

CALIFORNIA ASYLUM REPRESENTATION CLINIC

Training and Resource Manual 2017 – 2018



University of California, Berkeley
School of Law

This manual belongs to: _____

Phone: _____

Email: _____

Supervised by East Bay Sanctuary Covenant

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Overview of CARC Participation

1. Intake and Assign Case

- Meet with supervisor before meeting with client to get specifics on case (deadlines, legal strategy, challenges, need for psychological evaluation).

2. Draft Declaration or Outline of Declaration

- Meet with client several times (likely 2-4 times for approximately 2-3 hours) to get a general outline of the case. Ideally, draft the declaration in narrative form. *See samples.*
- Request client to gather ALL available proof (e.g., letters from friends or family members corroborating her story, medical records, travel documents, pictures, marriage certificate).
- Highlight your concerns/problems with the case for your supervisor.
- If necessary, research legal issues.
- Review the case and your declaration draft with your supervisor.

3. Fill Out the Asylum Application

- Make a 2-3 hour appointment to work at EBSC to fill out the I-589 and the G-28 forms.
- Ensure psychological diagnosis if there's a one-year bar issue.
- Tell your client to bring all identifying documents (e.g., birth certificate, passport, visa, marriage certificate) for herself (and if applicable for her children and spouse).
- Tell your client to bring two passport-style photos. (EBSC can take them for a small fee.)
- Have your supervisor meet with your client to explain the asylum process and the risks of applying.
- Mail I-589 and G-28: the original and two copies are mailed; EBSC keeps one copy.
- Inform your client of next steps: application receipt notice, fingerprint appointment, work permit, and interview appointment.
- Tell your client to inform you when she receives any receipts for documents in the mail, as well as her notice of hearing.
- Explain the likelihood of getting a timely appointment versus work permit if still no appointment after five months.

4. Finalize Declaration and Gather Documents

- If you need to add details to the draft of the declaration, meet several more times with your client to obtain information needed to finalize draft (you will likely only need to meet 1-2 more times with your client).
- Gather copies of your client's available proof and personal documents.
- Have the declaration translated into your client's native language (if she is not fluent in English) so that she can review it.

5. (Optional) Put Together Document Packet

- Make sure that your client's available proof and personal documents are translated into English.
- If needed for the case (which is more likely than not), put together a country conditions packet.
- Turn in three complete packets two weeks before the interview. Will be reviewed by supervisor to be turned in the Monday of the week before the interview.
- Make sure EBSC has one additional packet of personal documents.

CONTACT INFORMATION

CARC COORDINATORS:

You should feel free to contact the CARC board if you need support or have any questions about the program. Each CARC member who would like a board mentor will be assigned one, but please don't hesitate to reach out to any of us! For general questions, please email carccordinator@gmail.com. You can also email us at our personal accounts below.

This year's CARC board members are:

Maddie Boyd	Central Coordinator	maddieboyd@berkeley.edu
Benda Muñoz	Training Coordinator	bmunozi@berkeley.edu
Jacob Wilbers	Outreach and Financial Coordinator	jwilbers@berkeley.edu
Miriam Rofael	Recruitment/Client Resources Coordinator	miriam_rofael@berkeley.edu
Victoria Tang	Client Resources Coordinator	victoriatang@berkeley.edu
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THE EAST BAY SANCTUARY COVENANT:

Physical Address

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Berkeley, CA 94709
(510) 540-5296

Mailing Address

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We work with the East Bay Sanctuary Covenant (EBSC) to represent clients. The Sanctuary is in the basement of Trinity Methodist Church on Bancroft Avenue. It is only a 10–15 minute walk from Boalt, just past Telegraph Avenue.

You will be working as a law student **under the supervision of** a licensed attorney at EBSC. You and your supervising attorney will work closely to ensure that the case is properly prepared and that your client is adequately represented. All legal questions should go to your supervising attorney.

OTHER RESOURCES

Google Drive: CARC maintains a substantial amount of material on our Google Drive, including sample declarations and sample indices of supporting documents. You should refer to this resource regularly as you work through your case.

OFFICE HOURS: CARC coordinators will hold office hours every week. For Fall 2017, office hours will be every Tuesday at 12:45 to 2pm in Room 112 (by the elevator on the first floor). CARC members are encouraged to reach out to the board members as a resource for tips on interviewing clients, feedback on the declaration writing process, and as a general sounding board for all things CARC and Berkeley Law related!

GENERAL GUIDELINES

With regard to your client:

- In general, keep in mind that **this is a real case with real consequences**. Your conduct will have a profound impact on your client's life. Treat the situation and your client accordingly. If you need help figuring something out or meeting time commitments, ask for help from a CARC Coordinator or the Sanctuary. If you don't know the answer to a question, don't just guess. Ever.
- **Respect your client's privacy and confidentiality at all times**. You may only discuss details of your client's case with the following persons: your CARC partner, the CARC coordinators, other CARC participants, and the Sanctuary staff at a time where no other person will be able to overhear the conversation. In all other contexts, if you discuss your case at all, do so only in general terms without revealing any identifying information. Violating confidentiality is an ethical breach and may impact your ability to become a lawyer.
- **Keep case-related files and papers in a secure place** where only you or your CARC partner has access. Shred these files when you dispose of them.
- Remember that you represent your client **under the supervision of a licensed attorney**. Inform your client fully of everything you do on her behalf and obtain her consent and your supervising attorney's consent before submitting anything to U.S.C.I.S. Let your client know if you do not know the answer to a question. Present your client with all of her options after you have discussed her situation with your supervising attorney. Always leave the final decision to your client and act on her wishes. This includes the decision as to whether or not to actually file for asylum.
- **Remember that you are not yet an attorney**. Do not represent yourself as an attorney to your client or to anyone else. If you are asked, the attorney of record for all CARC cases is your supervising attorney at the Sanctuary.
- Be friendly, but maintain a professional distance from your client. **Meet with your client at neutral and private locations**, such as at the Sanctuary or a conference room in the law library. Do not meet with your client in either of your homes. Be aware of the signs of vicarious trauma (see later section in this manual) and let a CARC coordinator know if you feel that you are suffering from vicarious trauma.

- o **Keep in regular contact with your client.** Make sure that your client informs you of changes in her phone number and address. Notify your client if you are ever away for an extended period, such as for Winter Break. If you lose contact with your client, notify a CARC coordinator and your Sanctuary case supervisor immediately.

With regard to the Sanctuary:

- o Keep two parallel files on your case: one at the Sanctuary and one for you and your partner. Be sure you have provided your staff attorney with all of the documents in your file.
- o Be respectful of the Sanctuary staff and volunteers. They are there to assist you but are also extremely busy. Sanctuary staff members are not your staff.
- o The Sanctuary is ultimately responsible for all cases. You must work closely with your supervising attorney to ensure all filing requirements have been properly met.
- o If you encounter problems working with the Sanctuary, please bring them to the attention of a CARC coordinator.

With regard to your partner:

- o Make sure that both of you are up to date on the case. **Stay in close communication.**
- o Respect one another's schedules and needs. You should exchange a schedule of your availability as soon as possible.
- o If you and your partner are having challenges working together, please speak to a CARC coordinator.
- o Be sensitive to one another's emotional responses to the client and her story.

With regard to yourself:

- o The stories you will hear may be traumatic. Please feel free to reach out to a CARC board member if you need someone to talk to about your experience.

PART ONE: OVERVIEW OF ASYLUM LAW

I. THE BASICS OF ASYLUM LAW

(Adapted from the Minnesota Immigrant & Human Rights Center's Basic Asylum Procedural Manual)

A. Background

Individuals who have suffered or fear persecution based on their particular race, religion, nationality, political opinion or membership in particular social groups in their home countries can apply for asylum in the United States. This right is guaranteed by the 1951 United Nations Convention Relating to the Status of Refugees and implemented in the 1967 United Nations Protocol Relating to the Status of Refugees. U.S. Congress codified refugee and asylee protection in 1980 through the Refugee Act.

In contrast to refugees who apply for status while still abroad, applicants for asylum must be physically present in the United States. An applicant may receive asylum if they can establish past persecution or a “well-founded fear” of future persecution in the home country on account of race, religion, nationality, political opinion, or membership in a particular social group. Asylum, however, is discretionary, which means an applicant may not be entitled to it even when eligible. In exercising her discretion, the judge or asylum officer can take into account a number of negative factors, including violations of immigration law (e.g., use of fraudulent documents) or criminal law (e.g., commission of a crime) when making a determination.

Obtaining asylum grants significant benefits to the recipient. An asylee cannot be removed from the United States unless the government can show that there has been a “fundamental change in circumstances [in the home country] relating to the original claim...” such that he may no longer be in danger upon return. 8 C.F.R. § 208.24 (2001). An asylee may also travel, obtain work authorization and may apply to adjust his status to lawful permanent resident one year after the grant of asylum. Further, an asylee is able to petition for and provide asylee status to his spouse and unmarried children under 21.

The Department of Homeland Security, through its United States Citizenship & Immigration Services (U.S.C.I.S.), now adjudicates all affirmative requests for asylum. The Attorney General maintains jurisdiction over asylum applications filed with immigration courts.

B. The Asylum Process

Within the United States, individuals fleeing persecution can apply for asylum either affirmatively or defensively. Persons applying for asylum affirmatively are those who came to the United States either legally or illegally and have not been placed in removal proceedings by the DHS. The Asylum Office within the Department of Homeland Security adjudicates all affirmative applications. By contrast, if an individual is placed in removal proceedings, he may apply for asylum, withholding of removal and/or relief under the UN Convention Against Torture as a defense to removal. Defensive applications are heard before an immigration judge. All CARC cases are affirmative asylum cases or track the affirmative process.

