



# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

### RAIO Combined Training Course

# CREDIBILITY

## TRAINING MODULE

Note: The Asylum Supplement is not included in this module; it will be added at a later time. For this reason, the Asylum Supplement is in draft.

*This Page Left Blank Intentionally*

RAIO Directorate – Officer Training / *RAIO Combined Training Course***CREDIBILITY****Training Module****MODULE DESCRIPTION**

This module provides guidance on evaluating the credibility of an applicant's testimony, factors upon which a credibility determination may be based, factors upon which a credibility finding may not be based, and how to determine whether any non-credible aspects of a claim affect eligibility. Additionally, the module provides guidance on how to handle credibility issues that arise during the interview.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

When interviewing the applicant and adjudicating the case, you, the officer, will be able to assess credibility and articulate appropriate reasons supporting your credibility determination.

**ENABLING PERFORMANCE OBJECTIVES**

1. Distinguish between appropriate and inappropriate factors to consider in evaluating credibility of the applicant and the evidence presented.
2. Distinguish between minor v. substantial and internal v. external inconsistencies in the evidence presented by the applicant.
3. Identify credibility issues raised in cross-cultural communication among parties to the interview.
4. Identify the role of corroborating documentary evidence in evaluating credibility of the applicant and the evidence presented.
5. Address credibility problems at the interview.
6. Explain the analytical framework for a credibility determination.

**INSTRUCTIONAL METHODS**

Interactive presentation  
 Discussion  
 Practical exercises

**METHOD(S) OF EVALUATION**

Multiple-choice exam  
 Observed practical exercises

**REQUIRED READING**

**Division-Specific Required Reading - Refugee Division**

**Division-Specific Required Reading - Asylum Division**

**Division-Specific Required Reading - International Operations Division**

**ADDITIONAL RESOURCES**

**Division-Specific Additional Resources - Refugee Division**

**Division-Specific Additional Resources - Asylum Division**

**Division-Specific Additional Resources - International Operations Division**

**CRITICAL TASKS**

<b>Task/ Skill #</b>	<b>Task Description</b>
ILR16	Knowledge of the relevant laws and regulations for requesting and accepting evidence (4)
ILR22	Knowledge of the criteria for establishing credibility (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM4	Skill in determining applicants credibility (5)
DM7	Skill in making legally sufficient decisions (5)

RAIO Template Rev. 2/21/2012

~~FOR OFFICIAL USE ONLY (FOUO) - LIMITED OFFICIAL USE / LAW ENFORCEMENT SENSITIVE~~ DATE: 6/10/2013

Page 4 of 56

---

DM9	Skill in making legally sufficient decisions with limited information (5)
RI4	Skill in integrating information and materials from multiple sources (e.g., interviews/testimony, legal documents, case law) (4)
RI5	Skill in identifying the relevancy of collected information and materials (4)
IRK3	Knowledge of the procedures and guidelines for establishing an individual's identity (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (3)
ITS7	Skill in identifying inconsistencies and false statements (4)

---

**SCHEDULE OF REVISIONS**

<b>Date</b>	<b>Section (Number and Name)</b>	<b>Brief Description of Changes</b>	<b>Made By</b>

---

**TABLE OF CONTENTS**

<b>1</b>	<b>INTRODUCTION.....</b>	<b>10</b>
<b>2</b>	<b>GENERAL CONSIDERATIONS.....</b>	<b>11</b>
2.1	Duty to Remain Neutral .....	11
2.2	Burden of Proof - A Cooperative Approach.....	11
2.3	Take into Account the Factors as a Whole.....	11
2.4	No Moral Component .....	13
2.5	Credibility Concerns Must Be Clearly Articulated.....	14
<b>3</b>	<b>AN ANALYTICAL FRAMEWORK FOR CREDIBILITY DETERMINATIONS .....</b>	<b>14</b>
3.1	Step One: Identify the Type of Credibility Concern.....	15
3.1.1	Detail.....	16
3.1.2	Consistency .....	19
3.1.3	External Consistency .....	21
3.1.4	Plausibility .....	24
3.1.5	Other Relevant Factors .....	26
3.2	Step Two: Determine if the Credibility Concern is Material .....	26
3.3	Step Three: Inform the Applicant of Your Concern .....	26
3.4	Step Four: Give the Applicant an Opportunity to Explain.....	27
3.5	Step Five: Assess the Reasonableness of the Explanation .....	27
<b>4</b>	<b>WHAT MAY NOT BE CONSIDERED IN MAKING A CREDIBILITY DETERMINATION.....</b>	<b>27</b>
4.1	An Officer's Views of a Country or Situation.....	28
4.2	An Officer's Moral Judgment.....	28
4.3	An Officer's Personal Opinion about How an Individual Would Act.....	28
4.4	Use of an Attorney .....	29
4.5	Self-Serving Statements .....	29
4.6	Delay in Filing the Claim .....	29
4.7	Contact—Or Lack of Contact—with U.S. Embassy .....	29

4.8	Failure to Apply for Refugee Status in a Third Country.....	30
4.9	Similar Claims .....	30
4.10	Claims That Differ .....	33
4.11	COI Fails To Corroborate Claim .....	34
4.12	Ineligibility for Benefit.....	34
<b>5</b>	<b>ADDRESSING CREDIBILITY AT THE INTERVIEW.....</b>	<b>34</b>
5.1	Probing Credibility.....	34
5.1.1	Elicit general biographical information about the applicant at the beginning of the interview to establish a baseline .....	35
5.1.2	Listen carefully to what the applicant says .....	35
5.1.3	Elicit as much detail as possible.....	35
5.1.4	When appropriate, ask questions out of chronological order.....	35
5.1.5	When appropriate, ask the applicant to explain certain events a second time .....	36
5.1.6	Develop a firm understanding of any discrepancy before asking the applicant to explain .....	36
5.1.7	Take careful notes.....	36
5.1.8	Closely review documents submitted by the applicant.....	36
5.1.9	Provide the applicant an opportunity to address perceived credibility flaws .....	37
5.1.10	Remaining composed and professional, even if fraud is suspected .....	38
<b>6</b>	<b>SPLIT CREDIBILITY FINDING.....</b>	<b>38</b>
<b>7</b>	<b>TOTALITY OF THE CIRCUMSTANCES .....</b>	<b>40</b>
7.1	Cross Cultural Misunderstandings.....	40
7.1.1	Body language.....	40
7.1.2	Customs.....	40
7.1.3	Culturally-based perceptions.....	41
7.1.4	Interpreter's or applicant's English speaking ability, language, or dialect .....	41
7.2	Trauma from Flight and Past Persecution .....	42
7.3	Submission of Fraudulent Documents .....	43
7.3.1	General Rule.....	43
7.3.2	Considerations.....	43
7.4	Personal Background of the Applicant .....	44
7.5	Time Constraints.....	45
7.6	Difficulty in Evaluating the Behavior of a Stranger.....	45



