





**ASYLUM FOR IMMIGRANT SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE**  
**A TRAINING FOR THOSE WHO ALREADY WORK WITH SURVIVORS OF GENDER VIOLENCE**  
© ASISTA, CENTER FOR GENDER & REFUGEE STUDIES, & TAHIRIH JUSTICE CENTER

Webinar Two: Mechanics of Filing for Asylum

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### Faculty

- Blaine Bookey, Center for Gender and Refugee Studies, Co-Legal Director
- Ashley Dilonno, Tahirih Justice Center, Social Service Program Manager
- Cecelia Friedman Levin, ASISTA, Senior Policy Counsel
- Morgan Weibel, Tahirih Justice Center, Baltimore Director

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### Asylum Series

- Webinar 1: Asylum Overview for Attorneys and Advocates working with Survivors
  - Recording available online. [questions@asistahelp.org](mailto:questions@asistahelp.org)
- Webinar 2: Mechanics of Filing an Asylum Application**
  - Thursday, February 4th**
- Webinar 3: Advanced Asylum Legal Issues
  - Thursday, March 10th

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**GOALS: after this training you will be able to**

- Describe asylum process for those survivors in family detention facilities
- Apply what you know from working on VAWA, U and T cases to completing an asylum application, declaration, supporting documents and witnesses
- Start thinking about how to prepare asylum case for trial

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**Overview of the Asylum Filing Process**

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**Defensive Applications**

- Defensive asylum applicants must file I-589 in court at a Master Calendar hearing.
- If your client's Master Calendar hearing is scheduled for any date after her 1 year anniversary of last entry, then file a motion to advance and attach a complete asylum application.
- Note: *Lodging* an asylum application (for work authorization) is different than *filing* an asylum application (to meet the 1 year deadline).

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**What if client already submitted an asylum application?**

- Applicant whose case is referred from the Asylum Office does NOT need to re-file I-589 in court but can submit a new form to correct previous errors.
  
- Heed *Matter of M-A-F*, new applications will have to meet 1 year filing deadline
  - New applications = ones that present "previously unraised basis for relief" AND/OR that are predicated on a "new or substantially different factual basis."

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**Mechanics of Work Authorization**

- Asylum clock begins when I-589 is properly lodged.
  
- Can file I-765, after 150 days on Asylum Clock
  
- USCIS can approve I-765 after 180 days on Asylum Clock
  
- Any delays credited to asylum applicant STOP the clock!

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**Contents of Asylum Application**

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Preparation of Asylum Application	
<input type="checkbox"/>	I-589 Application
<input type="checkbox"/>	Client declaration
<input type="checkbox"/>	Supporting Documents and Affidavits
<input type="checkbox"/>	Planning for Interview/Trial

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<input type="checkbox"/>	Hypothetical

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<input type="checkbox"/>	Completing the form I-589

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**How is this like what you already do?**

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- Don't leave blanks spaces, instead use "n/a" "none" or "unknown"
- You can use any legible combination of typed and/ or handwritten responses.
- Sign only in blue pen so signature is obviously original
- Legal status requires lawful process in place marriage occurred
- Adopted children follow INA definition

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**Practice Pointers for Completing I-589**

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- Follow filing instructions on Form I-589 at [www.uscis.gov](http://www.uscis.gov)
- Remember your client's limitations! Give only as much detail as she can remember.
- There is NO filing fee for form I-589
- Raise all colorable grounds or you may waive them
- You can use Attorney's address for "Safe Mailing"
- Cautiously include derivatives who aren't in removal proceedings
- Be sure to list all memberships and associations (careful with Terrorist Organizations= terrorism bar)

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**What to include in I-589 filing**

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- At a minimum the following documents should be filed along with the form I-589:
  - E-28 notice of entry of attorney
  - Identification (applicant's birth certificate and/or passport)
  - Proof of derivatives relationship (i.e. marriage certificate or birth certificate)
- It is recommended that you file some supporting country conditions materials.

