence that she suffered past persecution and has a well-founded fear of future persecution at the hands of her father on account of her religious beliefs, which differ from her father's orthodox Muslim views concerning the proper role of women in Moroccan society.

Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3303.pdf>

- 1) General background information about a country, where available, must be included in the record as a foundation for an applicant's claim of asylum and withholding of deportation.
- 2) Where the record contains general country condition information and an applicant's claim relies primarily on personal experiences not reasonably subject to verification, corroborating documentary

evidence of the asylum applicant's particular experience is not required; but where it is reasonable to expect such corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence should be provided or an explanation should be given as to why such information was not presented. *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987), clarified.

- 3) The Immigration and Naturalization Service should play an active role in introducing evidence regarding current country conditions.
- 4) Although the burden of proof is not on the Immigration Judge, if background evidence is central to an alien's claim and the Immigration Judge relies on the country conditions in adjudicating the alien's case, the source of the Immigration Judge's knowledge of the particular country must be made part of the record.

Matter of S—P—, 21 I&N Dec. 486 (BIA 1996)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3287.pdf>

Although an applicant for asylum must demonstrate that harm has been or would be inflicted on account of one of the protected grounds specified in the "refugee" definition, persecution for "imputed" reasons can satisfy that definition. In mixed motive cases, an asylum applicant is not obliged to show conclusively why persecution has occurred or may occur; however, in proving past persecution, the applicant must produce evidence, either direct or circumstantial, from which it is reasonable to believe that the harm was motivated in part by an actual or imputed protected ground.

Matter of Kasinga, Int. Dec. 3278 (BIA 1996)

<https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3278.pdf>

- 1) The practice of female genital mutilation, which results in permanent disfiguration and poses a risk of serious, potentially life-threatening complications, can be the basis for a claim of persecution.
- 2) Young women who are members of the Tchamba-Kunsuntu Tribe of northern Togo who have not been subjected to female genital mutilation, as practiced by that tribe, and who oppose the practice, are recognized as members of a "particular social group" within the definition of the term "refugee" under section 101(a) (42) (A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a) (42) (A) (1994).
- 3) The applicant has met her burden of proving through credible testimony and supporting documentary evidence (1) that a reasonable person in her circumstances would fear country- wide persecution in Togo on account of her membership in a recognized social group and (2) that a favorable exercise of discretion required for a grant of asylum is warranted.

Matter of Dass, 20 I&N Dec. 120 (BIA 1989)

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3122.pdf>

- 1) As an asylum applicant bears the evidentiary burden of proof and persuasion, where there are significant, meaningful evidentiary gaps, the applications ordinarily will be denied for failure of proof.
- (2) While we adhere to the holding in *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987), that the lack of corroboration for an asylum applicant's testimony will not necessarily be fatal to his application, this does not mean that the introduction of supporting evidence is purely an option with an asylum applicant in the ordinary case; the general rule is that such evidence should be presented if it is available.

Matter of Chen, 20 I. &N. Dec.16 (BIA 1989)

<https://www.justic.gov/sites/default/files/eoir/legacy/2012/08/14/3104.pdf>

- 1) An applicant for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158 (1982), may establish his claim by presenting evidence of past persecution in lieu of evidence of a well-founded fear of persecution.
- 2) Where an alien has shown that he has been persecuted in the past on account of race, religion, nationality, membership in a particular social group, or political opinion, the likelihood of present persecution then becomes relevant as to the exercise of discretion, and asylum may be denied as a matter of discretion if there is little likelihood of present persecution.
- 3) Where past persecution has been established by an applicant for asylum, the Service ordinarily will be obliged to present, as a factor militating against a favorable exercise of administrative discretion, evidence that little likelihood of present persecution exists, or the presiding official(s) may take administrative notice of changed circumstances in a country.
- 4) A favorable exercise of administrative discretion in an asylum application may be warranted for humanitarian reasons notwithstanding the fact that there is little likelihood of future persecution.