7.7	Duty to Be Neutral and Unbiased .....	45
<b>8</b>	<b>INVESTIGATING CREDIBILITY ISSUES – SOME TOOLS TO USE IN EVALUATING CREDIBILITY FLAWS .....</b>	<b>46</b>
8.1	Except When / Especially When .....	46
8.2	Parallel Universe Thinking.....	48
8.3	Doubting and Believing Scale .....	49
8.4	Temporarily Set Aside Decision Making.....	50
<b>9</b>	<b>CONCLUSION.....</b>	<b>50</b>
<b>10</b>	<b>SUMMARY.....</b>	<b>50</b>
	<b>PRACTICAL EXERCISES .....</b>	<b>52</b>
	<b>OTHER MATERIALS.....</b>	<b>53</b>
	<b>SUPPLEMENT A – REFUGEE AFFAIRS DIVISION.....</b>	<b>54</b>
	Required Reading.....	54
	Additional Resources .....	54
	Supplements.....	54
	<b>SUPPLEMENT B – ASYLUM DIVISION .....</b>	<b>55</b>
	Required Reading.....	55
	Additional Resources .....	55
	Supplements.....	55
	<b>SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION.....</b>	<b>56</b>
	Required Reading.....	56
	Additional Resources .....	56
	Supplements.....	56

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

“If you give me six lines written by the most honest man, I will find something in them to hang him.”

– Cardinal Richelieu (1585–1642), Prime Minister of France

“Anyone who has ever tried a case or presided as a judge at a trial knows that witnesses are prone to fudge, to fumble, to misspeak, to misstate, to exaggerate. If any such pratfall warranted disbelieving a witness's entire testimony, few trials would get all the way to judgment.”

–Kadia v Gonzales, 501 F.3d 817, 821 (7th Cir. 2007).

## 1 INTRODUCTION

Evaluating the credibility of an applicant's testimony is fundamental to the evaluation of eligibility and, in many cases, is the determining factor. You must make an independent judgment as to the applicant's credibility in every case. While making your decision, you must remain impartial and unbiased.

All applicants for asylum and refugee status must submit an application form and must be interviewed. When an individual submits an application for asylum or refugee status, he or she is asserting eligibility for an immigration benefit based on his or her identity, past events, and fear of what might happen upon return to the home country. Other interviews conducted by officers in the RAIO Directorate, such as asylee/refugee following-to-join, naturalization, orphan, and certain relative petition cases, may also require an interview

and a credibility determination. The main purpose of the interview is to elicit and provide information related to eligibility for an immigration benefit or for some other official purpose. The interview also provides an opportunity for the interviewee to ask questions that he or she may have and to present relevant information.

This module provides guidance on general considerations in evaluating the credibility of an applicant, factors upon which a credibility determination may be based, factors upon which a credibility finding may not be based, and how to determine whether any non-credible aspects of a claim affect eligibility. Additionally, the module provides guidance on how to handle credibility issues that arise during the interview. The division-specific supplements provide guidance on how to record your credibility analysis – in asylum adjudications through the assessment or Notice of Intent to Deny (NOID) (See ASM Supplement Decision-Writing); in refugee adjudications through the assessment form (See RAD Supplement –Decision Recording; and in international operations through the Adjudications Worksheets and, where appropriate, Service Center return memoranda and decision letters.

## **2 GENERAL CONSIDERATIONS**

### **2.1 Duty to Remain Neutral**

Your duty as an adjudicator is to remain neutral and unbiased. You must evaluate the record as a whole and fairly assess the testimony and evidence you have gathered and which the applicant has presented to you.

### **2.2 Burden of Proof - A Cooperative Approach**

A non-adversarial interview requires a cooperative approach between you and the applicant. While the applicant must establish eligibility, you have a duty to fully and fairly develop the record – by conducting country of origin information research, where applicable, by carefully reviewing the file, and by eliciting testimony during the interview.

In the asylum and refugee context, credible testimony may be enough for the applicant to meet his or her burden unless you decide that corroborating documentation is necessary. In such cases, the applicant must provide the corroborating evidence unless he or she does not have it and cannot reasonably obtain it.

### **2.3 Take into Account the Factors as a Whole**

It is crucial that you consider all the evidence available to you when analyzing an applicant's credibility. In discussing the proper approach to credibility determinations, the Third Circuit outlined the following approach, stating that:

[an] overall credibility determination does not necessarily rise or fall on each element of the witness's testimony, but rather is more properly decided on the cumulative effect of the entirety of all such elements. Where, as here, the asylum applicant has presented testimony that was for the most part quite detailed, internally consistent, materially in accord with his asylum application, and accepted by the [adjudicator], and there is supportive evidence of general country conditions and some corroborative documentation of the applicant's testimony, the [adjudicator] is not justified...in concluding that the applicant is not credible based on a few equivocal aspects not logically compelled by the record or by reason or common sense.<sup>1</sup>

### *Examples*

- ***Matter of Pula***

The BIA found that the credibility of an applicant's testimony was not impeached by minor discrepancies in the written asylum application, which was prepared by interpreters, "[i]n view of the detail, consistency, and candor of the applicant's lengthy testimony."<sup>2</sup>