Affirmative asylum applications start in the local asylum office. For the Bay Area, the nearest office is in San Francisco. After filing an application, the Asylum Office will provide a receipt notice, fingerprint notice, and then schedule an interview between the applicant and an asylum officer. As affirmative asylum is a non-adversarial process, the interview consists of a series of questions between the officer and

the applicant throughout which the officer attempts to test the credibility of the applicant's story and to assess whether the applicant meets the legal standard for a grant of asylum.

If the asylum officer chooses to grant the application, the applicant becomes an asylee. Officers who find that an applicant is not credible or does not meet the legal standard generally refer the case to an immigration judge. CARC does not have the capacity to represent clients in immigration court. If a case reaches this stage it will be handled by East Bay Sanctuary.

Should the immigration judge find against the applicant, the applicant can appeal to the Board of Immigration Appeals (BIA). Both the IJ and BIA are administrative bodies within the executive branch that hear exclusively immigration cases, not Article III judges. BIA decisions can be appealed to the local federal appellate court, in this case the Court of Appeals for the Ninth Circuit, and ultimately to the Supreme Court.

For your reference, the law that stipulates the procedure for an asylum interview is 8 C.F.R. §208.9.

C. Legal Test for Asylum and Refugee Protection

The Immigration and Nationality Act (INA) sets forth the legal test for asylum eligibility. A person may qualify for asylum if he meets the international definition of a refugee. A refugee is defined as:

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 of the protection of, that country **because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.**

INA § 101 (a)(42)(A); 8 U.S.C. § 1101(a)(42)(a). Accordingly, individuals who can demonstrate that they have suffered past persecution or have a "well-founded fear of persecution" based on one of the five enumerated grounds can qualify for asylum protection.

1. Definition of Persecution

Neither the INA nor accompanying regulations define persecution. Federal courts and the Board of Immigration Appeals (BIA) have broadly defined persecution as "the infliction of suffering or harm upon those who differ ... in a way that is regarded as offensive." *Desir v. Ilchert*, 840 F.2d 723, 727 (9th Cir. 1988); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). Threats to life or freedom are uniformly found to be persecution. Physical abuse, even when not life-threatening will also generally constitute persecution. The suffering or harm experienced, however, must amount to more than mere harassment. *Balazoski v. INS*, 932 F.2d 638, 642 (7th Cir. 1991).

Additionally, being subjected to various types of harm that in and of themselves do not amount to persecution may be considered persecution when taken in aggregate. Such harms might include: (1) arbitrary interference with a person's privacy, family, home or correspondence; (2) relegation to substandard dwellings; (3) exclusion from institutions of higher learning; (4) enforced social or civil inactivity; (5) passport denial; (6) constant surveillance; and/or (7) pressure to become an informer.

2. Persecutors

The persecution must be either by the government or a group that the government cannot or will not control. It can include, for example, groups such as guerrilla forces, death squads, or paramilitary groups. In other cases, such as child abuse, female genital mutilation, or sexual orientation discrimination, the persecutor can be family members, clan members or society at large. This can also include prosecution in some circumstances such as where there is no due process, where the prosecution is a pretext, or where the punishment is grossly out of proportion with the crime.

3. Well-Founded Fear of Persecution: Legal Test

In order to demonstrate well-founded fear, an applicant must demonstrate both a *subjective and objective* component. *Id.* In order to satisfy the subjective component, a person must show that he actually has a fear of returning to his country of origin. In order to establish the objective element, an asylum applicant need only show a reasonable possibility that he will be persecuted. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). The U.S. Supreme Court has stated that the following is sufficient to establish a well-founded fear:

- (1) “having a fear of an event happening when there is less than a 50% chance that it will take place, and
- (2) “establishing a 10% chance of being shot, tortured, or [being] otherwise persecuted.” *Id.*

The applicant can do this through two means (*Matter of Mogharrabi*, 19 I&N 439, 441 (BIA 1987)):

- (1) Present specific facts through objective evidence or through persuasive, credible testimony; and
- (2) Show that given evidence presented, a reasonable person would experience a fear of persecution.

In *Matter of Mogharrabi*, the Board set forth the following four elements which an applicant for asylum must show in order to establish a well-founded fear of persecution: (1) the applicant possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could become aware, that the applicant possesses this belief or characteristic; (3) the persecutor has the capability of punishing the applicant; and (4) the persecutor has the inclination to punish the applicant. *Matter of Mogharrabi*, 19 I&N Dec. at 446; *INS v. Elias-Zacarias*, 112 U.S. 812 (1992). The Ninth Circuit also held that children are more sensitive to persecution than adults, so an action that may not rise to the level of persecution when committed against an adult may constitute persecution if committed against a child. *Hernandez-Ortiz v. Gonzales*, 496 F. 3d 1042, 1045-46 (9th Cir. 2007).

Several things that can undermine the objective fear of persecution are: similarly situated relatives in their home country, an applicant who has recently returned to her home country, and an applicant who remained in her home country for a long time after the alleged persecution. Applicants can overcome the return trip by arguing that the visit was casual and the applicant took precautions, etc.

4. Past Persecution

It is important to determine the existence of past persecution as well. If an applicant can establish that he was persecuted in the past, there is a presumption of future persecution. 8 C.F.R. § 208.13(b)(1); *Matter*

of Chen, Int. Dec. 3104 (1989). The presumption relates only to fear of harm based on facts that give rise to the original persecution. 8 C.F.R. § 208.13(b)(1) (2001). The government then has the burden of rebutting the presumption. The government may do this, for example, by establishing by a preponderance of the evidence that conditions in the home country have changed to the extent that the applicant no longer has a well-founded fear, or that by moving to another part of his country the applicant could avoid the persecution and that it would be reasonable to expect him to do so. 8 C.F.R. § 208.13(b)(1)(i) (2001).

5. Internal Relocation

The government may defeat a finding of well-founded fear of persecution if the applicant could avoid the persecution by relocating to another part of the home country and it would be reasonable to do so. 8 C.F.R. § 208.13(b)(2)(ii) (2001). Factors to be considered include the following: ongoing civil strife; strength or weakness of government infrastructure; geographical limitations; and social or cultural constraints. 8 C.F.R. § 208.13(b)(3) (2001). If the feared persecutor is the government or if past persecution has been shown, the burden to establish the reasonableness of internal relocation falls on the government. *See* 8 C.F.R. § 208.13(b)(3)(ii) (2001). The government bears the burden to overcome the presumptions by a preponderance of the evidence, even in the context of an Asylum Office adjudication.

6. Humanitarian Grant Exemption to Internal Relocation

If the government succeeds in establishing changed country conditions or the reasonableness of internal relocation, the applicant may still be afforded asylum protection if he can demonstrate “compelling reasons” for being unwilling or unable to return arising out of the severity of the past persecution *See* 8 C.F.R. § 208.13(b)(1)(iii) (2001). *Matter of Chen*, Int. Dec. 3104 (1989) referred to this as “severe and atrocious” past persecution. Evidence of the severity of the persecution can include a permanent physical disability or ongoing mental condition suffered as a result of the past persecution.

An additional avenue for victims of past persecution is that asylum can be granted based on past persecution and a reasonable possibility of suffering other serious harm. *See* 8 C.F.R. § 208.13(b)(1)(iii) (2001). “Serious harm” does not have to be based on one of the five enumerated grounds however it does have to rise to the level of persecution. *Id.* Some examples of other serious harm include inability to attain serious medical treatment, gang activity, violence against women, etc.

D. The Nexus and the Five Protected Grounds for Asylum

In order to establish asylum eligibility, the applicant must show that the past or feared persecution is “on account of” five protected grounds – race, religion, nationality, political opinion, and membership in a particular social group. The 2005 Real ID Act requires that the nexus be a central motivation in the persecution, rather than just one of several factors, though other motivations can exist. The first three categories have fairly well-accepted definitions while the latter two are more expansive and controversial in application.

1. Race

The term “race” includes “all kinds of ethnic groups that are referred to as ‘races’ in common usage.” United Nations High Commissioner on Refugees, Handbook on Procedures and Criteria for Determining Refugee Status ¶ 68 (1992) (UNHCR Handbook). For example, ethnic Albanians and Chechens, would qualify as “races” under this definition.

2. Religion

Persecution on account of religion can include the prohibition of public or private worship, membership in a particular religious community, or religious instruction. UNHCR Handbook ¶ 72. Serious discrimination towards a person because of his membership in a particular religion or religious community may also constitute persecution on account of religion. *Id.* Mere membership in a particular religious community, on the other hand, will not in most cases be enough to establish an asylum claim. *Refahiyat v. INS*, 29 F.3d 553, 557 (10th Cir. 1994).

3. Nationality

The term "nationality" includes citizenship or membership in an ethnic or linguistic group and oftentimes overlaps with "race." UNHCR Handbook ¶ 74.

4. Political Opinion

An applicant's actual political opinion may serve as a basis for persecution. The client should be prepared to elaborate and defend her claimed political opinion. Further, a political opinion *imputed* to the applicant may also serve as a basis for persecution. An "imputed opinion" is defined as an opinion that the persecutor believes the applicant to have. For example, a child who is persecuted because her father is a member of an opposition party can be said to have been persecuted because of an imputed political opinion. Imputed status is applicable to the other categories, but is most common to political opinion. More controversial are whistleblower cases, or cases where the applicant has a particular worldview, such as in equal treatment for women. These claims should be more carefully researched.

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA, INA §101 (a)(42)(B), 8 U.S.C. § 1101 (a)(42)(B)) changed the definition of refugee by specifying that persecution on account of political opinion includes persons persecuted due to *coercive population control programs*, such as forced abortion, forced sterilization, or fear of persecution because of refusal to participate in program of forced population control. Only 1000 persons may be granted refugee status on this basis every year.

5. Social Group

"Social group" is a very broad phrase. According to the UNHCR, a social group is constituted by "persons of similar background, habit or social status." UNHCR Handbook ¶ 72. Generally, it is understood as a group of people who share or are defined by certain characteristics such as age, geographic location, class background, ethnic background, family ties (e.g., an African clan), gender, and sexual orientation.

