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

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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
Common Asylum Claims for Central American Women and Children

- Gang-based threats or violence
- Harm suffered on account of family
- Victim of domestic violence by partner or caregiver
- Child targeted based on sexual orientation
- Child forced into prostitution, or marriage
- Exploitation of child labor
- Street child

Apprehended at Border

Detained and more summary processes (expedited removal/ reinstatement)

Hearing on Merits

Reasonable Fear Interview (prior removal order or Ag Fel)

Credible Fear Interview

Can apply for asylum or other relief if eligible

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?

The holistic model

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 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
- Some 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 nonpolitical 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

<table>
<thead>
<tr>
<th></th>
<th>Asylum</th>
<th>Withholding</th>
<th>CAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harm</td>
<td>Persecution</td>
<td>Threat to life or freedom</td>
<td>Torture</td>
</tr>
<tr>
<td>Occurrence or Likelihood of Harm</td>
<td>If WPT or future (&gt; 10%), or if persecution is sufficiently severe</td>
<td>More likely than not (more than 50%)</td>
<td>More likely than not (more than 50%)</td>
</tr>
<tr>
<td>Nexus</td>
<td>Harm must be on account of one of the five grounds</td>
<td>Same</td>
<td>No nexus required</td>
</tr>
<tr>
<td>Discretionary v. Mandatory</td>
<td>If no statutory bars apply, relief is discretionary</td>
<td>Relief is mandatory, but bars determine the type of relief</td>
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<tr>
<td>Relief provided</td>
<td>Leads to LPR and their USC status and right to bring spouse and children</td>
<td>Prevents return only to country of feared harm; protection doesn't extend to derivatives</td>
<td>CAT With return unlikely; CAT Deferral can be easily terminated and need to determining protection doesn't extend to derivatives</td>
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Benefits of Grant

Benefits of Asylum
- Extend status to derivative family members
- Spouse, unmarried children under 21 at time of filing
- Work authorization for principal and derivative family members
- Travel permitted with advance parole
- But not to country where persecuted
- Ability to apply for legal permanent resident status after 1 year of final grant
- Access to public benefits
- “Qualified immigrants”+

Benefits of Withholding and CAT
- 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**
- Fear must be GENUINE
  - Applicant’s state of mind
  - Child may be unable to express actual fear and may need to rely on objective evidence

**Objective Component**
- Fear must be OBJECTIVELY REASONABLE
  - 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

- Race
- Religion
- National Origin
- Membership in Particular Social Group
- Political Opinion (Actual Or Imputed)

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, agnosticism
    - Targeting child because of parents’ religion
  - Nationality
    - Including statelessness
    - Not just citizenship, can include ethnic or linguistic group. May overlap with race.
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/](http://cgrs.uchastings.edu/)

On Confidentiality Issues:

On Public Benefits:
- [https://www.nilc.org/access-to-bens.html](https://www.nilc.org/access-to-bens.html)
- [http://lawlibrary.ud.american.edu/topic/public-benefits/](http://lawlibrary.ud.american.edu/topic/public-benefits/)
Questions?