- ***Matter of O-D-***

The BIA upheld an immigration judge's (IJ) negative credibility finding in the asylum case of an applicant who submitted a fraudulent national identity card in an attempt to establish central elements of his claim – his identity and nationality – and failed to provide an explanation for doing so. There were also inconsistencies found between the applicant's testimony in his Form I-589 asylum application and his testimony at the immigration hearing. The BIA reviewed the IJ's credibility determination based upon the totality of the circumstances, considering not only the submission of the fraudulent document, but the entirety of the record and found "that the remaining inconsistent record presented by the respondent is insufficient to overcome the pall cast on the respondent's credibility by virtue of his submission of the counterfeit document."<sup>3</sup>

- ***Matter of B -***

Negative factors in a case must be balanced against positive factors to determine whether, on the whole, an applicant is credible. This proposition holds true even

---

<sup>1</sup> *Jishiashvili v. U.S. Attorney General*, 402 F.3d 386, 396 (3d Cir. 2005).

<sup>2</sup> *Matter of Pula*, 19 I&N Dec. 467, 472 (BIA 1987).

<sup>3</sup> *Matter of O-D-*, 21 I&N Dec. 1079, 1084 (BIA 1998).

where there are several factors that may point toward a lack of credibility. For example, in *Matter of B-* the BIA considered an IJ's negative credibility finding based on several factors – the applicant's allegedly evasive demeanor while testifying, inability to remember exact dates, departure to the U.S. while his brother and family remained behind, and failure to have others from Afghanistan testify to corroborate his general experience. In overturning the IJ's determination, the BIA, "impressed with the indications of the applicant's truthfulness," accepted the applicant's explanations for not looking at the judge while testifying and his inability to remember exact dates. The BIA also rejected the relevance of the applicant's brother's staying behind and discounted his failure to provide corroborating evidence that would have been of limited usefulness. Because the applicant's testimony was consistent throughout the examination and lengthy cross-examination, consistent with his written application, and contained no embellishments, the BIA found that on the whole, the applicant was credible.<sup>4</sup>

- *Matter of Kasinga*

Taking into account all the factors as a whole refers not only to the whole of the applicant's testimony, but also to the individual circumstances of each applicant. The BIA rejected a negative credibility finding that was based upon an alleged lack of rationality, persuasiveness, and consistency in the applicant's presentation, finding that the 19-year-old applicant presented a plausible, detailed, and internally consistent asylum claim. The BIA considered the applicant's age (17) at the time of her flight from her country, her father's death, her separation from her mother and control by an "unsympathetic aunt," her long journey to the U.S., her eight months in INS detention at several facilities, and her explanations for any possible credibility concerns when determining that the applicant was credible.<sup>5</sup>

## 2.4 No Moral Component

There is no moral component to credibility determinations. The purpose of evaluating the credibility of an applicant is solely to determine eligibility, not to punish the applicant if he or she is untruthful.

The fact that an applicant may have made untrue statements during an interview raises questions about the veracity of the claim and should be considered. However, not all untrue statements lead to a denial or referral of the application.

---

<sup>4</sup> *Matter of B-*, 21 I&N Dec. 66, 70-71 (BIA 1995).

<sup>5</sup> *Matter of Kasinga*, 21 I&N Dec. 357, 364 (BIA 1996).

*Example*

A Salvadoran citizen told an INS enforcement officer that he was Mexican. When the applicant applied for asylum, he asserted that he was Salvadoran. The Court of Appeals for the Ninth Circuit found that the immigration judge erred in finding that the misrepresentation made the applicant ineligible for asylum. The misrepresentation supported the claim for asylum eligibility, because the applicant's misrepresentation to the enforcement officer whom he feared might deport him was consistent with the applicant's testimony that he feared deportation to El Salvador.<sup>6</sup>

## 2.5 Credibility Concerns Must Be Clearly Articulated

A credibility finding must be clearly articulated and based on objective facts. It cannot be based on “gut feelings” or intuition, as intuition and gut feelings are unreliable, particularly when interviewing a stranger from a different culture through an interpreter. To ensure that your credibility determination is fair and impartial, follow the analytical framework outlined below.

## 3 AN ANALYTICAL FRAMEWORK FOR CREDIBILITY DETERMINATIONS

You must evaluate credibility in every case and carefully analyze the applicant's testimony in light of all of the evidence in the record. After gathering all the facts, if you find that the applicant is not credible, you must provide a specific, clearly articulated basis for the adverse credibility finding.<sup>7</sup>

An applicant's retelling of his or her story to you during the interview will inevitably have some flaws. Evaluating those flaws is fundamental to the evaluation of eligibility and arguably the most challenging part of your job.

The testimony an applicant gives during the interview must be reasonably detailed, consistent with what he or she and others say and have said before, and plausible in light of logic. This testimony is evidence, just like a passport is evidence of identity or a human rights report is evidence of the political and economic conditions of a specific country or region.

<sup>6</sup> *Turcios v. INS*, 821 F.2d 1396 (9th Cir. 1987).

<sup>7</sup> See, e.g., *Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998); *Hajiani-Niroumand v. INS*, 26 F.3d. 832 (8th Cir. 1994); and *Malek v. INS*, 198 F.3d 1016 (7th Cir. 2000).

The credibility determination is an evidentiary determination. It is the basis upon which you decide what evidence to use in your assessment and how much weight to give that evidence.

### *Factors upon which a Credibility Finding Must Be Based*

An applicant's testimony is credible if it is detailed, consistent, and plausible. Therefore, a clear and well-articulated basis for a negative credibility finding should accurately describe significant material flaws in consistency, detail, and/or plausibility.

The REAL ID Act of 2005 added some additional factors that may be considered in making a credibility determination, all based on prior case law. As discussed below, these factors apply only to asylum determinations and should be considered only as part of a negative credibility determination that finds flaws in consistency, detail, and/or plausibility. See "Other Relevant Factors" below.

