



TRAUMA INFORMED REPRESENTATION IN ASYLUM CASES

Asylum Interview/Asylum Merits Hearing Checklists¹

The following checklists are intended to help advocates representing asylum seekers prepare their cases for adjudication in a trauma-informed way. The first checklist relates to interviews before the asylum office, while the second is intended as a guide before those facing a hearing at the immigration court. Remember that offering transparency, predictability, reliability, and client control are all central to trauma-informed representation.

Realizing that you may be handling your very first case, and therefore not know what to expect to best prepare yourself and your client, we've included some preliminary general information on each process in the chart below. In addition, it is helpful to check with practitioners in your area to understand how things operate locally.

Asylum Interview at USCIS Asylum Office	Asylum Merits Hearing at Immigration Court
<p>Asylum interviews are conducted by the U.S. Citizenship and Immigration Services (USCIS) asylum office in affirmative cases, or in the cases of unaccompanied children. At an asylum interview, there is no opposing counsel. The asylum officer is the adjudicator.</p> <p>When appearing for an asylum interview, you will arrive at the asylum office and check in, as will your client and any interpreter you have brought with you. You will wait in a waiting area before being called into an office for the interview.</p> <p>Interviews are conducted by a single asylum officer and often last a couple of hours. The officer may or may not be an attorney. Other than the officer, there will be no one from USCIS in the room.</p> <p>Although you bring your own interpreter, the officer will contact a government interpreter to listen in by phone. The interview is not recorded or transcribed, so you must be certain to take good notes.</p> <p>The officer may ask you some preliminary questions about the file and then get started asking your client</p>	<p>Asylum merits hearings are a type of individual hearing (ICH). This is the judge's opportunity to assess an asylum claim. Unlike the asylum interview, this process is adversarial. DHS will be represented at the hearing by an attorney.</p> <p>When appearing at the immigration court, you will arrive and go through security before heading to your judge's courtroom. If another hearing is underway, you may be asked to wait in the waiting area until the judge is ready for your case.</p> <p>Merits hearings may last hours or require completion over more than one day at court. Your client has the burden of proof to establish her eligibility for asylum. You will seek to do this through information contained in the asylum application (Form I-589) and evidence such as your client's declaration, other declarations/reports (from witnesses, experts), case documents (medical records, death certificates, news articles) and country conditions reports.</p>

¹ This resource was created in collaboration with Natalie Cadwalader-Schultheis, Staff Attorney at ProBAR.

questions. The file will include the asylum application and any supporting documents you have submitted such as your client's declaration, other declarations/reports (from witnesses, experts), case documents (medical records, death certificates, news articles) and country conditions reports.

Once the officer is done, you can request some time to ask some questions of your client as well. Once you are done, the interview will conclude.

It is unlikely that you will receive a decision immediately. Instead, it will be available for you to pick up in the future, or it may be mailed to you.

If there is a denial of asylum by the asylum office, the case will be referred to an immigration judge for review. The immigration judge will evaluate the asylum claim independently.

Often, a great deal of the merits hearing consists of your direct examination of your client. She may also have to answer questions from the judge and will be subject to cross examination by the Department of Homeland Security (DHS) attorney. You can request the opportunity for re-direct as well.

At the merits hearing, you may also seek to offer testimony from experts who have evaluated your clients physical or mental health, or her situation given circumstances in her home country. If they cannot appear in person, you may need to request that they be allowed to testify telephonically. The same is true of any fact witnesses. Like your client, these individuals will be subject to possible questioning by the judge, as well as cross examination.

You should be prepared to offer a closing statement, and if the judge will allow one, an opening statement as well. The judge may issue a decision at the conclusion of the hearing or indicate that one will be issued in the future.

If the judge issues a decision at the hearing, you must be prepared to indicate whether your client reserves the right to appeal. The DHS attorney will also need to indicate whether DHS reserves the right to appeal or not as well. Reserving the right does not mean the right must be exercised. DHS sometimes reserves the right to appeal and then does not follow through with filing the appeal.

ASYLUM INTERVIEW CHECKLIST

Working with an Interpreter:

- If your client's best language is not English, obtain the services of an interpreter for the interview. The government does not provide an interpreter! (Please note, however, that a temporary rule in place at the time of drafting this checklist provides that asylum applicants who cannot proceed in English are not required to provide interpreters, but instead must proceed with government provided telephonic interpreters.)
- If you are working with a nonprofit organization who referred you the case, check with them regarding finding an interpreter. It is likely best to try and secure pro bono interpretation whenever possible. It is also best to use the same interpreter throughout the life of the case.
- Try to get an interpreter who speaks the same dialect of your client's language.