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<b>What is the Attorney's Role?</b>	
<input type="checkbox"/>	
<input type="checkbox"/>	Interview client, many times.
<input type="checkbox"/>	Check on client's story – FOIA request /prior filings
<input type="checkbox"/>	Fill in forms – I-589, E-28, etc.
<input type="checkbox"/>	Ensure that client reviews all answers in her native language

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<b>What is the Advocate's Role?</b>	
<input type="checkbox"/>	
<input type="checkbox"/>	Assist/support client interviews
<input type="checkbox"/>	Assist client in coordinating document collection
<input type="checkbox"/>	Assist in reviewing forms with client – I-589, E-28, etc.
<input type="checkbox"/>	Empower client to take active role in their case

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<input type="checkbox"/>	
<input type="checkbox"/>	Asylum Declaration Development

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**Purpose and Objectives of Declaration**

- First person narrative account of all experiences germane to asylum application
- Written in a compelling, detailed, and succinct manner
- In chronological order
- Best version of client's own words
  - Reflect the client's age, education, literacy level, and manner of speaking
  - Do not include legalese
- Based upon client's personal knowledge (process build' client confidence and facilitates memory process)
- Without exaggeration or embellishment
- Legally relevant, but without legal analysis, argument or speculation

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**How is this like what you already do?**

- Working at the client's pace is essential to success
- Using chronology when possible to lay out the story
- Using client's own words for authenticity
- Using client's own points of reference (i.e. before or after birth of a child or during certain seasons etc.)

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**Include Legally Relevant Facts**

- Alienage: outside country of origin
- Well-Founded Fear
- Persecution
- Nexus
- Government unable or unwilling to protect
- Internal Relocation
- Bars to Asylum
- Humanitarian Asylum

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**Presentation Style Notes**

- Declaration of [Client's Full Name] in Support of Asylum Application (A#, if assigned)
- Compelling headings, sub-headings
  - Consider CAPS, bolding, italicizing and/or underlining to make headings stand-out
- Number each paragraph
- Short and simple paragraphs
- Italicize foreign words and define
- Quotations – consider qualifying with “said something like...”

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**Preparation for Meeting with Client**

- Preparation shows interest and commitment to your client's case and makes interviews more efficient and productive
- Review notes from previous interviews or intake to refresh memory
- Outline questions or “roadmap” of topics in advance
- Familiarize yourself with country conditions ahead of time!
  - Know basic historical facts, geography, circumstances relevant to (what you know of) your client's claim

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**Details, details, details!**

- Time references – dates, times, days, etc.
- Places
- People
- Speech
- Emotions
- Sensory details
- Experiences of other persons similarly situated
- Client's subjective knowledge of relevant country conditions

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**But, how much detail?**

- Reflect client's memory and level of detail
- "Around my birthday", "spring", "I was about three months pregnant" NOT "June 8, 2014 at 4:00 pm" if client doesn't know
- It is okay if client does not remember!
- Encourage client's memory, but do not ask client to guess, make up or agree to your suggestion for a date
- Avoid inserting your own calculation of date if client does not remember

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**Consistency is Key!**

- Client's account of events
- I-589 application
- Supplementary evidence, e.g. identity documents, psychological evaluation, other declarations, police reports, country conditions, etc.
- Statements made to Border Patrol, DHS, etc.
- Other documentation provided to US immigration
- Others?

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**What is the Attorney's Role?**

- Work with advocate to identify most comfortable approach for client:
  - Interviews
  - Written statements
  - Drawings
  - Use of therapist to collect particularly sensitive information
- Check on client's story – FOIA request/ prior filings

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**What is the Advocate's Role?**

- Assist/support client interviews
- Coordinate mental health support for before and/or after interviews
- Assist in collaborations with mental health providers and other support networks
- Maintain detailed case notes on any information and details that might be relevant to the case to ensure accurate reporting in the declaration

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**Supporting Documents**

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**Best Practices in Document Collection**

- Explain why documents are needed
  - How important is each item?
- Help client explore alternate documentation
  - If something is completely unavailable, be sure to explain why in your application
- Explain releases, how information will be shared
  - Don't forget to use confidentiality agreements