You can minimize subjectivity in your credibility determinations by taking a methodical approach and using the following analytical framework, derived from existing statutory guidance and case law. This framework provides a step-by-step process for determining whether flaws in the applicant's testimony might lead to a negative credibility finding.

- Step One: Identify the type of credibility concern
- Step Two: Determine if the concern is material (relevant) to the claim
- Step Three: Inform the applicant of your concern
- Step Four: Ask the applicant to explain
- Step Five: Assess the reasonableness of the explanation

If there are no significant material flaws in the applicant's testimony, the applicant is credible.

### **3.1 Step One: Identify the Type of Credibility Concern**

There are four factors upon which you must always assess the credibility of an applicant's testimony:

1. Detail
2. Internal Consistency
3. External Consistency
4. Plausibility

There are other relevant factors that may be taken into consideration when making a credibility determination, but which must be used with caution and only after you have determined whether the testimony contained material flaws in detail, internal consistency, external consistency, or plausibility. *See Other Relevant Factors* below.

You must learn to identify and distinguish among these factors. For example, a political activist is unable to tell you the name of the party leader. Is this a lack of detail or a plausibility factor?

### 3.1.1 Detail

#### General Rule

An applicant should be able to provide sufficient detail to indicate first-hand knowledge of the events that form the basis of his or her claim. Therefore, the applicant's ability or inability to provide detailed descriptions of the main points of the claim is critical to the credibility evaluation. The applicant's willingness and ability to provide those descriptions may be directly related to your skill at placing the applicant at ease and eliciting all the information necessary to make a proper decision.<sup>8</sup> Impatience with an applicant or frequent interruptions may result in the applicant providing fewer details.

It is reasonable to assume that a person relating a genuine account of events that he or she has experienced will be able to provide a higher level of detail, especially sensory detail, about that event than he or she could if the account were not genuine. A person claiming a leadership role in an opposition political party should be able to provide more detail about the inner workings of the party, the leadership and the party goals, than someone who was merely a supporter. The more recent the event the greater the level of detail an applicant may be capable of providing. It is reasonable to expect more detail from an applicant describing events that took place within the past year than if he or she were describing events that took place several years ago.

The more detailed testimony an applicant gives, the more opportunities there will be for it to contain inconsistencies and contradictions. This is true for even the most truthful applicant. It is your job to determine whether those inconsistencies and/or contradictions are due to a lack of credibility or may be explained by other factors.

#### Factors That Impair Memory

In evaluating whether an applicant has provided sufficient detail to indicate first-hand knowledge of events, you must take into account the amount of time that has elapsed

---

<sup>8</sup> See RAI0 Training Modules, *Interviewing: Eliciting Testimony* and *Interviewing: Introduction to the Non-Adversarial Interview*.



since the events occurred; the possible effects of trauma; the applicant's background, education, and culture; and any other factors that might impair the applicant's ability to remember. Additionally, you should exercise caution in determining the type of detail you expect the applicant to remember and take into account the fact that different people notice and remember different things. If several people are questioned about an event they experienced together, each will probably remember different details. The applicant will not necessarily remember the type of detail you would remember in a similar situation.

### **Your Duty to Elicit Detail**

The applicant may not know the type of detail you seek and may believe that stating simply that he or she was arrested, without more, is sufficient to answer your question, "What happened?" Furthermore, in the refugee context, since the applicant may already have divulged the details to a case worker, he or she may believe that you already have the details.

It would be improper to find that an applicant failed to provide sufficient detail without first attempting to elicit detail from the applicant with follow-up questions. The purpose of the interview is to elicit all relevant and useful information bearing on the applicant's eligibility for the benefit being sought. Keep in mind that in a non-adversarial interview you control the interview. Therefore, you cannot reach a negative credibility finding based on lack of detail if you do not pose questions regarding the specific detail you are requesting.

#### *Example*

##### **Follow-up Questions Regarding an Arrest**

- "Please describe exactly what happened to you when you were arrested."
- "Where were you when you were arrested?"
- "Where were you taken when you were arrested?"
- "What was said to you when you were arrested?"

As with any credibility concern, if the applicant does not provide a reasonable amount of detail about an incident when asked specific questions, you must inform the applicant of your concerns and provide the applicant an opportunity to address those concerns and offer explanations for the lack of detail.

#### *Examples*

- "I've asked several questions about the circumstances surrounding your arrest, and you have only told me the place and time you were arrested. Please

provide me with information about where you were taken and how you were treated.”

- “If you are unable to provide these additional details, please explain to me why you cannot.”
- “You said that you printed political leaflets several times at your office and that you had to hide to do so. However, you told me you cannot describe the leaflets, where you got the paper, or how you were able to hide from your co-workers. Please explain why you cannot tell me these things.”

If after being asked follow-up questions focusing on specific details, the applicant still cannot provide any detail about the arrest, and if there is no explanation for the applicant’s inability to provide detail, the applicant may be found not credible.

### **The Applicant’s Obligation to be Truthful**

Just as you are obligated to elicit relevant details, the applicant is required to tell the truth and fully cooperate with you in establishing the facts of his or her claim. The applicant must:

- supply all pertinent information concerning him or herself and past experience in as much detail as is necessary to enable you to establish the relevant facts
- give a coherent explanation of all the reasons invoked in support of his application and should answer any questions you ask
- make an effort to support his or her statements by providing any available evidence, by giving satisfactory explanations for any lack of evidence, and by making every reasonable effort to procure necessary evidence

#### *Example*

#### **(Incorrect Adverse Credibility Finding Due to Lack of Detail)**

The applicant claimed that she was raped, but could not provide a description of the clothes the assailant was wearing.

