

ASISTA CENTER FOR Gender & Refugee STUDIES TAHIRIH JUSTICE CENTER

ASYLUM FOR IMMIGRANT SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE

A TRAINING FOR THOSE WHO ALREADY WORK WITH SURVIVORS OF GENDER VIOLENCE

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Webinar One: Asylum Overview

Faculty

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GOALS: after this training you will be able to

- Apply what you know from working on VAWA, U and T cases to gender-based asylum
- Apply best practices in working with immigrant survivors of domestic and sexual violence to asylum seekers
- Identify partners you need to work with and how you will work together

Asylum Series

- Webinar 1: Asylum Overview for Attorneys and Advocates working with Survivors

- Webinar 2: Mechanics of Filing an Asylum Application
 - Thursday, February 4th

- Webinar 3: Advanced Asylum Legal Issues
 - Thursday, March 10th

How is this like what you already do?

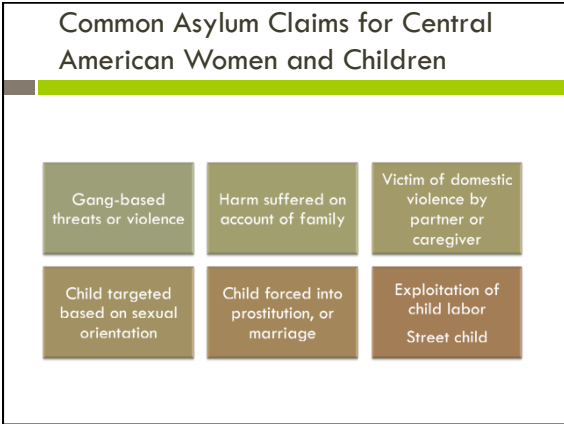
- Getting applicant's story & explaining system
- Explaining facts are DV/SA (persecution)
- Explaining applicant's fears and life context
- Working with applicant to creatively document
- Working with applicant to get all support they need
 - How do DV/SA advocates help with these?

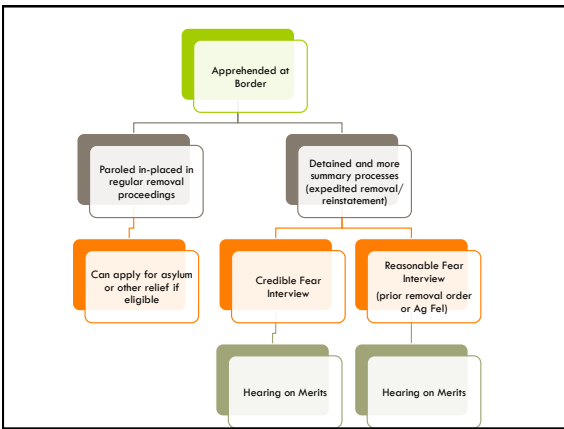
Who are the family detainees?

- Women and children fleeing gang rape and murder

- Women and children who suffered DV or SA in home country

- Some have suffered DV/SA and other crimes in transit, in detention, post-detention

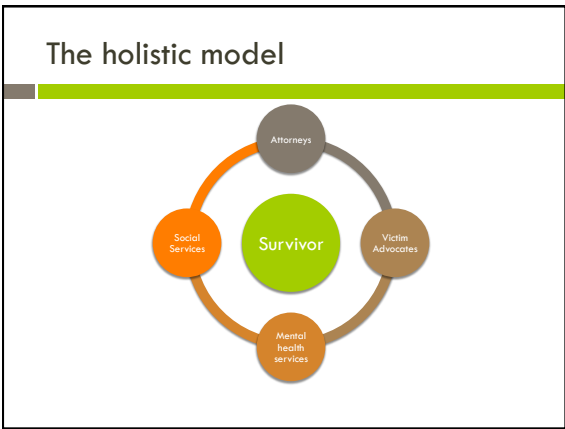




- ### Things to Consider Post Release
- What may release look like?
 - Order of Supervision
 - Order of Release on Recognizance
 - Electronic Monitoring
 - Important Agencies/Acronyms
 - Enforcement Removal Office (ERO)
 - Intensive Supervision Appearance Program (ISAP)

What do DV/SA survivors need?