Immigration courts have said that members of a particular social group must share a "common immutable characteristic." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). That characteristic should be something the group cannot change or should not be required to change because it is fundamental to their identity. *Id.* *Matter of C-A-*, 23 I&N Dec 951, 956-957 (BIA 2006) and *In re A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007) require that (1) the immutable characteristic which is shared by the members of the PSG is clearly identifiable in society and (2) that society in the client's country of origin views this as "the other."

The social group should be defined by the motivation not the persecution, though the persecution can be referenced as a part of the definition. Watch out for circular logic (the applicant cannot claim asylum solely on the basis of domestic violence, as the applicant probably wasn't persecuted because she was a victim of domestic violence). This causes problems for domestic violence cases. The Department of Justice filed a brief suggesting alternative formulations defining the social group as victims of domestic violence who are unable to leave the relationship, or women who are viewed as property and are thus unable to leave. See also *political opinion*.

A number of other groups have also been defined to fall within the meaning of “social group.” For example, persecution on account of sexual orientation has been held to fall within this category. *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990). Additionally, some gender-based claims have been held to fall within the meaning of social group. The law has recognized the practice of female genital mutilation (FGM) as persecution on account of gender. *See Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) and *Abankwah v. INS*, 1999 WL 476436 (2nd Cir. 1999) for a discussion on FGM. Applicants can claim different social groups for past persecution and fear of future persecution. Applicants should always state at least one social group.

The motive of the persecutor is most directly indicated by the words or actions of the persecutor herself including threats or slurs. In other cases, motivation can be proved by circumstantial evidence, such as the persecution beginning shortly after the applicant changes religion or speaks at a rally.

II. POTENTIAL BARS TO ASYLUM

Note: Be sure to ask your client about each of these issues early in the process. They all have serious consequences and may even affect your client's decision about whether to apply for asylum. If you even *think* any of these issues apply to your case, notify a CARC board member and contact your supervising attorney at the East Bay Sanctuary immediately.

A. The One-Year Bar

Under most circumstances, asylum applicants must file for asylum within one year of their last entry into the United States.¹ If your client has been in the United States for over a year and has not yet filed for asylum, this will likely be a barrier to overcome in your client's case. The information below provides a very general overview on ways the one-year bar may be overcome.

1. Legal Standards

The regulations provided by 8 CFR § 208.4 govern one-year bar issues. If you have a one-year bar issue in your case, make sure you read through these regulations and the asylum officer training manual unit on the one-year bar (posted on asylumlaw.org) before starting to prepare your client's declaration.

An asylum applicant's failure to file within one year of entering the United States *may* be excused if:

- **Extraordinary circumstances** caused the applicant's failure to meet the deadline, OR

¹ The Ninth Circuit clarified in *Minasyan v. Mukasey* that the one-year deadline means one year *after* the arrival date, and not one year from the arrival date itself. 553 F.3d 1224.

² 8 C.F.R. § 208.4(a)(4)&(5).

- The applicant's **circumstances changed** in a way that "materially affected the applicant's eligibility for asylum."²

The applicant must file within a reasonable period given the extraordinary and/or changed circumstances.³ Your client WILL be asked about these rationales in the interview, so be prepared to discuss them.

Extraordinary Circumstances

In assessing whether extraordinary circumstances warrant the excuse of an asylum applicant's failure to file before the one-year deadline, adjudicators conduct "an individualized analysis of the facts of the particular case."⁴

The regulations give examples of circumstances that may excuse failure to file, such as: (1) the applicant's mental disability (e.g. PTSD, Depression); (2) the applicant's legal disability (e.g. applicant was a minor); (3) the applicant was in lawful status (e.g. temporary protected status, student or work visa); (4) ineffective assistance of counsel; (5) the serious illness or incapacity of a family member⁵; (6) the applicant is an unaccompanied minor.

Illiteracy, lack of knowledge about asylum, and similar factors do not count.

Changed Circumstances

An exception to the one-year filing deadline also may be granted based on "changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum."⁶ The regulations list a few such changes, including: (1) changes in country conditions (a genocide begins, a new party comes to power); and (2) Changes in the applicant's circumstances (converting to a new religion, receiving an HIV diagnosis, etc.).

Filing within a Reasonable Time

Where changed or extraordinary circumstances have been established, an asylum applicant qualifies for an exception to the one-year deadline if she can show that she filed her application within a reasonable time of the relevant events.⁷ There is no hard and fast rule of what amounts to a reasonable time, though the strength of the rationale should be proportionate to the length of the delay. Six months is generally considered reasonable. There is considerable debate over when the reasonable time clock starts. Some officers will start the clock when the person first hears about asylum, though others count from when the applicant contacts someone who can help her file. In regards to changed circumstances in an applicant's home country, the clock starts not when the circumstances changed, but when the applicant found out about the changed circumstance.

² 8 C.F.R. § 208.4(a)(4)&(5).

³ 8 C.F.R. § 208.4(a)(4)&(5).

⁴ *Matter of Y-C-*, 23 I&N Dec. 286, *4 (BIA 2002).

⁵ 8 C.F.R. § 208.4(5)(i)&(vi).

⁶ 8 C.F.R. § 208.4(a)(4)(i)(B).

⁷ *See* 8 C.F.R. § 208.4(a)(4)(ii).

2. Case Preparation to Overcome the One-Year Bar (See also Part two for general filing instructions)

IMPORTANT: If your client has been in the United States over one year, you will want to file her application *as soon as possible*. Of course, if your client has not yet been in the United States for one year at the time you are assigned the case, you *must* file the application before the one-year deadline passes.

The Declaration

In cases where the applicant has missed the one-year filing deadline, *the client's declaration must include a section in which the applicant describes her life during the relevant period*, focusing on the reasons why she could not have applied sooner. Be sure to question your client carefully about this period.

It is not enough to prove the *existence* of changed or extraordinary circumstances. The applicant must also *affirmatively prove that these circumstances prevented the applicant from filing within one year*. The applicant's declaration and supporting evidence should make this connection. You should address problematic facts head-on. Asylum officers will generally view the applicant's ability to work, file other applications, seek legal advice, etc. as evidence that the applicant could have filed for asylum sooner. These things must be addressed carefully in the declaration. For example, if your client sought legal advice nine months before filing her application, her declaration will need to provide a detailed and compelling explanation of why she could not have filed an asylum application at that time.

Supporting Evidence

At your first or second meeting, brainstorm with your client about what types of documents are available to support her argument that she should be excused from the one-year filing requirement. Can you get a letter from a psychologist to prove that your client suffers from PTSD? If the client is not seeing a psychologist or a licensed therapist, the Sanctuary will arrange a mental health assessment. What documents do your client have proving her membership in Falun Gong? Can your client get medical records proving that her son was seriously ill and that she had to take care of him? Get your client to start requesting and gathering helpful documents right away, and follow up with your client regularly until she has obtained them.

B. Firm Resettlement and Safe Third Country Bars

1. Firm Resettlement

The INA § 208(b)(2)(A)(vi) bars individuals from receiving asylum if they are “firmly resettled” in another country prior to arriving in the U.S. Firm resettlement is usually evidenced by some offer of permanent status or citizenship by the third country. For example, an applicant cannot receive asylum in Canada, and then apply again in the U.S. Firm resettlement does not include time the applicant spent in a third country that was a necessary consequence of flight from persecution, where she did not establish significant ties, or where the conditions of her residence were so substantially restricted that she was not in fact resettled. For example, an applicant who fled through Mexico from Guatemala to reach the U.S., or who spent time living illegally in Mexico, is not considered firmly resettled. Evidence of lack of firm resettlement could include the time spent in the country, the conditions under which the applicant lived, and the extent to which employment and other rights were made available.

2. *Safe Third Country*

This is a limited exception that applies only to countries with which the U.S. has a specific bilateral or multilateral treaty. The U.S. does have such a treaty with Canada, so be aware of this if your client entered from Canada.

C. **Bars for Past Convictions, Material Support for Terrorism, and Past Persecution of Others**

1. *Past Convictions*

Conviction of a felony or other violent crime in the U.S. is a bar to asylum. The Sanctuary usually fingerprints potential clients as part of the vetting process, but you should also look out for this issue.

2. *Material Support for Terrorism*

The Immigration and Nationality Act (INA), 8 U.S.C.A. § 1182, describes categories of potential immigrants to the United States, including asylum seekers and refugees, who are disqualified from visa consideration. Among the descriptions of “inadmissible aliens” are those who have “engage[d] in terrorist activity,” including providing “material support.” “for the commission of a terrorist activity,” “to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity,” or to a “terrorist organization,” whether designated by the United States government, or defined as such because it engages in terrorist activity. 8 U.S.C.A. § 1182(a)(3)(B)(iv)(VI).

Both “material support” and “terrorist activity” are very broadly defined terms. A terrorist organization can be a “group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, terrorist activity” and encompasses any resistance or rebel group that is engaged in armed conflict with its government.⁸ “Terrorist Activity” means “the use of any explosive, firearm or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial property damage.” INA 212(a)(3)(B)(i)-(iii).

“Material support,” for the purposes of the Act, includes providing a safe house, transportation, communications, funds, transfer of fund or other material financial benefit, false documentation or identification, weapons . . . explosives, or training” to the above. 8 U.S.C. § 1182(a)(3)(B)(iv)(VI). This has been interpreted to include contributing or soliciting of money, including paying a ransom, or supplying food, shelter, or information.

The material support bar could be an issue for clients who lived through a revolution or civil war in their home countries. Be sure to ask your client what she and her family thought of the rebels and whether they ever gave anything directly to the rebels. Falling afoul of the material support bar can result in your client’s application being denied or put on hold indefinitely for years.

⁸ Courts have specifically stated that even democratic movements or “freedom fighters” can be defined as “terrorist” organizations, when they attempt to overthrow the government by force. *See, Choub v. Gonzales*, 245 Fed.Appx. 618 (9th Cir. 2007); *In re S-K-*, 23 I. & N. Dec 936 (BIA 2006); *McAllister v. Att’y Gen. of the United States*, 444 F.3d 178 (3d Cir. 2006).