#### *Example*

#### **(Correct Adverse Credibility Finding Due to Lack of Detail)**

An applicant from Nepal supplied only vague assertions that Maoists had been inquiring about him and gave few details. The applicant did not identify the

names of any of the Maoists or describe them in any way. Nor did he state how many were inquiring about him; why they were looking for him; what they wanted; why he thought their interest in him persisted given that they had not inquired about him since 2001; or why he continued to fear the Maoists in light of their apparent loss of interest in him. The IJ gave the applicant an opportunity to supplement his responses to provide more detail concerning any “fear [he has] of anything bad happening to [him] or has happened to [him],” but the applicant declined to do so.<sup>9</sup>

### 3.1.2 Consistency

An applicant’s statements (oral or written) that are internally consistent, consistent with the applicant’s other statements, and consistent with other evidence in the record, such as country conditions reports, may support a positive credibility finding.<sup>10</sup>

An applicant’s testimony may contain minor inconsistencies and omissions that generally will not, alone, undermine credibility. However, substantial, material inconsistencies or omissions are a negative factor that can lead, when viewed as part of the record as a whole, to an adverse credibility finding.<sup>11</sup>

Minor mistakes, such as those that result from faulty memory, may not reliably indicate that a claim is not credible. Whether an inconsistency is considered minor or substantial depends not only on the nature of the inconsistency, but also on the record as a whole.

Inconsistencies may arise during the course of the interview when the applicant contradicts himself or herself, or when the documentation presented by the applicant contradicts the claim. For example, a passport submitted to establish identity may reveal travel that indicates that the applicant was not in the country during a period when he or she claims to have been persecuted.

Inconsistencies also may occur between testimony given by family members on the same case and/or, in overseas refugee processing, between family members on cross-referenced cases.<sup>12</sup> In the following-to-join context, you may identify inconsistencies between

<sup>9</sup> *Shrestha v. Holder*, 590 F.3d 1034, 1046 (9th Cir. 2010).

<sup>10</sup> INA § 208(b)(1)(B)(iii); *Matter of Kasinga*, 21 I&N Dec. 357, 364 (BIA 1996).

<sup>11</sup> See *Ismail v. Mukasey*, 516 F.3d 1198 (10th Cir. 2008) (...the significance of an omission must be determined by the context, and rigid rules cannot substitute for common sense.), *Pop v. INS*, 270 F.3d 527 (7th Cir. 2001); (inconsistencies went to the heart of the asylum claim). See also *Bandari v. INS*, 227 F.3d 1160 (9th Cir. 2000) (discrepancies not significant enough to support adverse credibility finding).

<sup>12</sup> Refugee resettlement cases will often be cross-referenced with other family members. For purposes of refugee interviews, discrepancies between cross-referenced cases would be considered an inconsistency, though confidentiality should be considered when addressing such issues with the applicant. In the asylum context, RAPS

information in the principal refugee or asylum application and the following-to-join family member's testimony. These would be external credibility issues. Inconsistencies between the applicant's claim and reliable country conditions information would be considered external credibility flaws.

### **Internal Consistency**

Dealing with internal consistency requires you to assess whether “[t]he material facts are coherent and internally consistent with facts asserted by the applicant, witnesses or dependents, and with any [personal] documentary evidence relied upon by the applicant,”<sup>13</sup> such as identity documents. It is for you to consider how well the evidence fits together and whether or not it contradicts itself.

In the assessment of internal consistency, you should watch for the level of detail and the introduction of inconsistencies, keeping in mind at all times that there may be mitigating circumstances in some cases, such as mental or emotional trauma, inarticulateness, fear, or mistrust of authorities.<sup>14</sup> When dealing with either internal or external consistency make certain that you inform the applicant of your concerns (without violating confidentiality of other's asylum or refugee claims) and give the applicant an opportunity to address those concerns and offer an explanation.

### *Examples*

The following are examples of inconsistencies or omissions that, standing alone, generally would not lead to a negative credibility finding:

- The applicant failed to list on his written application two incidents that involved harm to relatives and that were collateral to his claim.<sup>15</sup>

---

may reveal cases of related family members, but for confidentiality purposes those cases should not usually be referenced in the decision making process. In the following-to-join context, information in the refugee or asylum application may relate to family relationships, including when and how the following-to-join applicant last had contact with the principal. While confidentiality rules preclude you from informing the applicant of those inconsistencies, they may direct the line of questioning to probe more deeply into the related issues. If some contradictory information comes to your attention, it should be treated as an external inconsistency since there is no legal connection between the two cases.

<sup>13</sup> European Asylum Curriculum Course on Evidence Assessment, online materials sub-module 3, unit 3.2 “Assessing the Claim’s Credibility” (Oct. 28, 2010).

<sup>14</sup> James A. Sweeney, *Credibility, Proof and Refugee Law*, 21 Int'l J. Refugee L. 700 (2009).

<sup>15</sup> *Aguilera-Cota v. INS*, 914 F.2d 1375 (9th Cir. 1990).

- The applicant stated on his written application that he had been shot at, but stated in oral testimony that he had never been shot at. The applicant explained that his representative (or in the refugee context, the RSC or UNHCR) was the one who made the statement in the written application and the applicant signed without reading it.<sup>16</sup>
- There was an inconsistency between applicant's statement on the application that he and his brothers were accosted by "unknown armed men," and his testimony that they were accosted by "death squads."<sup>17</sup>

The last example is an example of a very common perceived inconsistency that results when an officer fails to clarify language in an interview. It is very easy to resolve such inconsistencies during the interview. "When you say 'death squads,' what do you mean?"

### 3.1.3 External Consistency

External consistency relates to country of origin information (COI),<sup>18</sup> known facts, and other pieces of evidence provided by the applicant or ascertained by you in the course of your investigation.

#### Consistency with Known Objective Information

Material facts asserted by the applicant should be consistent with generally known facts and your COI research. Where relevant, you are required to conduct research into COI. In conducting that research you should keep in mind the difference between assessing the likelihood of future persecution and the more immediate task of determining whether the material facts asserted by the applicant in relation to past or current events are consistent with country information.