- Immediate Safety
 - Perpetrator still around? Safety planning!
 - Children at risk?
- Stability
 - Basic life support = housing, food, work, child care
 - What do children need? School, counseling?
 - Secure legal status (besides immigration)
 - Custody? Support? Protection orders?
 - Criminal charges against perpetrator?



Asylum, Withholding of Removal & CAT

Asylum: Legal Elements

- **Past persecution** OR **well-founded fear** of persecution
- **Nexus** (“on account of”)
 - at least one of the 5 enumerated grounds is “one central reason” for the persecution
- **Protected Ground** - race, religion, nationality, membership in a PSG, or political opinion
- Committed **by government** OR forces the **government is unwilling or unable** to control.
- **Internal relocation** in-country not reasonable

Bars to Asylum

- **Bars generally to do not apply to CFI eligibility**
 - Previous asylum application denial (absent change in circumstances)
 - Persecutor of others
 - Particular serious crime/Aggravated felony
 - Serious nonpolitical crime
 - National security
 - Terrorism
 - Firm Resettlement
 - **Filing within one year of last entry**
 - Exceptions
- Children
 - individual culpability, developmental stage, duress, coercion, self-defense

Withholding of Removal

- Automatically apply for withholding when file asylum application
- Same basic, statutory definition as asylum
 - except no subjective prong and no “humanitarian” option
- Heightened burden of proof: “more likely than not” that there is a threat to the life or freedom of the applicant on one of the specified grounds
- Available if applicant faces certain asylum bars (including 1-year filing deadline bar)
- If no bars apply, relief is mandatory
 - Bars: Nazi, persecutor of others, “particularly serious crime,” “serious non-political crime,” terrorist / danger to security
- No pathway to residence and no derivative benefits for spouse, children

Convention against Torture-CAT

- Two forms of CAT relief – request BOTH:
 - ▣ Withholding of removal under 8 C.F.R. § 1208.16(c);
 - ▣ Deferral of removal under 8 C.F.R. § 1208.17(a)
- Different definition
 - ▣ Torture vs. Persecution
 - ▣ No nexus requirement
 - ▣ Government or government acquiescence
- Burden of proof: More likely than not (> 50%)
- Non-discretionary; no pathway to residency, no derivative benefits

Eligibility Framework

	Asylum	Withholding	CAT
Harm	Persecution	Threat to life or freedom	Torture
Occurrence or Likelihood of Harm	- WFF of future (1 in 10); or - Eligibility on past persecution if sufficiently severe	More likely than not (more than 50%)	More likely than not (more than 50%)
Nexus	Harm must be on account of one of the five grounds	Same	No nexus required
Discretionary v. Mandatory	If no statutory bars apply, relief is discretionary	If no statutory bars apply, relief is mandatory	Relief is mandatory, but bars determine the type of relief
Relief provided	Leads to LPR and then USC status and right to bring spouse and children	Prevents return only to a country of feared harm; protection doesn't extend to derivatives	CAT WH: return withheld CAT Deferral: can be easily terminated and remain in detention; protection does not extend to derivatives

Benefits of Grant

Benefits of Asylum	Benefits of Withholding and CAT
<ul style="list-style-type: none"> □ Extend status to derivative family members <ul style="list-style-type: none"> ▣ Spouse, unmarried children under 21 at time of filing □ Work authorization for principal and derivative family members □ Travel permitted with advance parole <ul style="list-style-type: none"> ▣ But not to country where persecuted □ Ability to apply for legal permanent resident status after 1 year of final grant □ Access to public benefits <ul style="list-style-type: none"> ▣ "Qualified immigrants" + 	<ul style="list-style-type: none"> ▣ Work authorization only ▣ No path to LPR status ▣ No benefits for derivatives ▣ No ability to travel ▣ No access to public benefits

Defining Persecution

- Harm of a serious nature; more than "mere harassment":
 - Serious physical harm
 - Threats to life or freedom
 - Torture
 - Rape/sexual assault
 - Servitude/slavery
 - Forced prostitution
 - Forced child marriage
 - Female genital cutting
 - Emotional or psychological harm
- Harm or threats of harm must be considered *cumulatively*

Is DV/SA persecution?