Lack of Knowledge Exemption

The INA states that an applicant who provided material support to a terrorist organization is not inadmissible if she can establish, by “clear and convincing evidence” that she “did not know, and should not reasonably have known that the organization was a terrorist organization.” 8 U.S.C.A. § 1182(a)(3)(B)(iv)(VI)(dd). This could include aid given while your client was a small child, or aid given to a charity your client did not know supported terrorist organizations.

Group-Based Exemption

The Secretary of State has the authority to grant a “group-based” exemption to the material support bar. The eight groups currently designated are primarily in Thailand, Burma, Tibet, and Cuba.⁹

3. Persecution of Others

The INA also bars an applicant from receiving asylum if she has “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA §§ 208(b)(2)(i); 241(b)(3)(B)(i); 244(c)(2)(B)(ii). While the government has the burden to make a prima facie case of persecution, the applicant must then defeat the presumption by a preponderance of the evidence.¹⁰

“Persecution” is defined as “the infliction of suffering or harm upon those who differ . . . in a way regarded as offensive.” *Fisher v. INS*, 79 F.3d 955, 961 (9th Cir. 1996). However, activities “directly related to a civil war,” such as the overthrow of a government or the defense of that government against an opponent are generally not forms of persecution. *Matter of Rodriguez-Majano*, 19 I&N Dec. 811, 815 (BIA 1988); see also *Miranda Alvarado v. Gonzales*, 449 F.3d 915, 930-32 (9th Cir. 2006) (distinguishing between “on-the-battlefield conflict” and activities not inherent in civil war, namely “torturing individuals selected for their affiliation with an opposition”). In addition to rising to the level of persecution, an alien’s acts must also have been committed on account of a protected ground.

There are two requirements for establishing culpability under the persecutor exception: individual accountability and assistance or participation in the persecution. *Miranda Alvarado v. Gonzales*, 441 F.3d 750, 760 (9th Cir. 2006) (citing *Vukmirovic v. Ashcroft*, 362 F.3d 1247, 1252 (9th Cir. 2004) and *Laipenieks v. INS*, 750 F.3d 1427 (9th Cir. 2005)). While personal accountability and assistance in the persecution must be established, actual “trigger-pulling” is not necessary. *Miranda Alvarado*, 441 F.3d at 761-62 (9th Cir. 2006) (quoting *A-H-*, 23 I&N Dec. at 784). However, “mere acquiescence” or membership in an organization is insufficient to satisfy the persecutor exception.¹¹ *Matter of A-H-*, 23 I&N Dec. at 784. Many of these cases are referred to Washington D.C. and are not resolved for several years.

⁹ The designated groups are the Karen National Union/Karen National Liberation Army, Chin National Front/Chin National Army, Chin National League for Democracy, Kayan New Land Party, Arakan Liberation Party, Tibetan Mustangs, Cuban Alzados and Karenni National Progressive Party.

¹⁰ See *In Matter of A-H-*, 23 I&N Dec. 774 (A.G. 2005).

¹¹ See Examples of Courts Finding Persecutor of Others, San Francisco JLC Ninth Circuit Outline, available at <http://www.justice.gov/eoir/vll/benchbook/resources/sfoutline/CourtsfindingPoOs.html> (listing examples of actions that recognized as either counting or not counting as persecution).

Exemptions for Acting under Duress

This exemption does not officially exist in asylum law, but is currently being litigated. The most recent Supreme Court issue is *Negusie v. Holder*, 129 S. Ct. 1159 (2009) in which the Court remanded the case back to the Board of Immigration Appeals (BIA) stating that the BIA has the authority to decide whether to recognize the exemption as it relates to the persecutor bar. There are also several pending cases in the circuit courts on this issue. Most forms of civil and criminal law in the U.S. recognize the duress exemption, and Justice Stevens in his *Negusie* dissent implied that any duress exemption would be based on criminal law principles. *Id.* at 1174.

Refugee adjudications currently recognize the duress exemption. Among the factors U.S.C.I.S. can consider when deciding whether the material support was provided under duress are: (1) whether the applicant reasonably could have avoided, or took steps to avoid, providing material support; (2) the severity and type of harm inflicted or threatened; (3) to whom the harm was directed; and (4) the perceived imminence of the harm threatened and perceived likelihood that the harm would be inflicted.

D. Prior Contact with Immigration Authorities

WARNING: If your client had a prior removal or deportation, YOUR CLIENT MAY BE DETAINED AT HER INTERVIEW AND FOUND INELIGIBLE FOR ASYLUM. Because of the very real risks that prior removal orders pose, please be very careful to get as much information as possible from asylum applicants about any past contact they may have had with immigration officials.

Note: Clients who have been previously denied asylum cannot reapply unless they can demonstrate changed country conditions. Many immigrants who have been previously detained are given quasi-asylum interviews, and deemed ineligible. This can render your client ineligible for asylum.

1. Determining whether your Client had a Removal Order

The Sanctuary's fingerprinting should reveal a client's prior contact with immigration officials. Still, during your first or second meeting with your client, you should ask your client whether she has ever had any contact with immigration authorities, (i.e. if she was ever caught at the border or otherwise caught after entering the United States) and whether she has ever been returned to the country from which she came. If the client did have immigration contact, you should get the whole story, including the answers to these questions:

1. Have you had ANY contact with immigration agents, border patrol, or police? (Asking whether your client had "contact" may yield better information than using words such as "arrested," "detained," "stopped," etc., which may not reflect how your client experienced the event or may have negative connotations.)
2. If so:
 - o When and where did the contact take place?
 - o Were you fingerprinted? Were fingerprints taken of all 10 fingers or just one?
 - o Was your photograph taken?
 - o Were you given any papers? If so, do you still have them?
 - o Did the officer ask what country you were from? What did you say?

- o Were you asked about being afraid to return to your home country?
- o If the contact happened at or near the border or at an airport, were you allowed to enter the United States?
- o How long did you remain in custody? (If days, most likely a removal order was issued.)
- o Were you given an appointment to go to court or for any other type of meeting with immigration?
- o If so, did you go to the appointment or court date?
- o If you went to an appointment or court, what happened there?
- o Did the immigration officers mention anything about not being able to enter the United States for 5 years or some other period of time?
- o Did the immigration officers say anything about “deportation” or “removal”?
- o Did you try to claim that you were a U.S. citizen?
- o Did you present any false documentation (e.g., false U.S. birth certificate, U.S. passport, visa, green card, U.S. driver’s license, U.S. work permit)?
- o If so, did the immigration officers find out that the documentation was false?
- o Were you caught at a designated border crossing or somewhere else near the border?
- o To what country were you deported?

2. Types of Removal Orders

Expedited Removal: This is a removal/deportation¹² process that usually occurs at a border crossing point (“Port of Entry” or “POE”) or airport,¹³ and not in front of an immigration judge. This process did not exist before April 1, 1997. There is little in the treatment of immigrants or the immigration personnel involved to distinguish an expedited removal from a voluntary return, so it is important to get as much information as you can about what Immigration knew about your client at the time of being stopped.

Voluntary Return: This is the practice of “catch and release.” It occurs when immigrants are caught crossing into the United States, usually at a non-designated border crossing (i.e., crossing surreptitiously). They are often, but not always, photographed and fingerprinted (rarely of all fingers). Their personal information is collected, and they are returned to the Mexican side of the border. Although a record is created of the immigrant’s attempt to enter the United States and the asylum officer will likely have access to it, this is not a removal order and does not in itself impact asylum eligibility.¹⁴

Removal Order: This is a removal process that usually occurs after an immigrant is detained or caught within the United States, or is paroled in (allowed to enter without being formally admitted) or detained after attempting an entry.¹⁵ Outside of the expedited removal context, removal orders are always issued

¹² “Removal” is the term for what was called “deportation” prior to the 1996 immigration reforms, although informally, the two words are still used interchangeably.

¹³ It is possible that an immigrant may get an expedited removal after being picked up *in* the United States. This process, however, is very rare and is limited to immigrants who cannot show that they have been living in the United States for 2 years immediately prior to the detention, such as third-country nationals (i.e., not Mexicans or Canadians), or Mexicans and Canadians who have a history of criminal and/or immigration violations. Prior to 2004, all immigrants apprehended within the United States (i.e. outside the border zone) were subject to regular (non-expedited) removal proceedings.

¹⁴ It is, however, important to note that Immigration maintains records of voluntary returns — occasionally, a client is caught lying about her entry date based on voluntary departure records.

¹⁵ If an immigrant apprehended at the border expresses fear of returning to her home country, she will be detained or paroled into the United States and placed in removal proceedings.

by a judge, most often an Immigration Judge (IJ). If an immigrant does not show up to court, the IJ will issue a removal order “in absentia.”

An immigrant may have received a removal order if:

- She was fingerprinted on all 10 fingers and had her photograph was taken. (For voluntary returns, immigrants are often just printed on one finger.)
- She was given an appointment to see an IJ after being detained at the border. (If she did not go to the appointment, then she was probably ordered removed in absentia.)
- She told immigration authorities that she was from a country other than Mexico or Canada. (In this case, the immigrant would likely be detained or paroled in for an immigration hearing and may have an in absentia removal order.)
- She presented false documents, such as a U.S. passport, green card, or birth certificate to immigration officers and was subsequently sent back.
- She was asked if she would be afraid to return to her home country. This indicates that she received an expedited removal (if she responded that she was not afraid) or was paroled in for an asylum hearing before an IJ and may have a removal order (if she said she was afraid and was interviewed briefly about why—this is called a “credible fear interview”).
- She was told “something about five years” or that she could not reenter the United States for some period of time. (Note that people often misunderstand or misremember information explained to them by officers. The key here is to see if the officer made any reference to a period of time that they would not be able to enter the United States, obtain a U.S. visa, etc.)
- An immigration official or IJ told her she was being deported or removed.
- The client was caught at a designated crossing point, such as a border control checkpoint or airport. (Stops at official checkpoints more often result in expedited removals.)