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**How is this like what you already do?**

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- Documenting DV/SA facts (= persecution)
- Explaining applicant's fears and life context
- Working with applicant to creatively document
- Working with applicant to get all support they need

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**What is the Attorney's Role?**

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- Ensure that documents meet REAL ID
- Cross check documents with client's story & FOIA/ prior filings
- Coordinate with others helping the client (i.e. therapist, interpreters, translators, and social worker)
- Index gathered documents and reference them in brief/ filings

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**What is the Advocate's Role?**

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- Assist/support client interviews
- Assist client in coordinating evidence collection
- Help client prioritize and manage evidence collection
- Reminder: keeping notes on attempts to gather documents can help in declaration drafting

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	Using Expert Witnesses

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Expert Witnesses	
<input type="checkbox"/>	Definition of an Expert <ul style="list-style-type: none"><li><input type="checkbox"/> An expert witness is a person "with scientific, technical, or other specialized knowledge" who can "assist the trier of fact to understand the evidence or to determine a fact issue." Federal Rules of Evidence, Rule 702</li></ul>
<input type="checkbox"/>	Types of Experts <ul style="list-style-type: none"><li><input type="checkbox"/> Country conditions</li><li><input type="checkbox"/> Medical</li><li><input type="checkbox"/> Psychological</li><li><input type="checkbox"/> Forensics</li></ul>

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How is this like what you already do?	
<input type="checkbox"/>	VAWA/Us use of experts to explain DV/SA dynamics
<input type="checkbox"/>	Use of experts to explain impact of abuse
<input type="checkbox"/>	T visas use of an expert related to country conditions to prove extreme hardship

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**Country Conditions Expert**

- Do you need one?
  - What other sources of country conditions documentation are available? Are there no other formats available for your particular issue? Are you having difficulty meeting your burden of proof?
  - Country conditions documentation may not address particular issue – Example: proving social group requirement in gang cases
- Where to find one:
  - Center for Gender & Refugee Studies: [www.cgrs.uchastings.edu](http://www.cgrs.uchastings.edu)
  - Universities: professors of political science, sociology, anthropology (maybe also history or gender studies)
  - The Fahamu Refugee Programme maintains a comprehensive list of Country of Origin Information Experts (see materials for website)
  - Amnesty International or Human Rights Watch

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**Medical or Psychological Expert**

- Do you need one?
  - Medical expert may be able to document the existence of persecution and/or torture related injuries
  - Psychological expert may be able to establish PTSD or other condition as extraordinary circumstance if client has missed the one year filing deadline and explain apparent lack of credibility by establishing cognitive or psychological impairment
- Where to find one:
  - Center for Gender & Refugee Studies: [www.cgrs.uchastings.edu](http://www.cgrs.uchastings.edu)
  - Survivors International (SF)
  - Center for Survivors of Torture (San Jose)
  - HealthRight International
  - Physicians for Human Rights

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**Forensics Expert**

- Do you need one?
  - If government challenges your documents, you may need a forensics expert to rebut
- Where to find one:
  - Professional licensing boards
  - Word of mouth from colleagues
  - Probono.net

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<b>Preparing the Expert Witness Declaration</b>	
<input type="checkbox"/>	<ul style="list-style-type: none"><li><input type="checkbox"/> Define the issue for your expert</li><li><input type="checkbox"/> Provide the expert with a copy of the client's declaration</li><li><input type="checkbox"/> Avoid a boilerplate affidavit</li><li><input type="checkbox"/> Highlight expertise and applicability within the first few paragraphs</li><li><input type="checkbox"/> Include basis for findings</li><li><input type="checkbox"/> Provide expert's CV, include experience testifying</li><li><input type="checkbox"/> Review draft and discuss edits with expert</li></ul>

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<b>Procedural Requirements</b>	
<input type="checkbox"/>	<ul style="list-style-type: none"><li><input type="checkbox"/> Witness list, including CV of expert</li><li><input type="checkbox"/> Motion for telephonic (if not in-person)</li></ul>

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<b>Preparing for Trial</b>	
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**Preparing Client for Trial**

- For direct (open ended questions)
  - Bullet pointing the story you want to tell
  - How do you cover who, what where, when, why?
  - Pretend you are the government attorney.
- For cross (leading)
  - Attorney can identify possible objections you can make and practice them
  - Practice asking for a break if your client becomes too upset
  - Remember that the general wisdom is that clients should answer as briefly as possible,
  - If answer sounds damaging, you may want to prep your client to say, instead, "yes, but that's because (insert good reason related to the claim, i.e., he threatened to harm my son," etc.)