When an asylum or refugee applicant has established his or her general credibility (i.e., is sufficiently detailed, internally consistent and plausible), you can accept a claimed fact as credible when there is reliable COI to support the applicant's evidence about a material fact, and other reliable evidence does not contradict the applicant's account. For example, you will rarely find evidence that the applicant was a participant at a specific protest at a specific place and time. However, you may well find COI information to support the applicant's claim that there was such a protest at that place and time. If so, the applicant's testimony is externally consistent. Not all protests or other events, however, will be documented in COI. Nevertheless, you may still find those applicants

---

<sup>16</sup> *Garrovillas v. INS*, 156 F.3d 1010 (9th Cir. 1998).

<sup>17</sup> *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994).

<sup>18</sup> For additional information in using COI in adjudication, see RAI0 Training Module, *Researching and Using Country of Origin Information in RAI0 Adjudications*.

credible based on their testimony. When in doubt, discuss the issue with your supervisor who may discuss the issue with the RAIO research unit.

### **Contradictory Reliable Country of Origin Information**

Reliable COI that clearly contradicts a claimed material fact is a negative credibility factor.

#### *Example*

An applicant gives the name of a member of parliament representing the area where the applicant lived and voted, but reliable COI gives a different person as the member of parliament representing the applicant's area.

Keep in mind, however, that politicians are voted in and out, so you should make sure the COI you consult relates to the relevant period when the politician was elected to parliament and the relevant area where the applicant lived– the current country report may not provide this information. When you see a contradiction, make sure that it applies to the right period of time. Verify external information before applying it to the facts of the case.

Where there is a perceived inconsistency, you must confront the applicant to give him or her an opportunity to explain the inconsistency. You should review the record to ensure that you have permitted the applicant an opportunity to explain prior to dismissing the applicant from the interview. In some cases, inconsistencies between the applicant's statements and COI may not be discovered until after the interview. In such a situation the nature of the discrepancy must be analyzed. In some cases, the circumstances may warrant a re-interview of the applicant. You should consult with your supervisor about how to proceed.

### **Lack of Country of Origin Information**

With some claimed incidents or events there will be no corroborative objective evidence that the incident/event actually took place. This in itself would not be proof that the incident/event did not occur. The availability of information about an event might depend on the scale of the incident, the country situation, and the ability of the media or other organizations to report information. It may well be that the media is suppressed by the authorities in the particular country, and such incidents are purposely not reported.

### **Use Caution**

Countries' circumstances can change rapidly, and the most recent COI may not reflect the current situation. Also, use caution in evaluating an applicant's lack of knowledge regarding events or organizations in his or her country. An applicant may be unaware of

the clandestine activities of part of his organization due to a high level of secrecy within the organization or the applicant may be from a rural area to which news does not easily reach and the interviewee's viewpoint may be extremely localized. An applicant's gender, level of education, and/or socioeconomic status may also play a role in the type of COI knowledge the individual has or can reasonably be expected to have. See RAIO Training Module, *Researching and Using Country of Origin Information in RAIO Adjudications*.

### *Examples*

The following are examples of substantial inconsistencies that may lead to a negative credibility determination if the applicant does not provide a reasonable explanation for the inconsistency. As you read them, determine whether these inconsistencies would be considered "internal" or "external."

- The applicant testified that she was arrested and detained only once; however, she stated in her written application that she was arrested and detained twice and provided a detailed written description of each detention.
- The applicant initially testified that he fled his home the same day that he was threatened and went into hiding in a distant village. Later, the applicant testified that he stayed in his home village and continued to work for several weeks after he was threatened.
- The applicant claimed to have been harmed because she was a member of a political party in 1984, but country conditions reports establish that the party was not founded until 1990.
- The applicant claimed that she suffered lasting economic harm and was unable to earn a livelihood because she received poor conduct grades in school on account of her religion. Examination of her school transcript indicated that she received high marks in conduct throughout her years in school.<sup>19</sup>
- The applicant stated that he had witnessed only his father's kidnapping, not his uncle's, but later stated that he witnessed both being kidnapped. He stated that he never saw his father again after the uniformed men took him away, but also stated that his father and his uncle were both paraded past his house. His

---

<sup>19</sup> See, *Pop v. INS*, 270 F.3d 527 (7th Cir. 2001).

mother's letter, introduced as evidence, conflicted with all of the applicant's versions of the story.<sup>20</sup>

### 3.1.4 Plausibility

The facts asserted by the applicant should be plausible. That is, they should conform to objective rules of reality. If it is not plausible that the events in the applicant's country occurred as the applicant described, then the claim properly may be found not credible. Keep in mind, however, that the reality in many countries may be quite different than in the United States.

Being improbable or unlikely is not the same as being implausible. Improbable things happen frequently. What may appear to be implausible in the United States may be very common in another country.<sup>21</sup> In determining whether an applicant's story is plausible you should take great care to avoid substituting your own subjective feelings about how the world works for an objective determination of whether the events described by the applicant could be possible. Do not rely on your views of what is plausible based on your own experiences, which are likely to be quite different from the applicant's. Additionally, it is important to recognize that exceptional events do occur.

The finding that aspects of an applicant's claim are implausible must be supported by evidence in the record and may not be based on your personal beliefs or opinions. Your "finding that an applicant's testimony is implausible may not be based upon speculation, conjecture, or unsupported personal opinion."<sup>22</sup> "Personal beliefs cannot be substituted for [the] objective and substantial evidence" necessary to support a plausibility/implausibility finding.<sup>23</sup>

If you determine that an applicant's testimony is not plausible, you should provide an explanation with specific and clearly articulated reasons for your determination.

The fact that no corroboration of the existence of a particular group or event is found in country reports generally does not render the claim implausible. The weight to be given to the fact that country conditions information fails to corroborate a claim depends on the specific allegations, the country, and the context of the claim.

---

<sup>20</sup> See, *Bojorques-Villanueva v. INS*, 194 F.3d 14 (1st Cir. 1999).

<sup>21</sup> See *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994) ("As a general rule, in considering claims of persecution . . . it [is] highly advisable to avoid assumptions regarding the way other societies operate.")