- What do international accords say?
- How could the DV and SA you've seen be framed as persecution?

Well-Founded Fear

Subjective Component	Objective Component
<ul style="list-style-type: none"> □ Fear must be GENUINE <ul style="list-style-type: none"> ■ Applicant's state of mind ■ Child may be unable to express actual fear and may need to rely on objective evidence 	<ul style="list-style-type: none"> Fear must be OBJECTIVELY REASONABLE <ul style="list-style-type: none"> ■ A 10% chance ■ Country conditions evidence

Ways to Establish Well Founded Fear

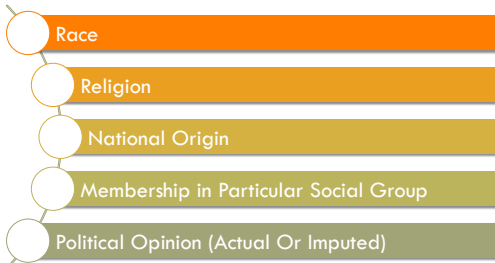
Evidentiary presumption from past persecution

- What would this be for DV/SA?
- Gov't may rebut presumption by showing
 - Fundamental changes in circumstances
 - Reasonable relocation
 - Is this like anything you see with Us or VAWAs? How do you respond to that?

Objective facts establishing risk of future persecution

- In cases where no past persecution, or where gov't rebutted presumption

"On Account Of" Protected Grounds



Mixed motives allowed, BUT the protected ground must be at least "one central reason" for the persecution

Race, Religion, Nationality

- ❖ Immutable or fundamental status or belief
 - **Race**
 - Ethnic and indigenous groups (e.g. Guatemalan Mayans)
 - **Religion**
 - Wrong religion
 - Too religious, not religious enough
 - Challenging gender roles within religion
 - Atheism, agnostic
 - Targeting child because of parents' religion
 - **Nationality**
 - Including statelessness
 - Not just citizenship; can include ethnic or linguistic group. May overlap with race.

Political Opinion

- **Political Opinion**
 - Broadly defined; not just political parties
 - Children can hold an opinion
 - Opinion may be imputed to them based on parents or family, or based on their actions

Social Group

Membership in a particular social group

- (1) **Immutable or fundamental characteristic**
- (2) **Socially distinct***
 - Perceived as a group by **society** (persecutor's view not determinative)
 - Treated distinctly
- (3) **Particularity***
 - Terms commonly understood/accepted in society; discrete and definable boundaries

Social group for DV

- ***[M]arried women in Guatemala who are unable to leave their relationship"***
 - *Matter of A-R-C-G*
- **Factors established**
 - Particularity
 - Social Distinction
 - Depends facts and evidence on each case

Gender & Political Opinion

- Has the survivor?
 - Resisted male authority?
 - Resisted sex with her husband or partner?
 - Expressed a desire to behave outside of cultural norms/ expectations for a woman in her setting?
 - Actually behaved outside of cultural norms (dating, sex before marriage, child outside wedlock, clothing, etc.)?
 - Expressed a belief in gender equality contrary to her culture?
 - Experienced Any *escalation* of harm after she expressed her political opinion/beliefs in any of the above ways?

Nexus?

- Was the protected ground “one central reason” for the abuse? What direct or circumstantial evidence is there to establish the reasons?
- How is this like Us and VAWAs?
 - Harm comes from qualifying crime not underlying conditions
 - “connections” to DV for VAWA in various places
 - Trafficking = in US “on account of”

How do you show nexus?

- How does psych/emotional abuse show the reasons for the abuse?
- What is the context in the country for gender-based violence and discrimination against women more broadly?
- How do you show it’s because he’s an abuser not a jerk or a drunk?