3. If You Think Your Client Has A Prior Removal Order

For some cases, the Sanctuary will have had the clients get his or her fingerprints. You should consult with the Sanctuary to obtain the record if there is not one in the file or one is not forthcoming, and you believe the client may have a prior removal order. If there is a record of a removal, it should provide your client an “alien registration number” (“A” number), the date of the deportation, the grounds of deportation with reference to the Immigration and Nationality Act (INA), and, many times, where she was picked up and where she was returned to. However, a background check is not a substitute for careful questioning of your client.

A background check may also be run for clients who have criminal arrests. Please discuss with your supervising attorney about the best way to track down your client’s criminal record.

E. Other Forms of Immigration Relief Available Other Than Asylum

1. Withholding of Removal

Similar to asylum, Withholding of Removal protects people fearing persecution. However, it has a higher bar than asylum, requiring an applicant to prove that there is a “clear probability” that the applicant will

face persecution if she returns to her home country. Also, it does not provide the same benefits as asylum, such as a path to legal permanent residency. Unlike asylum, which is discretionary, Withholding of Removal is mandatory if eligibility is proven.

2. Convention Against Torture

The UN Convention Against Torture (CAT) provides applicants who do not qualify for asylum because of one of the bars to stay removal proceedings against them. It does not have any bars to relief, but the benefits provided under CAT are much less generous than asylum. It does not include a path to permanent residency and citizenship, and applicants do not receive derivative status for spouses or minor children.

The six elements of a CAT claim are: (1) an intentional act; (2) infliction of severe pain and suffering; (3) under the custody or control of the offender; (4) for a broad array of wrongful purposes; (5) by or sanctioned by a public official (including willful blindness, but not groups that the government is unable to control); (6) not arising out of lawful sanctions

3. U-Visa

This visa offers special protection for victims of severe crimes committed in the U.S. who have cooperated with the authorities in investigating the crimes.

4. T-Visa

This visa offers special protection for victims of human trafficking who have cooperated with authorities in prosecuting the traffickers.

III. ASYLUM LAW RESOURCES

If your supervising attorney directs you to, do a little research on applicable legal precedent. There are three sources of binding precedent for CARC cases: the U.S. Supreme Court, the Ninth Circuit, and the Board of Immigration Appeals. Decisions of other federal circuit courts and, to a lesser extent, international tribunals and immigration courts (reported in Interpreter Releases, which are available on Westlaw) may be persuasive. Do not waste your time with blind Lexis and Westlaw searches. Instead, start with one of the resources listed below, or speak with an immigration attorney about your case at a CARC training and ask about relevant precedent.

Becoming familiar with the precedent governing your client's case will serve as a guide for your questioning and help you structure your client's declaration. You should start with the U.S. Department of State's report on your client's country so that you have a better understanding of where they are coming from.

1. An outline of Ninth Circuit Immigration Outline, available online.
http://www.ca9.uscourts.gov/guides/immigration_outline.php
2. *AILA's Asylum Primer* by Regina Germain is available at the Law Library. This book provides practical, up-to-date guidance on issues in asylum cases. We are in the process of obtaining a copy for CARC's library.

3. *Kurzban's Immigration Law Sourcebook* is available at the Law Library. This is the one manual all immigration attorneys have, and a good place to start when looking for relevant precedent. We are in the process of obtaining a copy for CARC's library.
4. *Refugee Case Law*, a site maintained by The University of Michigan, is useful for comparing international jurisprudence, but you may be able to find relevant U.S. cases on here for your CARC case. Either way, if you are interested in asylum/refugee law, it is worth knowing about.
<http://www.refugeecaselaw.org>

A guide for researching asylum law has been prepared by our very own librarians here at Berkeley Law and is available on the web. The guide provides link to a vast array of helpful resources, including those related to U.S. law, international organizations, country conditions research, and a number of other research guides. <http://www.law.berkeley.edu/library/dynamic/guide.php?id=64>.

PART TWO: PREPARING AND FILING THE ASYLUM APPLICATION

I. CASE CHECKLIST

The following is a checklist of the items that you need to complete your case. These steps are covered in greater detail throughout this manual, so please just use this list as a starting point for understanding what you need to do for your client and keeping yourself on track throughout the process. Your client interviews are geared toward collecting all of the information you will need to turn in as part of the client's asylum application. The Sanctuary should always have a complete case file on your client. You must review your filings with your supervising attorney at the Sanctuary before they are sent to USCIS. Never send documents or forms without first having them reviewed.

The documents that you will produce are:

Form I-589: This is an official form from USCIS that all asylum seekers must complete with biographical information, as well as a brief explanation of the asylum claim. This *must* be completed on a computer in the Sanctuary so that the information goes into the Sanctuary's database. However, you might find it helpful to fill out in paper with your client and then enter the information into the Sanctuary's computer since space is limited at the Sanctuary and the form can take a long time to complete. The I-589 will be submitted *before* the rest of the documentation that supports your application. The Sanctuary will work with you to set a due date for both the form and the other documents. *See Appendix A.*

Two passport-sized photographs of your client. Your client can get her photos from any photographer who sells passport-sized photographs, including the Walgreens on the corner of Telegraph and Bancroft. Make sure you check the photos to verify that they conform to the regulations for passport photos (e.g., the head is the right size). There are several stores that process these photos off of Bancroft Way. The Sanctuary also takes passport photos for the Form I-589. Your client should expect to pay between \$5 and \$14. One passport photo must be submitted with Form I-589 and the other must be handed to your supervising attorney at the Sanctuary.

Notice of Entry of Appearance as Attorney (Form G-28): This must be signed by the client. This form is available on the Sanctuary's immigration software system and will be signed by your supervising attorney before submission. Form G-28 must be filed at the same time as Form I-589.

Declaration: This is the document that will convey your client's story to the asylum officer. It should detail the instances of past persecution your client has suffered and/or why your client has a well-founded fear of persecution in her country of origin. This document will be filed on a later date than Form I-589. See "Drafting Your Client's Declaration." *See Google Drive for examples.*

II. INITIAL STEPS

Before your first meeting with your client:

- o Read the CARC manual
- o Review your client's intake form (your supervising attorney will email this to you)
- o Meet with your supervising attorney at the Sanctuary as soon as you get your case
- o Make sure that you are clear on the asylum process and your role as your client's representative, and ask a CARC Coordinator if you have any questions
- o Find an interpreter through CARC or the Sanctuary (if necessary). An asylum interview can be different from other types of interpretation, so discuss with your interpreter your expectations and guidelines. (*See Working with Interpreters*)
- o Confirm your filing deadline. Asylum applications must be filed within one year of your client's entry. Your filing deadline should be at least two months before your client's one-year deadline to allow for contingencies if your client does not have proof of entry. Your filing deadline will determine the pace at which this process takes place. Your client's filing deadline has been pre-determined by Sanctuary and is stated on the front page of your client's intake form. This deadline is non-negotiable. Only forms I-589 and G-28 must be filed on this date. Your supervising attorney must review these forms before you can file them with USCIS.
- o Call your client to set up your first meeting. Meet your client within two weeks of receiving her case. All meetings should be in a private place where your client feels comfortable, either at the Sanctuary or in a conference room in the law library or other private room at Boalt.

Before interviewing your client for the first time:

- o Have a meeting with your supervising attorney to lay the foundations and timeframe of the case.
- o Think about what you already know about your client and generate a list of initial questions for the client.

When interviewing your client:

- o Explain to your client that everything you talk about is confidential to help her feel at ease. Then, explain the purpose of your questions and the importance of being honest; ask her to be clear about how she knows things and what she does and does not remember.
- o Let your client know that you will be taking notes on her story and ask her if she is comfortable with you using your laptop (if you choose to do so).
- o Take extensive notes on your client's story and type them up soon after the interview. You may also have one partner take notes during the session while the other asks questions.
- o Speak with your client about supporting documents she has or may be able to have sent to her from her home country, such as identity documents, police or hospital records, letters from friends or family members, party membership cards, etc. These materials may take a long time to arrive, so it is better to ask for them to be sent sooner rather than later. Before asking your client

to obtain anything from abroad, make sure that doing so would not put anyone in danger of physical harm.

- Verify your client's date of entry, and check for any of the bars to asylum (see "Potential Issues/Bars to Asylum").
- If your client has been tortured or seriously harmed, speak with her and your supervisor about obtaining a psychological evaluation and/or a medical evaluation.
- Begin to develop a plan for how you will approach your case and your theory of "persecution" or of a "well-founded fear of persecution."
- Consider if your client needs a psychological evaluation and discuss with the Sanctuary. If your client has a one-year bar issue, you will need one.
- Leave space and time for your client to ask questions.
- Review your client's statement with her multiple times to make sure that every detail is correct and her memory consistent.

Research:

- Become an expert on your client's country and the general background of her case.
- Gather relevant documents for your client's application. Ask her what documents she knows of or can get that could support her application.
- As you draft your client's declaration and index of supporting documents, remember that you are making an implicit legal argument. Read related court decisions and speak with your Sanctuary attorney about your client's claim. Make sure that you present a consistent story that addresses each element of your client's claim and clearly makes the strongest case possible for her.

Filing the I-589:

- *Before* you file the I-589, schedule a meeting with your supervising attorney to make sure your client is credible and has a valid asylum claim.
- Review the sample I-589 form in your CARC manual and generate a list of information you need for your client.
- Arrange a meeting with your client at the Sanctuary to complete the I-589 in the Sanctuary's database.
- Print at least one copy for yourself and one for your client.
- Make sure your client obtains passport photographs to send in with her application; you may need to accompany your client to one of the stores on Bancroft that takes passport photographs.
- Have your client's application ready a week before the deadline so that there is time to have it reviewed and signed by your supervising attorney before mailing it to the Asylum Office.

