

Practice Pointers: Ensure Your Evidence Is Credible¹

In our technical assistance, we are seeing attorneys rely heavily on the “any credible evidence” standard when responding to RFEs and denials, arguing generally that CIS violates the standard if it finds an applicant’s information is not credible or is insufficient. While many RFEs are wrong on this (often for the reasons articulated in [our amicus brief on good faith marriage](#)) there are two common ways in which applications may fail to sufficiently support the credibility of the documentation supplied: material discrepancies in the evidence submitted and not explaining why the “best evidence” is unavailable. Once CIS questions the credibility of your evidence, citing the any credible evidence standard doesn’t help you, since they are only required to consider “credible” evidence.

Discrepancies on a material issue

When the facts concerning domestic violence (a material issue) described by a client in a prior application differ from those in a new application, or the facts cited by police in a U visa certification are less complete than the facts described in the personal declaration, it may raise credibility concerns. Often these discrepancies are easily explained as flowing from the context of domestic violence. It’s important to discuss these discrepancies with your client. For example: Did prior counsel, or the police, not ask the right questions, or not enough questions? Did your client tell them all the same facts but they failed to write them down, perhaps not considering them important? Was she too afraid (why in her case specifically?) to provide the same level of detail? Was she rushed by the person interviewing her? These discrepancies are often easy to explain, but you *must have your clients explain*, in their initial declarations, why the stories are different. Then, if CIS says it’s not credible, it’s easy to fix; you do not have to backtrack and rehabilitate credibility. If you do have to rehabilitate later, your client should do a new declaration explaining why there are discrepancies and why they were not explained in the first submission.

Why the evidence you are supplying is the “best evidence” available

If it looks like you should have been able to supply primary evidence, but you do not provide it, CIS may question the credibility of the evidence submitted. Explain why you can’t supply the “better” form of evidence. Again, this is often tied to the DV context: The police refused to write a report; your client was too afraid to talk to the doctor because the abuser was present, etc. Explain up front why the evidence isn’t available, preferably in the client’s own words in her declaration.

- For example, if your client mentions calling the police but no police report is available (or it’s unhelpful), then your client or her DV advocate should explain their efforts to obtain the documentation and why those efforts were not successful (or why the reports are not helpful). Given that context, they should then explain how the evidence submitted is credible and is the “best evidence” available.

To summarize: For the any credible evidence standard to work, you must show why your evidence is credible, which means “heading off at the pass” any questions such as “why are the stories different?” or “why aren’t they supplying the best evidence available?” Remember, too, that this is the standard for the *kind* of evidence you supply; the burden of proof = preponderance, which is where (we argue) CIS must review the evidence as a whole, not pick it apart and then deny.

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