<sup>22</sup> *Elzour v. Ashcroft*, 378 F.3d 1143, 1153 (7th Cir. 2004); *Jishiashvili v. U.S. Attorney General*, 402 F.3d 386, 393 (3d Cir. 2005).

<sup>23</sup> *Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000).



As explained by the Third Circuit, “[b]y requiring the [adjudicator] to tether a plausibility determination to evidence in the record, including evidence of country conditions or other contextual features, and rejecting speculative or conjectural reasoning, we ensure that there is a reasoned foundation to support the conclusion that the witness's testimony was objectively implausible.”<sup>24</sup>

When an applicant testifies in an interview to a material fact that seems implausible to you, always question the applicant closely about the details surrounding that material fact. If the applicant is able to provide a consistent and reasonable explanation of how the event occurred, that portion of the testimony is credible.

### *Examples/Practical Exercise*

Read the following fact patterns. For each example, determine whether the statement is plausible or implausible. We will discuss in class.

1. The applicant claimed that, although she was detained at the county jail two miles from her brother’s home, she watched, unaided by technology, from a jail window as the police entered her brother’s home and arrested him.

Plausible or implausible? \_\_\_\_\_

Explain: \_\_\_\_\_

2. The applicant’s claim indicated that she was pregnant with the same child for 16 months. When confronted with the implausibility of this, the applicant explained: “That is how we do it in my country.”

Plausible or implausible? \_\_\_\_\_

Explain: \_\_\_\_\_

3. The applicant claimed that the Stalinist Courts in Switzerland had persecuted him.

Plausible or implausible? \_\_\_\_\_

Explain: \_\_\_\_\_

4. A prison guard risked a government career by accepting a bribe of a gold bracelet.

Plausible or implausible? \_\_\_\_\_

Explain: \_\_\_\_\_

5. The applicant claimed that “the Moroccan government commonly forced political dissidents to leave the country and to sign a document promising never to return

<sup>24</sup> *Jishiashvili*, 402 F.3d at 393.

(or, at least not for ten years).” A report from the State Department indicated that “[t]here are no known instances of enforced exile in Morocco and that the government offered self-imposed exiles amnesty starting in 1994.”<sup>25</sup>

Plausible or implausible? \_\_\_\_\_

Explain: \_\_\_\_\_

6. A university-educated man said he spoke Punjabi, Hindi, Bengali, and English, could not read or write Punjabi, although he claimed to have lived in Punjab and operated a business there for eight years.<sup>26</sup>

Plausible or implausible? \_\_\_\_\_

Explain: \_\_\_\_\_

### 3.1.5 Other Relevant Factors

Other relevant factors include demeanor, candor, and responsiveness. These factors apply only in asylum adjudications. When considering these, use the analytical framework in this lesson to determine if a credibility concern is material and relates to detail, consistency, and/or plausibility. *See* ASM Supplement – REAL ID and Other Relevant Factors for these additional factors that you may take into consideration in the asylum context.

### 3.2 Step Two: Determine if the Credibility Concern is Material

A fact is material if it would influence the outcome of the eligibility determination because it relates to a required legal element. *See* “Applicant’s Burden” in RAIIO Training Module, *Evidence*. Another way to say this is a fact is material if it goes to the heart of the claim. If there are inconsistencies found, are they material to the claim? Do they lead to a conclusion that the applicant’s evidence is not credible? If the answer is no to both questions, there is no credibility concern.

In asylum claims, a credibility concern need not go to the heart of the claim. *See* ASM Supplement – REAL ID Act and “Other Relevant Factors.”

### 3.3 Step Three: Inform the Applicant of Your Concern

Insufficient detail: "Why can't you tell me more about...?"

Inconsistency within the testimony: "Earlier in the interview you said X, now you are saying Y..."

<sup>25</sup> *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001).

<sup>26</sup> *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

Inconsistency between the testimony  
and other evidence: "Your I-589 says X, now you are telling me Y..."

Implausibility: "How is it possible that...?"

### 3.4 Step Four: Give the Applicant an Opportunity to Explain

The following are suggested phrases for eliciting an explanation:

"Help me understand . . ."

"Why is there a difference between what is on your application and what you told me today?"

"Please explain to me . . ."

"Who completed this form?"

### 3.5 Step Five: Assess the Reasonableness of the Explanation

To determine if an explanation is reasonable, you should apply the same factors that are used to make initial credibility determinations. Ask yourself whether the explanation is detailed, consistent, and/or plausible. If it is, then the explanation is reasonable and the applicant is credible on that point. If the explanation is vague or inconsistent with another part of the record or the applicant's testimony, or implausible in light of logic or country conditions, then it is not reasonable and a negative credibility determination is justified.

#### *Examples*

Examples of reasonable explanations, depending on the context, include:

- I am sorry, my memory is poor and I misspoke earlier.
- The date on the application is the date using the calendar from my home country and is different from the one used in the United States.
- When the police came to my house the first time, they did not arrest me, that is why I told you I have only been arrested once.

## 4 WHAT MAY NOT BE CONSIDERED IN MAKING A CREDIBILITY DETERMINATION

There are a number of factors that should not be considered when making a credibility determination. The factors listed below are some of those; this is not an exhaustive list. Some of the following factors are always inappropriate to consider in evaluating credibility because they do not shed light on whether or not an applicant is credible. Other factors discussed below may be considered with caution or may lead you to test the applicant's credibility further during the interview. None of the factors, however, can form the sole basis for finding that a claim is not credible.

#### **4.1 An Officer's Views of a Country or Situation**

You may have lived in or traveled in a particular country, or you may have formed opinions about a country based on the experiences of friends or associates. Although knowledge gained from such experiences or contacts may be useful in developing lines of questioning during the interview or when gathering additional reliable COI, such personal knowledge is not evidence and your decision cannot be based in any way on such personal opinions and views.