III. DRAFTING YOUR CLIENT'S DECLARATION

Declaration Overview

Every application for asylum should include a declaration, or narrative from the client, detailing her experiences in her country: the reasons for fleeing and reasons that she fears returning. The declaration allows the client to tell her story completely and, as much as possible, in her own words. You should be writing the declaration in your client's voice, not your voice or the voice of a law student.

It is important that the declaration convey a complete understanding of the client's situation within the context of her country. Thus, you should always begin with getting personal background information, such as parents' employment, number of siblings, client's level of education and literacy, and any other information that may set the stage for the client's ultimate claim or explain stumbling blocks in her ability to convey her claim.

Additionally, the declaration should include even relatively minor incidents of discrimination and harassment, which would not rise to the level of persecution on their own, but can be important to provide a context for the incidents that led the client to flee her country or establish cumulative harm.

Your Role

In drafting the declaration you should follow a client-centered approach. You are there to help facilitate the client in telling her own story and to ensure that the declaration touches upon all the vital elements of an asylum claim. *For an example of a declaration, see the Google Drive.*

In many ways, your most important job is to build a relationship of trust with the client so she feels free to tell all aspects of her story to you, and ultimately, to the adjudicator. The client should feel empowered in this process, and therefore, you should be compassionate when dealing with all legal and non-legal issues.

Format

Although there is no formula on how to draft a declaration, we abide by several guidelines to ensure that the declaration is easy to read, complete, and conveys the client's claim.

Voice

The declaration is always in the first person — in your client's voice.

Length

There is no rule on how long the declaration should be, only that it completely conveys all aspects of an applicant's story. We generally see declarations anywhere from 3 to 15 pages.

Paragraphs

Each paragraph should be numbered consecutively. Separating the story with summary headings is generally a good idea.

Organization

There needs to be a logical order to the story. Usually, we draft declarations chronologically. Depending

on the client and the particulars of a client's claim, it might make more sense, however, to organize the story thematically, or some variation of the two.

Details

It is very important to include as many details as possible for each incident described in the declaration. You should try to provide specific examples of mistreatment, especially in a case where the harm lasted over a long period of time.

It is also important to break down generalities like, "I was called names throughout my childhood" into specific examples like "I was called terrible names such as *maricón* and *joto*."

Dates are also very helpful, so try to include as many dates as possible. If the client can't remember months or years, be creative in trying to trigger your client's memory. Use other contexts, such as the age of her child, time of year or holidays, or count backwards from a date she does remember. But know your client as a witness. If she is terrible at dates, it may make the most sense to avoid them as much as possible. Keep in mind that your client might come from a culture that does not keep track of time the same way it is done in the United States (e.g., celebrating birthdays).

Certification

At the end of the declaration, include a closing line and the applicant's signature and certification of translator, if needed.

Things to Avoid

While the declaration cannot contain any untruthful material, it is your job to help the client decide which information should not be included because it does not help the case.

- Don't emphasize the client's desire to apply for asylum as a means to work legally (if this is the client's ONLY or MAIN reason for applying, then maybe she should not be applying).
- Avoid legal terms and conclusions.
- Be extremely careful with smuggling issues. If a client's family member helped him or her enter the United States, you need to be careful about which details to include. Check with someone at the Sanctuary if you have questions.
- If your client or client's abuser uses drugs or alcohol, the situation needs to be explored. Talk to someone the Sanctuary. It could negatively affect his or her case.
- Avoid psychological and medical diagnoses. You may include your client's symptoms.
- Avoid the use of exact quotes.
- Unless your client is absolutely certain about a specific number (e.g., dates, number of people present at an incident), use approximations.

IV. PSYCHOLOGICAL EVALUATIONS

Purpose

Psychological evaluations of asylum seekers serve two very important, yet distinct, purposes. First, the psychological evaluation can support a finding of extraordinary circumstances excusing your client's failure to file a timely application. Second, the psychological evaluation can boost your client's credibility for any misstatements or confusion at the interview. Additionally, psychological evaluations can be helpful to support a severe and atrocious past persecution claim. **Any client with a one-year bar issue needs to have a psychological evaluation.**

Legal Background

One-Year Bar

The one-year bar requirement is waived for an asylum applicant who can show a material change in his or her circumstances or who can show an extraordinary circumstance that prevented him or her from filing within the time limit. INA § 208(a)(2)(D). An extraordinary circumstance includes a serious mental disability that stopped the applicant from filing within the first year. 8 C.F.R. § 208.4(a)(5).

Many of the cases you will handle this year will be of individuals beyond the one year filing limitation. Thus, many of you will be obtaining psychological evaluations to provide evidentiary support to your argument that the client could not have filed within the first year of living in the United States.

Credibility

All asylum applicants must prove to the asylum officer that they are credible. INA § 208(b)(1)(B)(ii). An asylum officer may use any inconsistencies in the applicant's testimony in making an adverse credibility determination. INA § 208(b)(1)(B)(iii). However, a psychological evaluation can be used to persuade the asylum officer that the applicant is telling the truth, but is confused due to a psychological impairment.

Rules for Acceptable Psychological Evaluations

Although the Federal Rules of Evidence do not apply in immigration proceedings, the rules provide the strongest support for the acceptance of a psychological evaluation. Each evaluation must be in writing and signed by the mental health professional. These professionals include: LMFTs, Ph.Ds, Psy.Ds, and M.D.s. You may not use an evaluation from someone who is not licensed by a state.

There should be at least four parts to a psychological evaluation: (1) credentials, (2) facts obtained in making the opinion, (3) overview of tests and methods used to make a diagnosis, and (4) how the tests and methods used mesh with the facts obtained to establish a diagnosis.

Credentials

All psychological evaluations must include the evaluator's credentials. Credentials include the psychotherapist's level and place of education, licensure, any awards received by the psychotherapist, any peer reviewed articles authored by the psychotherapist, length of experience in the field, length of

experience working with trauma, a statement of any previous qualifications by a court as an expert, and his or her familiarity with the culture of the client.

A psychotherapist need not list everything above, but must list enough credentials to lend him or herself credibility. Certain psychotherapists will omit this information from the psych evaluation, instead submitting a C.V. in addition to the evaluation. This is perfectly acceptable as well.

Facts Obtained

All psychological evaluations must include a statement of facts elicited from the client. Often, in addition to being a foundational requirement, this statement of facts will bolster your client's testimony at the Asylum Office.

You must read the psychological evaluation prior to submission to ensure the facts elicited at the psychological evaluation match the facts gathered for your declarations. If there are discrepancies, please discuss them with your client first to assess the most accurate account. Then, talk with your supervisor about approaching the psychotherapist to make any edits or corrections.

"Tests"

Psychological evaluations may include the tests and methods used to establish a diagnosis for PTSD, severe depression, severe anxiety, or any other psychological symptom your psychotherapist believes applies to your client. This statement may be as simple as meeting for a one-on-one therapy session to a complex set of PTSD tests, or both.

Diagnosis

Finally, all psychological evaluations must include a statement of how the client performed on the tests, and a statement of diagnosis. In addition, most psychotherapists will break apart the clinical symptoms of a PTSD diagnosis and apply the facts as elicited to them.

Most important, especially if the client is beyond the timely filing requirement, the psychotherapist **must include a statement regarding whether the psychotherapist believes the client was or was not able to file for asylum in a timely manner based upon the diagnosis.**

PART THREE: WORKING WITH YOUR CLIENT

The bulk of the work in a CARC case consists of meeting with your client to obtain the information necessary to prepare her application. Basically, this consists of your client telling you her life story, and you honing in on the elements that establish her claim for asylum. Ultimately you will format this information into the declaration, and compile an index of documents to support it.

I. MEETING YOUR CLIENT

Meeting your client for the first time may be daunting, but these guidelines should help set you at ease. First and foremost, both you and your partner should attend all meetings with your client. This includes all meetings with Sanctuary staff. This will ensure that both of you foster a meaningful working relationship with your client. Before your first interview, think about what you already know about your client and begin to generate a list of initial questions. If your client is well educated, consider asking her to write out the first draft of her declaration.

Where to Meet

The Sanctuary is usually a good place to meet your client for the first time. All CARC clients are referred through the Sanctuary so your client will know how to get there and what to expect when she arrives. If the Sanctuary is crowded and there is no place to sit, you may consider going to a private room at Boalt (such as one of the conference rooms in the law library).

Client Interview Checklist

- **Introduction:** Introduce yourself and explain that you are a law student. Feel free to share with your client about your interests, family, etc.
- **Note-Taking:** Let your client know that you will be taking notes on her story and ask her if she is comfortable with you using your laptop if you choose to do so. Take extensive notes on your client's story and type them up soon after the interview; you may also have one partner take notes during the session while the other asks questions.
- **Confidentiality:** Explain to your client that everything you talk about is confidential to help her feel at ease. Then, explain the purpose of your questions and the importance of being honest; ask her to be clear about how she knows things and what she does and does not remember.
- **Client's Present Situation:** Get information about your client's current support network and living situation. Discuss whether the client has a partner and the status of the relationship. It may make sense for the client to get married.
- **Understanding of the Asylum Process:** Make sure the client understands the asylum process and law, including the inability to return to the home country after getting a grant of asylum.
- **Bars to Asylum:** Go through the list of bars to asylum with your client (see Potential Bars to Asylum). While these bars are rare, if any of them apply they will drastically alter your approach to the case and possibly your client's decision to apply for asylum. If any apply, consult with your supervising attorney immediately.