Failure of State to Protect

- Persecution by a state or private actor that the state is “unable or unwilling” to control
 - Disjunctive test – “one or the other”
- Establish through:
 - Actual failure to protect
 - Futility or danger of reporting
 - Failure to protect similarly situated
 - Law on books vs. enforcement of law

Showing Attempts to Obtain Protection

- When do you show this for other survivors?
 - T visas without certifications and extreme hardship
 - Explaining why survivors don't access systems
 - Lack of “primary evidence”

Internal Relocation

- Not eligible for asylum if can reasonably *and* safely relocate to another part of the country

How is this like what you already do for survivors?
Hardship for U derivatives

Perpetrator behavior?
Unreasonable for client and family to live elsewhere?

Humanitarian asylum- “past persecution alone”

- Where past persecution presumption of future well founded fear has been rebutted, when might an applicant still qualify for relief?
 - Compelling reasons arising out of severity of past persecution OR
 - A reasonable possibility of other serious harm:
 - No nexus to protected ground
 - Must be so serious it equals persecution
 - Current conditions/new physical or psychological harm

Review: Proving DV asylum

- ◆ **Persecution? Domestic Violence**
 - ◆ Frequency, level of harm important to est. persecution
- ◆ **Social group? Relationship status**
 - ◆ Clearly defined relationship/immutable or fundamental characteristics
- ◆ **Nexus?**
 - ◆ Persecutor’s belief about applicant
- ◆ **Failure of Government to Protect**
 - ◆ Country conditions- broad acceptance of DV?
- ◆ **Inability to Internally Relocate?**

Review: Proving SA-based asylum

- Many SA cases will also fit within the DV framework outlined above.
- In cases where the specific DV framework may not be applicable, you can draw on the general principles enunciated by Matter of A-R-C-G- and related decisions recognizing gender-based persecution as asylum worthy.
- Social groups in those cases might be something more along the lines of gender + nationality + other immutable characteristics or shared past experiences.
 - For example, “Guatemalan women viewed as property by a gang member” or “Salvadoran women who have rebuffed sexual advances by a gang member” or “Single Honduran mothers” depending on the characteristics targeted by the perpetrator.
 - Political opinion of feminism might also be applicable.

Best Practices

- Identify and explain role of everyone on the “team”
 - Do they know what DV/SA advocates do?
- Explain how systems work
 - What systems will they encounter?
- Explain releases, how information will be shared
- Explain confidentiality and privilege rules
 - Different for different team members?

Best Practices

- How often must you interview the applicant to get the full and true story?
- Who on your team has training on working with DV/SA survivors? They know how to ask the right questions
- Whose voice will the IJ hear when reading the declaration?
- Who can help collect other documentation?
- Who can corroborate and explain DV/SA?

Remember to Check

- Criminal history
 - In US or in home country?
- Immigration history
 - Entry, old deportation orders, upcoming Immigration Court dates? Ask for family members too
- Location of immediate family (in US or abroad)
 - What is their immigration history? Do family members have any additional immigration-related needs?

Other options based on DV/SA

- Special Immigrant Juvenile Status (kids only)
 - Age-out issue
 - Must have state court finding on various things
 - Can't file for parents if granted

- VAWA self-petitioning
 - Abuser must be LPR/USC spouse or parent
 - Few public benefits

Other options continued

- Trafficking?
 - More derivatives available but
 - Must at least try to get LEO certification
 - Easier of some acts in US

- U crimes?
 - More derivatives but
 - Must have LEO cert
 - No public benefits unless state supplies

Resources

- Legal Resources:**
- CGRS: <http://cgrs.uchastings.edu/>
 - Immigration Advocates Network <http://www.immigrationadvocates.org/>
 - Lutheran Immigration and Refugee Services: Guide for Asylum Seekers: http://lirs.org/wp-content/uploads/2014/11/LIRS_FirstSteps_AsylumSeekers.pdf
 - List of Foreign Terrorist Organizations (for the terrorism bar): <http://www.state.gov/j/ct/rls/other/des/123085.htm>
 - USCIS on Asylum: <http://www.uscis.gov/humanitarian/refugees-asylum/asylum>
- On Confidentiality Issues:**
<http://www.confidentialityinstitute.org/> and <http://nneadv.org>
- On Public Benefits:**
- <https://www.nilc.org/access-to-bens.html>
 - <http://niwaplibrary.wcl.american.edu/topic/public-benefits/>

	Questions?