- If you are having trouble finding an interpreter, you might also consider reaching out to law school immigration clinics to see if a student would be able to volunteer interpret for you.
- Be a bridge for your client to the interpreter. Explain confidentiality to both your client and the interpreter to help develop a trusting relationship.
- Explain the interpreter's role to them so that they understand they are to be impartial, not add new information to the case, and that they are not there to provide testimony.
- Make eye contact with your client even though speaking through an interpreter and learn to rely more heavily on non-verbal communication.
- Remind a less-experienced interpreter to interpret verbatim and not in the third person.
- Practice with the interpreter prior to the interview, and make sure the applicant can communicate effectively with them.
- Let the interpreter know that the government will have someone on the phone listening for correct interpretation at the interview.

Supplementing Documents/Correction to Asylum Application:

- Take an original and two copies of any supplemental documents to the interview and provide them to the asylum officer. If you mailed any supplemental documents in advance of the interview, take an extra copy to the interview in case the mailed copy did not make it into the file. Also bring any proof of mailing.
- If there are numerous documents, make an index, tab the documents, and highlight relevant portions of documents for the asylum officer.
- Remember that all non-English documents must be translated into English, and you must include a certificate of translation.
- Review all case documents for consistency. If you need to make corrections to the application, take a letter documenting the changes and two copies for the asylum officer, and provide this before the interview begins. Be sure that your client has signed and dated any supplement to the application.

Preparing Your Client for the Interview:

- Remind your client of the legal requirements for the case and what you are trying to prove, as well as your case theory and strategy. This may help your client have a full understanding of the proceeding as well as help your client have a big picture understanding of the goals for the proceeding.
- Provide your client with a copy of the application and their declaration. Provide the declaration in your client's best language so that she can review it easily. Ask your client to review dates/events if they are able to do so.
- Review the application and declaration with your client and note any changes.
- If you are including any expert evidence, be sure your client is aware of what information is included in that evidence. It also helps to briefly review the other supplemental evidence submitted.
- Talk to your client about telling her story through her interview. Ask her whether there are any aspects of her story that she really does not want to have to discuss. Discuss options for how you can go about making sure that the necessary information is still available for the asylum officer,



such as referencing her declaration. Clearly set expectations for your client so they understand you and the asylum officer will have the opportunity to ask questions.

- Conduct mock interviews with your client, with someone playing the role of the interpreter if the interpreter is not available.
- Explain the setup of the desk, etc. in the office of an asylum officer so that your client knows what to expect.
- Explain your role and the role of others who will be in the room at the time of the interview.
- Explain that both you and the asylum officer will take notes during the interview.
- Remind your client to tell the truth, to listen carefully to the asylum officer's questions, and only answer the questions asked.
- Empower your client. Let her know it is okay to ask for a break to go to the bathroom or rest a moment. It is okay to show emotion. It is also okay to ask the officer to repeat a question, let the officer know when she does not understand a question, and respond with "I do not know" or "I do not remember."
- Instruct your client to wait for the interpreter to finish talking before responding.
- If your client has children included in the application, they will also need to attend. If your client does not have someone who can babysit, trying to find a volunteer to come and agree to stay with the kids in the waiting room. Consider being prepared with activities and snacks for kids.
- Let your client know what they can and cannot bring into the USCIS office and discuss appropriate attire.
- Explain to your client what will happen after the interview. The asylum officer may approve or deny the case and may very well wait to issue a decision until a later date. Explain that even if the asylum officer decides to issue a denial, the case will be referred to an immigration judge to consider fresh.
- Ask your client if they have any questions or if there is anything you can do to better support them that day.

Attorney Preparation/Conduct for Interview:

- Have a couple of copies of your representation document (Form G-28) with you and at least the asylum application (Form I-589) and client's declaration with you.
- Bring any original documents to the interview for inspection by the officer.
- Bring your identification and, if applicable, your bar card.
- Ask the interpreter to bring their identification as well.
- Make a list of key points. If the asylum officer does not cover this information in their questioning, ask your client these questions related to these points when you are given time to do so at the end of the interview.
- After the officer has completed questioning, ask to proceed with a few follow-up questions of your client if necessary. Try to address any real or perceived inconsistencies in your client's story. Ask the officer whether they see any outstanding issues or problem areas. Offer to address these with additional evidence if possible.
- Take detailed notes of the interview as it will not be videotaped or recorded by the government.
- Prepare an oral and, if possible, written closing statement. Summarize for the officer why the applicant is eligible for asylum and deserves to be granted asylum. Note that some but not all asylum officers are lawyers. Your summary is particularly helpful in cases where the officer would like to grant relief but needs your help in finding a legal basis for doing so.