- **Supporting Documents:** Speak with your client about supporting documents she has or may be able to have sent to her from her home country, such as a birth certificate, police or hospital records, letters from friends or family members, party membership cards, etc. These materials may take a long time to arrive, so it is better to ask for them to be sent sooner rather than later. Before asking your client to obtain anything from abroad, make sure that doing so would not put anyone in danger of physical harm.
- **Date of Entry:** Verify your client's date of entry. Explain the one-year deadline. Brainstorm with your client on how she can show U.S.C.I.S that she entered the U.S. within the last year. This can be as simple as obtaining documentation showing that your client was in her country of origin less than a year before the date on which you plan to file. If no documents are available, a detailed description of your client's entry including dates and places of crossing is sufficient. Be sure to ask whether your client has had any previous contact with immigration officials as this may impact her eligibility. If the client's one-year deadline is different from the one on your intake form, notify your supervising attorney immediately.
- **Psychological Evaluation:** If your client has been tortured or seriously harmed, speak with her and with your supervising attorney about obtaining a psychological evaluation or a medical evaluation. If your client has a one-year bar issue, you will need a psychological evaluation. The psychologist will be able to identify and provide an affidavit attesting to signs of post-traumatic stress disorder or other conditions that are consistent with torture or persecution.
- **Timeline:** Go through a timeline of your client's life: where she was born, where she lived, her education, what happened to her, when she came to the US, etc.
- **Developing a plan:** Meet with your supervising attorney to talk about what you learned at your initial client interview and from your initial research. During these meetings, begin to develop a plan for how you will approach your case and your theory of "persecution" or of a "well-founded fear of persecution."
- **Contact Information:** Get all contact information for your client and give her a way of reaching you. Set an appointment to meet with your client for the next meeting.
- **Interpreters:** Assess your client's language proficiency. If an interpreter is needed, make sure to contact your supervising attorney about getting a volunteer interpreter. Also read "Working with Interpreters."

Developing an Effective Advocate-Client Relationship

(Adapted from the Minnesota Advocates for Human Rights' "Preparing the Asylum Application")

- Maintain regular contact with your client, even if only to get a "status report." You should maintain this contact over breaks. Discuss the importance of staying in communication and having the client contact you with changes in address and phone number.
- Take time to build a trusting relationship with your client. Do not expect to accomplish everything at the first meeting. It often takes a few meetings.
- Consider scheduling shorter meetings to prevent your client from becoming tired or emotionally overwhelmed. But be cognizant of the distance your client must travel and travel expenses.

- Describe the process. Do not assume your client is familiar with our system. Explain that the asylum interview is an administrative interview, not a court hearing, and that only you, the client, the asylum officer, and possibly an interpreter will be in the room.
- Watch for signs of past torture or trauma. Your client may literally be unable to describe certain incidents and experiences to you. If your client has suffered torture or violence, refer her to a local NGO, such as Survivors International in San Francisco or Center for Survivors of Torture in San Jose. See “Working with Victims of Trauma.”
- Involve your client in the asylum process. Many asylum seekers are educated, accomplished individuals and entirely capable of doing some of their own research on country conditions or even writing a draft of their declaration. Additionally, many torture survivors feel powerless, as if they cannot control their own destinies. Allow your client to contribute to the application, gather supporting materials, and educate you about her home country.
- Be respectful of your client’s culture and values.
- Set limits. You may be the only contact the client has in the community. You may be turned to for help with housing, child-care, or other things beyond your capacity as a law student. Although it might sometimes be tempting to do these things for your client, you may be actually undermining her independence and your own efficacy as her advocate. Talk to your CARC coordinators about your client’s needs, and feel free to contact the Sanctuary for help as well.

Suggested Client Questions

Below is a list of questions to help you get started as you interview your client to obtain information to craft your client’s declaration. Please remember that this list is by no means exhaustive, and you should expect additional questions to arise as you delve deeper into your client’s story. To help you draft questions you should also begin to research your client’s country and anything specific to her case.

Additionally, you and your partner should decide in advance how you would like to approach the interviews. One way is to have one partner ask the questions that both have decided on in advance, while the other transcribes the responses on paper or on their laptop. Before using a laptop to take notes, make sure that your client is comfortable with it and remind her that her information will remain confidential.

To solicit information on your client’s personal history:

- Where were you born? Where did you grow up? How long did you live there? Where did you move? Who did you live with?
- How many brothers and sisters do you have? Where do they live now? What are their occupations? Where are your parents? What are their occupations?
- What is your level of schooling? Did you go a government or private school? Was there a subject you particularly enjoyed in school?
- How did you make a living? Tell us about your friends and colleagues.
- Has anyone in your family ever worked for the government or been part of a military, guerrilla, political or student group?

- o What do you know about the war in your country (if applicable)? How do you feel about the government? Guerrillas? Military?

To solicit information about the asylum claim:

- o Have you or anyone in your family ever been threatened or harmed by a particular group? (Remember in asking this question that sometimes your client may have experienced persecution or abuse at the hands of her own family members.)
- o Why did you leave your country?
- o Are you afraid to return to your country? Why? Who are you afraid of?
- o What will happen to you if you go back to your country?
- o Were you threatened, persecuted, or harmed in any way?
- o Why do you think you were threatened, persecuted, or harmed?
- o How did you manage to leave your country? How did you pay for the trip? Describe your route to us.

Once you have gained an idea of your client's life story you will have many more questions to ask to get an accurate picture of her asylum claim. You should work with your partner after each meeting to develop additional questions and discuss anything that you missed or do not understand. Make sure you begin drafting your client's declaration immediately. If you wait until after a few interviews to begin, you may feel overwhelmed by the notes you have amassed. Drafting after each interview helps you develop the legal theory of your client's case and focus your questions.

II. WORKING WITH INTERPRETERS

Often CARC students are paired with a client with whom they do not have a common language. The Sanctuary has some resources for finding interpreters. One common avenue is to ask the language departments at UC Berkeley if there are undergraduates willing to volunteer. CARC or the Sanctuary should connect you to a translator if you need one. If you are having trouble, please let your coordinators know. Some translators charge a fee, which CARC may be able to pay if your client cannot. Clients sometimes want to bring someone to translate for them, but an unrelated interpreter is preferable. Having a client's friends or relatives in the interview can be distracting or result in them intentionally or unintentionally coloring the client's story.

Before your first interview meet with your interpreter and clarify your expectations and ground rules. Impress upon your interpreter the importance of direct, word-for-word translation of what the client says. Your client's case depends largely on the credibility of the declaration, so having all the details relayed through the client's voice is of the utmost importance. Suggest to the interpreter to take notes if necessary and to interrupt the client when what she says seems too much to retain. When translating your client's responses, your interpreter should be speaking in the first person. Remember, the interpreter may be new at this and may need some coaching, so if you suspect the interpreter is paraphrasing or omitting parts of your client's response, don't hesitate to remind him to translate everything.

Signs that your interpreter may be paraphrasing or not translating everything include:

- o The client looks directly at the interpreter and talks to him, or
- o The client talks extremely long and the interpreter takes much less time, or
- o The interpreter talks in the third person (“she said...”)

Meeting with the Client and Interpreter

During the meeting remember that you, the advocate, are in charge of the meeting and the direction of the conversation. Ultimately, you are the one who knows what you need to accomplish in order to successfully represent the client so as to have asylum granted.

At all times, talk **directly** to the client. Do not chit-chat with the interpreter in English, as it will make the client feel left out and uncomfortable. If you make it clear that the client is the focus of attention (and care!) during the meetings, she will respond by making you (the advocate) the focus of her attention, and ultimately, you will get to understand your client better and be able to represent her in a more efficient manner.

Additional Considerations

Body language is important. Even though the client may not understand English, remember that she can still sense your tone of voice and body language.

After the meeting, always thank your interpreter for the time and effort s/he has put into a meeting! This is a common courtesy and will make your interpreter eager to continue working with you. Ask him how he thought the meeting went (if appropriate) and for suggestions on how to improve communication with the client. The interpreter might have some tips and just be waiting for an opportunity to share them with you.

III. WORKING WITH VICTIMS OF TRAUMA

Note: If your client has suffered torture, talk with your supervising attorney about referring her to get psychological treatment. This can help your client cope with the lingering effects of her experience and enhance her ability to talk about prior traumatic experiences. In addition, the psychologist may be able to provide you with a letter confirming that your client displays PTSD or other conditions consistent with past persecution. This may strengthen your case. Understand that many of you will have clients who will have suffered trauma, and be prepared to hear their stories. If you are unable to work with your client because of your own experiences or challenges, do not hesitate to speak with your supervising attorney. You should always feel welcome to share your thoughts about working with your client with members of the CARC board. If you are having psychological problems, seek the help of a doctor.

Trauma Treatment

*(Adapted from Survivors International, from the
Trauma Treatment Manual by Edward L. Schmookler, PhD)*

When people have had intolerable or traumatic experiences, they will often have specific difficulties and needs that anybody who wishes to help them needs to understand and respect. This section gives general guidelines for working with people who have been severely harmed through torture.

What they are suffering

The people you will be working with have experienced events that have permanently changed their lives. Even though they may feel that life has become very difficult or even intolerable, they can be helped and, eventually, recover. People who have been tortured or raped - or who have seen their loved ones tortured or killed - will never be the same again. Yet no matter how great the horror people have experienced, they may restore their previous emotional functioning so that they are not feeling pain, terror, shame or fear all the time. Torture, rape and murder may have robbed them of a sense of integrity and wholeness, but in time and with your help, they may be able to resume life with their sense of self restored.

People who have experienced torture or rape, or who have witnessed murders of loved ones often suffer from Post Traumatic Stress Disorder (PTSD), a psychological disorder that occurs when people have experienced life-threatening, shocking events. PTSD generates symptoms that are often the same for different people, regardless of the specific events they suffered. Although each culture may show specific ways in which PTSD manifests, there are common symptoms that are likely to emerge cross-culturally.