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**General tips for Witnesses**

- Speak in his/her own words
- Being mindful of Verbal/Nonverbal limitations
- Importance of Appearance
- TELL THE TRUTH**
- Listen carefully to the questions
- Do not answer if you do not understand or cannot hear the question.
- Only answer the question you are being asked
- Stop speaking if lawyer objects to question or if judge interrupts
- Do Not Lose Temper. Always be courteous, even on cross
- Correct Mistakes: If answer not clear or needs explanation, then give it as soon as possible. It is okay to say, "I don't know" or "I don't remember"

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**What is the advocate's role?**

- Help clients relax (i.e. use a stress ball, breathing exercises or carry a photo of someone or some place that brings them happiness/peace)
- Help empower clients to not feel overwhelmed by process (i.e. discuss a prayer, phrase or positive affirmation they can tell themselves in stressful situations. One example is "I am safe.")

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<b>Preparing the Expert for Testimony</b>	
	<ul style="list-style-type: none"> <li>□ Anticipate government objections to expert's qualifications, scope or relevance</li> <li>□ Identify any disciplinary issues or other adverse information that may undermine credibility</li> <li>□ Inform expert about client conduct that may impact the expert's testimony, and use expert testimony to help soften blow of bad behavior of client</li> <li>□ Prepare guideline for direct exam of your expert and discuss with the expert</li> </ul>

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<b>Objections to DHS Questioning</b>	
	<ul style="list-style-type: none"> <li>□ EOIR Procedures and Rules apply to both parties</li> <li>□ Government attorney has "dual burden":             <ul style="list-style-type: none"> <li>■ 1) zealously represent his/her client, the government,</li> <li>■ 2) but also to be mindful that he/she "is the representative of a government dedicated to fairness and equal justice to all." Kang v, Atty Gen, 611 F3d 157, 166-167 (3rd Cir. 2010)</li> </ul> </li> <li>□ Don't argue with the trial attorney – make your objection to the judge</li> </ul>

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	<b>Review</b>

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**Review: Mechanics of Asylum Filing**

- ◆ **1 year filing deadline may require a motion to advance master hearing in order to file I-589 in court**
  - ◆ Lodging and filing I-589 are different
- ◆ **Work authorization is based on # of days on the Asylum Clock**
  - ◆ 150 days= eligible to apply, 180 days= EAD authorized
- ◆ **REAL ID requires all corroborating evidence/reasonable explanation if unavailable**
  - ◆ Be sure to include explanations in declaration/documentation

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**Declaration Outline-Review**

- Introduction – brief summary of claim
- Personal background and profile information
- Events surrounding persecution and leading up to flight
- Flight from country of origin to U.S.
- Activities in country of origin/client's personal circumstances after leaving
- Fear of return and reasons
- Internal relocation
- Flight from country of origin to U.S.
- Anticipate/explain any difficulties in giving testimony or recall of information (for reasons of trauma, age, etc.)
- Conclusion
- Client's attestation, signature, date
- Interpreter's attestation, signature, date

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**Resources**

**Legal Resources:**

- Instructions on Lodging Asylum Applications: <http://www.justice.gov/sites/default/files/eoir/legacy/2013/12/03/13-03.pdf>
- EOIR, Immigration Court Practice Manual: <http://www.justice.gov/eoir/office-chief-immigration-judge-1>
- *Matter of M-A-F*, 26 I&N Dec. 651 (BIA 2015) <http://www.justice.gov/eoir/file/762676/download>

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	Questions?

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