Matter of Pula, 19 I&N Dec. 467 (BIA 1987)

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3033.pdf>

- 1) An alien's manner of entry or attempted entry is a proper and relevant discretionary factor to consider in adjudicating asylum applications.
- 2) The circumvention of orderly refugee procedures can be a serious adverse factor in determining whether to grant asylum; however, it should not be considered in such a way that the practical effect is to deny relief in all cases.

- 3) The circumvention of the immigration laws is only one of a number of factors which should be balanced in exercising discretion, and the weight accorded to this factor may vary depending on the facts of a particular case.
- 4) The circumvention of orderly refugee procedures alone is insufficient to require the most unusual showing of countervailing equities. *Matter of Salim*, 18 I&N Dec. 311 (BIA 1982) modified-

***Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987)**

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3028.pdf>

In *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), the United States Supreme Court held that the "clear probability" of persecution standard employed for withholding of deportation under section 243(h) of the Immigration and Nationality Act, 8 U.S.C. § 1253(h) (1982), does not converge with, and may not be equated with, the "well-founded fear" of persecution standard used for asylum under section 208, 8 U.S.C. § 1158 (1982). *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), is therefore overruled insofar as it held that the two standards were not meaning fully different, and in practical application converged.

***Matter of Acosta*, 19 I & N Dec. 211 (BIA 1985) OVERRULED IN PART ON OTHER GROUNDS BY**

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2986.pdf>

Matter of Acosta is the BIA's seminal case on the meaning of membership in a particular social group. Although the decision has been overruled in part by the Supreme Court in *INS V. CARDOZA-FONSECA*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987), and superseded by statute, *Matter of Acosta* established that a particular social group is one unified by some characteristic that is either (1) beyond the power of an individual to change or (2) so fundamental to individual identity or conscience that it ought not be required to be changed.

4. USEFUL CASES FROM OTHER U.S. CIRCUIT COURTS

***Sangha v. INS*, 103 F.3d 1482, 1486-87 (9th Cir 1997)**

<http://caselaw.findlaw.com/us-9th-circuit/1201096.html>

Teenaged Sikh boy left India due to Sikh separatist group threat to his family. This court held that by direct or circumstantial evidence that persecution occurred "on account of" political beliefs. In *Elias-Zacarias*, an applicant's refusal to fight in the context of a forced recruitment is not enough by itself to show that the persecutor acted on "account of" political beliefs.

Ouk v. Gonzales, 464 F.3d 108, 111 (1st Cir. 2006)

<http://caselaw.findlaw.com/us-1st-circuit/1437184.html>

This court held that genuine fear is not sufficient to establish eligibility for asylum. Ouk had not shown that the post-traumatic stress disorder was related to any persecution directed at her and therefore she had not established past persecution based on her political opinion.

Mashiri v. Ashcroft, 383 F.3d 1112, 1120 (9th Cir. 2004)

<http://caselaw.findlaw.com/us-9th-circuit/1235584.html>

This court held that threats may be compelling evidence of past persecution, particularly when they are specific and menacing and are accompanied by evidence of violent confrontations, near confrontations, and vandalism. Persecution may be emotional or psychological, as well as physical. Since Zakia had proved past persecution, the burden shifts to the government to rebut the presumption that Zakia is eligible for asylum.

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993)

<http://law.justia.com/cases/federal/appellate-courts/F3/12/1233/528449/>

This court held that in order to prevail on a withholding of deportation or asylum claim based on political opinion, an alien must specify the political opinion on which he or she relies on, show that he or she holds that opinion, and show that he or she would be persecuted or has a well-founded fear of persecution based on that opinion. BIA had not failed to consider the facts. The court denied the petition for review.

5. IMPORTANT AGENCY GUIDANCE

USCIS Asylum Division, Asylum Officer Basic Training Course – Guideline for Children’s Asylum Claims

Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement
<https://www.dhs.gov/news/2017/02/21/qa-dhs-implementation-executive-order-border-security-and-immigration-enforcement>



USCIS guidelines on asylum for unaccompanied minors

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves>

THANK YOU AND GOOD LUCK!