With Post Traumatic Stress Disorder (PTSD), many emotional and cognitive processes become more intense, while others are deadened. People whose normal lives have been drastically changed by the sudden intrusion of horrifying and destructive events are experiencing more than they can integrate, and their sense of security and safety is shattered. In PTSD, some of people's responses are greatly heightened. The shattering impact of a traumatic event has told them that the world is no longer the safe place they used to imagine. So they become ready for danger at all times: they have hyper-vigilance – greater readiness to flee or fight. They live in emergency mode, and have become used to not trusting others. At the same time as having heightened responses, they may also shut down a great deal, so that many of their normal responses to life and to other people are not accessible to them. As a result, these are some of the symptoms you might see:

- **Intense emotion and reactivity.** People exposed to traumatic events feel intense pain, terror, shame, horror, grief, rage, and shock. They are activated and alert most of the time, ready to react. People may be jumpy, looking constantly for danger, and easily startled. They may have difficulty sleeping or even relaxing.
- **Numbness.** When hell suddenly breaks into a life, people become overwhelmed. They may experience shock and protect themselves through denial, disbelief, and dissociation (spacing out or splitting off the terrible events as if they didn't happen to them). They feel numb and cut off from other people and their own feelings, as if they were no longer really alive.
- **Flashbacks.** People who have had terrible things happen to them will often re-experience the events over and over again, against their will. They will experience their minds invaded by memories of the events and will feel tortured by them.
- **Nightmares.** Like flashbacks, but these occur in sleep. As a result some people can be afraid to go to sleep and may develop sleep deprivation.
- **Triggering.** Often people will respond to events that remind them of the trauma with all the feelings that belonged to the trauma itself. Combat soldiers, for example, will respond to loud noises as if it meant incoming mortar; rape victims may respond to the smell of a man as if he was her rapist.

What they need

- **They need to know that you will respect their boundaries.** Trauma, almost by definition, breaches people's normal boundaries. It is as if life was suddenly interrupted with unimaginable violence that destroyed people's normal sense of protection, sense of safety, and sense of self. So people need to know that their wishes matter, that you will not force them to respond in any way other than what they choose, and that you will not invade them.
- **They need to know they can leave if they want to.** People who have experienced prison and torture must know that they are not trapped, that they can get up and leave whenever they want.
- **They will not be touched if they do not want to.** People who have learned to associate touch with violation often cannot bear to be touched, even in kindness. Especially when the violation was sexual, they may not be able to tolerate intimacy, even when you mean well.
- **They need to feel accepted and not judged.** When people have been violated, they experience a lot of feelings about themselves they cannot tolerate. They judge themselves very harshly and can often not even bear the fact that they are alive. They need those around to accept and affirm them as having value and not as having been "spoiled" or "ruined" by what they have been through, even if that is how they themselves feel.
- **People usually need to talk and be listened to.** When people are in pain, especially when they are in greater pain than you can bear to hear, or think about, or feel, it is very difficult just to listen. But it is the most important thing you can do.
- **Sometimes people need to be left alone.** We should never force help on people who have already been forced to do things by other people. We should help people only when they want help. Sometimes people are not ready or are unwilling to face what has happened to them, or to experience their feelings, or to talk about what has happened. It is always important to respect people's process of recovery. Each person needs to restore her sense of self in her own way in her own time. The best approach, when you are uncertain about what a person wants is to ask. It is always good to ask people's permission to talk about what happened, to inquire about their feelings, or to help them in any way. It is almost always damaging to people to insist that you know what they need better than they do.

What you can do to help: personal characteristics

- **Your presence is the most important gift you can give.** Many people think that to help severely emotionally wounded people they should have highly specialized medical training, or they should know the right things to say in order to make them feel better. That is not true. What is most important to badly hurt people is that they know that you are there, that you wish to understand their experience, and that you care. It is often remarkably simple what people need. They need you to be present, focusing your attention on them, and listening to what they have to say.
- **Detachment.** In addition to your compassion, survivors of trauma also need your neutrality. Many of the events that you hear about may elicit very strong feelings in you--feelings that are very appropriate. You may feel angry, sad, grieving, frightened, horrified, shocked, and deeply disturbed. Sometimes it is helpful to share a little of these feelings with your colleagues, so that you can normalize your reactions and gain an understanding of how what

you feel relates to the expressed and unexpressed feelings and thoughts of the person you work with. For the most part, the goal of individual work is to help people find their sense of self again, and for that they often need your calm presence rather than a lot of your emotional reactions. They have already had their space violated by others, now they need their own space to work in, and you can provide that best by making sure that it is their feelings and thoughts, not yours, that occupy most of the time and space in the room.

What you can do to help: procedures and processes

- **Begin simply.** Introduce yourself, tell the person you are working with that you are there to help and listen. Do not begin with discussion of the traumatic events unless they initiate that themselves. Begin by helping the survivor to become comfortable, asking her how she is doing in the present, whether she would like your help, how she would like you to help, whether she wants to talk to you, what she would like to talk about now. The goal in the beginning is to meet and set up an agreement and a space in which difficult work can later occur; it is not necessarily a time to begin that difficult work, unless this is the only meeting you will have, or unless you will have very few meetings.
- **Let the survivor lead.** Perhaps the simplest and best rule in recovery is to trust the other person's process. As the person is ready she will bring up issues in her own way and her own time. It is, therefore, often best to simply sit and listen in silence, once initial greetings have taken place and you have let the other person know that they can talk about whatever they want, and wait for them to decide what they want to talk about.
- **Ask questions.** Even though it is good to wait, you need not be passive. Once the other person has begun to talk about events it is good to engage with them, to let them know you are interested and also to help guide the process. What questions to ask is a matter of judgment and experience. Basically, it is good to trust your own intuition and interest to provide the questions, but below are some further guidelines suggesting how to direct the process.
- **Always work with the survivor's permission.** Never force or pressure them to remember or to feel. Always ask if they would like to discuss something before leading further. As long as the survivor is not overwhelmed and is willing, create space for her to move into discussing more emotionally difficult material. One goal is to help the survivor to integrate what has happened to her. If the person is already having flashbacks and nightmares, part of her mind wants to bring the experience into consciousness and master it, making sense of it, integrating it into her life, so she can go on.

Representing Survivors of Torture and Persecution: Take Care of Your Psychological and Emotional Needs

(Adapted from the Lawyers Committee for Civil Rights training, "Representing Survivors of Gender-based Violence in Asylum Proceedings," presented by Jayne E. Fleming of Reed Smith LLP in 2007)

We are all law students, facing the various pressures and stresses that being a law student entails. It is important to take care of your own mental and emotional well being as you go through law school and work on your CARC case. People in the "helping" professions often experience burnout, Post Traumatic Stress Disorder, or Secondary Traumatic Stress (i.e., stress from hearing traumatic experiences and

identifying with your client). It is important to take steps to avoid this. You may not experience any of the following issues as you craft your CARC case, but we wanted to make you aware just in case.

Signs of Burnout:

- Physical, emotional, or mental exhaustion
- Fatigue or exhaustion
- Sleep problems
- Somatic problems
- Irritability
- Anxiety
- Depression
- Feelings of guilt or helplessness
- Feeling angry or aggressive
- Substance abuse
- Being less effective in your work
- Being late to meetings or skipping work
- Trouble communicating with others
- Trouble concentrating on others and their needs
- Feeling detached or avoiding others

Signs of Secondary Traumatic Stress:

- Intrusive thoughts – e.g., being unable to stop thinking about your client's life story
- Nightmares
- Feeling withdrawn and isolated from other people
- Feeling depressed
- Difficulty concentrating
- Feeling helpless

Sometimes we experience these symptoms due to empathy — the ability to understand or share another's feelings. These reactions could also be due to similar life experiences, particularly those that we have not entirely processed ourselves.

Regardless of the causes of the symptoms, if you are experiencing any of the following feelings you should discuss them with a CARC Coordinator before continuing the case:

- Over identification (e.g., you are saying things to yourself like “I could just adopt my client’s children,” “I should just move in with my client and help them”). While empathizing with your client is part of being a compassionate advocate, over-identifying means that you lose your ability to be objective, which is what your client needs in an advocate.
- “Acting out”: Instead of coping with your emotions you start living your client’s life for her (e.g., showing her how to go grocery shopping, use BART).
- You start to believe your client’s needs are more important than yours.
- You feel disgust, contempt, or loathing for your client.
- You are excited by the gory details of your client’s story.
- You have feelings of being victimized by or act in a victimizing way towards your client.

APPENDIX A: DECLARATION TEMPLATE & SAMPLE

A 123 456 789

DECLARATION OF FULANO DE TAL IN SUPPORT OF HIS PETITION FOR ASYLUM

I, Fulano de Tal, declare the following:

1. Summary (generally one paragraph):

Personal Background

2. Include date & place of birth of birth, family, race/ethnic group, economic information.
3. Education, etc.

Persecution

4. Give details (without getting intrusive) (always best if you can make a case for severe and atrocious), what did the persecutors do, who specifically did it, when, why, what did they say. Keep NEXUS in mind.

Heading 2, 3, 4, etc.

Escape

5. Provide extensive details for EWIs (Entered Without Inspection)
6. Explain how, when, and why client obtained visa

One Year Bar

7. Explain life when first coming to United States: emotional state, isolation, other factors explaining why could not apply sooner

And/Or Changed Circumstances

8. New facts that materially affect claim: coming out process for LGBT, new or more severe threats for DV cases, arrest warrant or increased threats for political cases, HIV diagnosis, started hormone treatment or transitioning for transgender cases

Reasonable Time

9. Event(s) triggering them to now apply for asylum
10. Reasonable time factors: what they did after they learned about getting help/decided to apply

Fear of Return/Serious Harm

11. Why afraid to return related to persecution claim and other types of harm that explain why client is afraid to go back

I, Fulano de Tal, swear under penalty of perjury that the preceding statement is true and correct to the best of my knowledge and belief.

For these reasons I am petitioning for asylum in the United States.

Fulano de Tal

Date

I, NAME, affirm that I am competent to translate from English to [LANGUAGE] and that I read the preceding statement to the declarant in [LANGUAGE] and she understood the contents therein before signing.

NAME

Date