Post Interview:

- Let your client know the interview has concluded and thank them for their strength.
- Ask your client if they have any questions or if anything was confusing to them. It sometimes helps to provide an overview summary of what occurred before going over next steps.
- Explain to your client what happens next, specifically, that the asylum officer will make a decision to either grant asylum or refer the case to an immigration judge.
- Ask your client how they are feeling. Encourage them to inform a family member, friend and/or therapist if the interview experience has been especially traumatic.

ASYLUM MERITS HEARING CHECKLIST

Working with an Interpreter:

- For the merits hearing, the court will provide an interpreter if one is requested, but to prepare your case, you will need to find your own.
- If you are working with a nonprofit organization who referred you the case, check with them regarding finding an interpreter. It is likely best to try and secure pro bono interpretation whenever possible. It is also best to use the same interpreter throughout the life of the case.
- Try to get an interpreter who speaks the same dialect of your client's language.
- If you are having trouble finding an interpreter, you might also consider reaching out to law school immigration clinics to see if a student would be able to volunteer interpret for you.
- Be a bridge for your client to the interpreter. Explain confidentiality to both your client and the interpreter to help develop a trusting relationship.
- Make eye contact with your client even though speaking through an interpreter and learn to rely more heavily on non-verbal communication.
- Remind a less-experienced interpreter to interpret verbatim and not in the third person.
- Practice with the interpreter prior to the hearing, and make sure the applicant can communicate effectively with them.
- Let your client know that if on the day of the hearing she has trouble understanding the court interpreter, she should indicate as much.
- Making objections to interpretation during court is a strategic move that is often necessary. If you do not speak your client's language, consider having a second-chair attorney or law student who may be able to quickly assess discrepancies between your client's words and the interpretation and help you make objections when necessary.

Supplementing Documents/Correction to Asylum Application:

- Sometimes your opposing counsel's file is incomplete, or documents fail to make their way into the court file. Take two extra copies of all documents to the hearing and be prepared to provide them if needed. If you have file-stamped versions of your documents, have those handy in case you need to show proof of filing.
- Remember that all non-English documents must be translated into English, and you must include a certificate of translation.
- Review all case documents for consistency. If you need to make corrections to the application, be prepared to note those changes on the record for the court and trial attorney. You can also



submit a written supplement to the application noting any changes and/or updates in advance of the hearing when you file your supplemental evidence. Ensure that this document is signed and dated by your client.

- Sometimes, you may find new evidence after your filing deadline that you want entered at the hearing. Be prepared to enter any new evidence into the record through testimony and making motions during direct examination in case the judge requires this for late filings.

Preparing Your Client for the Hearing:

- Remind your client of the legal requirements for the case and what you are trying to prove, as well as your case theory and strategy. This may help your client have a full understanding of the proceeding as well as help your client have a big picture understanding of the goals for the proceeding.
- Provide your client with a copy of the application and their declaration. Provide the declaration in your client's best language so that she can review it easily. Ask your client to review dates/events if they are able to do so.
- Review the application and declaration with your client and note any changes.
- If you are including any expert evidence, be sure your client is aware of what information is included in that evidence. It also helps to briefly review the other supplemental evidence submitted.
- Although you may not know, offer for your client what information you do have about how long the hearing may last. If you plan to present other witnesses, let your client know that and in which order you expect to present them.
- Talk to your client about testifying. Ask her whether there are any aspects of her story that she really does not want to have to discuss in court. Discuss options for how you can go about making sure that the necessary information is still in the record.
- Let your client know that hearings in immigration court are typically open to the public. Although the courtroom is often empty for merits hearings, as other hearings are not scheduled at the same time, there is the possibility that someone may try to observe the hearing. If your client prefers that her hearing be closed, request closure with the court.
- Conduct a mock direct examination and cross examination with your client. It is most helpful if you have an interpreter as well as a colleague who can play the role of opposing counsel for this exercise. That way, you stay within the role you will play on the day of the hearing, as counsel to your client. It is also helpful to have someone play the role of the judge and ask your client some questions.
- Explain the setup of the courtroom, including who will sit where and each person's role so that your client knows what to expect. Ensure that your client knows that they will likely be asked questions by you and the judge and cross examined by the DHS attorney. Explain that you can ask questions, but that you cannot answer them.
- Explain that the hearing will be recorded, and that both you and opposing counsel will likely be taking notes, as may the judge.
- Remind your client to tell the truth, to listen carefully to all questions, and to only answer the questions asked.
- Empower your client. Let her know it is okay to ask for a break to go to the bathroom or rest a moment. It is okay to show emotion. It is also okay to ask that a question be repeated, let the



judge know when she does not understand a question, and respond with “I do not know” or “I do not remember.”

- Instruct your client to wait for the interpreter to finish talking before responding to best allow for an accurate record of the hearing.
- If you know of distinct ways that your client’s trauma may manifest itself during testimony (ex. complete stoicism, crying, stumbling over words, etc.) be prepared to refer to evidence you have hopefully admitted about how trauma has affected your client.
- Additionally, empower your client to notify you regarding any difficulties they are having understanding or hearing the interpreter. Let them know that it is essential that this issue is raised to you as soon as possible and during the hearing, not afterward, so you can help resolve the issue.
- Explain to your client that both parties will have the option to reserve the right to appeal at the end of the hearing. Discuss the potential need to appeal the case and the process for an appeal. Explain that if you reserve the right to appeal, this does not mean you have appealed the case. You have simply preserved that option for them. There is a separate process and steps needed to appeal. This can be confusing to clients, so it is best to go over this information in advance.
- If there is information you know regarding the particularities of the judge who is assigned or the DHS attorney, it may help to share this information with your client to provide them with local insights into what to expect. For example, if you know a DHS attorney is quite reasonable and respectful even on cross-examination, this can be comforting to a client. Additionally, if you know a judge is stern, quick to anger, and has a pet-peeve for storytelling and not getting to the point, it is important to inform your client of this and practice to ensure you can present the best case during the hearing.

Attorney Preparation/Conduct for Hearing:

- Make sure you have an E-28 on file with the immigration court.
- Prior to the hearing, you will have discussed with your client the potential outcomes and whether they would want to reserve appeal under different circumstances. You will want to ask again at the conclusion of the hearing, but this way they have thought through their options when the moment comes.
- Try to communicate with the DHS attorney in advance of the hearing to get her thoughts on the case. Local practice may be that it is best to reach the attorney via e-mail, phone or at the hearing itself before the case is called. Find out if she is willing to stipulate that your client has met any of the eligibility requirements for asylum? Does she have any specific concerns regarding your client’s case? Is there any way to narrow the issues?
- Bring any original documents to the hearing for potential inspection.
- Prepare yourself for any key arguments in advance of the hearing. Make a list of key points as well as known challenges and issues and note how you plan to make any counter arguments. Anticipate any negative decisions you may receive from the judge regarding pre-hearing motions or issues relating to experts. For example, if you filed a motion for telephonic testimony or a motion for late filing, be sure you have arguments prepared why the witness or evidence is necessary. If you are working with an expert and plan to present expert testimony, be sure you are prepared to argue why they should be allowed to speak on the issues as an expert witness.
- Take detailed notes during the hearing and be ready to address any inconsistencies, real or perceived, that arise. Utilize re-direct of your client if needed to clear up any issues. If your client



is not opposed to observers, this could be a good opportunity for a law student to attend and assist with notetaking.

- If you notice that your client is having trouble with the interpreter, take a break to discuss any issues with your client and/or point out the issues on the record.
- If you see that your client otherwise needs a break, ask the court for a short recess on your client's behalf.
- Prepare an oral and, if possible, written closing statement. Summarize for the court why the applicant is eligible for asylum and deserves to be granted asylum.

Post Hearing:

- Let your client know the hearing has concluded and thank them for their strength.
- Ask your client if they have any questions or if anything was confusing to them. It sometimes helps to provide an overview summary of what occurred before going over next steps.
- Explain to your client what happens next. The judge may make a decision to either grant or deny asylum and any other relief you have sought at the conclusion of the hearing, or the judge may schedule another hearing to give the decision. The judge may or may not issue a written opinion. Remind your client of the possibility of both parties' right to appeal regardless of what the judge decides.
- If the judge makes a decision during the hearing, explain the outcome to your client to ensure she understands it. If either party reserved the right to appeal, go over what this means and the next steps.
- If an appeal is necessary, set up another time for a meeting soon after the hearing to discuss that further.
- Ask your client how they are feeling. Encourage them to inform a family member, friend and/or therapist if the court experience has been especially traumatic.

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