#### **4.2 An Officer's Moral Judgment**

Your moral judgment of an applicant's behavior is irrelevant to a determination of whether or not events occurred as the applicant described. Moral judgments can never form the basis for a credibility determination. For example, in unusually strong language, the Ninth Circuit found it was inappropriate for the immigration judge to find that an applicant was not credible because he failed to marry the mother of his two children.<sup>27</sup>

#### **4.3 An Officer's Personal Opinion about How an Individual Would Act**

Your opinion about how an individual would act in a given situation or that an applicant has not acted rationally is irrelevant to a determination of whether or not events occurred as the applicant described. The comparison of how an applicant acted in a given situation to how the officer believes a "rational person" would act in such a situation is not a reliable indicator of credibility. What is rational to one person is not necessarily rational to another person, particularly if the two are from different backgrounds or cultures. Additionally, people do not always act rationally. For example, it would be inappropriate to find an applicant not credible because the officer believes that no rational woman would place herself at risk by publicly distributing anti-government pamphlets in a country where dissent is not tolerated and women do not take part in political life. If the facts of the case lead the officer to believe that the applicant acted in a manner that was unusual in light of the applicant's country and background, it is appropriate to ask the applicant about his or her behavior, in a non-adversarial, nonjudgmental manner, or to

---

<sup>27</sup> *Damaize-Job v. INS*, 787 F.2d 1332 (9th Cir. 1986).

test credibility by asking for additional detail. For example: “I understand that it must have been dangerous for you to distribute the pamphlets. What led you to take this risk?”

#### **4.4 Use of an Attorney**

The fact that the applicant files an application prepared by an attorney or consults with an attorney before making a statement does not indicate whether the application or statement is true or not. An applicant may be afraid to reveal information to a government official, or may not know which information is important to reveal, until consultation with an attorney.

However, if a statement made after receiving advice from an attorney contradicts an earlier statement made by the applicant, then you should elicit further information to determine whether there is a reasonable explanation for the change in testimony. Such inconsistencies and explanations should be considered in the same manner as any other inconsistencies and explanations that may arise in a case.

#### **4.5 Self-Serving Statements**

“Self-serving” refers *only* to statements that serve no purpose and provide no evidence, such as the statement, “I never tell lies.” You may disregard self-serving statements.

An applicant’s own statement in support of his or her claim is generally not a self-serving statement and you must consider it. Almost all the statements an applicant makes at the interview are made in an attempt to obtain a benefit. The fact that a supporting statement is made by the person seeking the benefit is not an indication that the statement is not relevant, reliable or credible.

#### **4.6 Delay in Filing the Claim**

The fact that an applicant did not apply for asylum or refugee status as soon as possible does not mean that the applicant fabricated the claim. A genuine refugee may wait until he or she is in a safe country before making a claim, may be unaware of his or her eligibility for refugee status, and /or may be unaware of the procedures for obtaining refugee status. If it is relevant to the claim, it is important to ask why the applicant delayed in filing and assess the applicant’s response.

#### **4.7 Contact—Or Lack of Contact—with U.S. Embassy**

The fact that an asylum or refugee applicant did not approach the U.S. Embassy in his or her home country is not necessarily relevant to a determination of whether or not events occurred as the applicant described. An applicant may have felt unsafe waiting in the country for the application to be processed, or may have believed that applying for a visa would have placed him or her at further risk. On the other hand, the applicant’s ability to obtain a visa may present a legitimate line of questioning during the interview. However, unless that part of the

testimony is materially inconsistent with the applicant's claim, it cannot form the basis for a negative credibility finding.

(Note: U.S. Embassies do not have authority to adjudicate claims for refugee or asylum status. They may refer cases to USCIS to make a refugee status determination, but they rarely do so.)

#### **4.8 Failure to Apply for Refugee Status in a Third Country**

The fact that an asylum or refugee applicant failed to apply for refugee status in a third country does not mean that the applicant lacks credibility. There may be many reasons why an applicant who fears persecution in his or her home country did not apply for protection in a third country, including economic, political, or family reasons. In such circumstances, it is important to ask the applicant why he or she did not apply in the third country and assess his or her answer.

#### **4.9 Similar Claims**

The fact that the applicant's claim is similar to other claims is not in itself determinative of credibility, because there are reasons that claims may be similar that are unrelated to the applicant's credibility. For example, an applicant's claim may be similar to other applicants' claims because there is a pattern of persecution in the applicant's country, resulting in many similar claims. Or, the applicant may have a genuine claim, but several other applicants copied it and filed their own claims based on the same or similar facts.

However, unrelated claims may also be similar because the applicants went to the same source for a fabricated claim. You may come across some "boilerplate" applications that are identical (word for word) or unusually similar in content. The fact that one application is identical to another may not in itself form the basis for an adverse credibility determination but may alert the officer to look particularly closely at the credibility of the claim. You must provide the applicant with an opportunity to present the full claim and explain any discrepancies between the testimony and the application in order to determine whether the applicant's claim is credible.

The following are two types of "boilerplates" you may encounter in the asylum or refugee context:

##### **Intra-proceeding similarities**

In *Surinder Singh v. BIA*, the Second Circuit upheld an IJ's adverse credibility finding based, in part, on "the nearly identical language in the written affidavits allegedly provided by different people in India in support of Singh's applications."<sup>28</sup> Citing Singh

<sup>28</sup> *Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006).

in a later decision the Court stated, "... our case law on intra-proceeding similarities has firmly embraced the commonsensical notion that striking similarities between affidavits are an indication that the statements are 'canned.'"<sup>29</sup>

If you encounter a case where affidavits of nearly identical language are submitted in support of a claim, you should closely question the applicant about the preparation of the affidavits: who prepared them, if not known; under what circumstances; and how the people who signed the affidavits had knowledge of the content. The officer should point out to the applicant the extreme similarity in the documents and provide the applicant an opportunity to explain why they are so similar. Such questioning will inform you about the evidentiary weight to give to the affidavits and their impact on the overall credibility determination.

In refugee processing, it is unlikely that the applicant would submit an affidavit from a witness. Applicants' statements are taken by UNHCR and/or the RSCs and the applicants, except in exceedingly unusual circumstances, do not have assistance of counsel or others outside the program to aid in their case preparation.

### **Inter-proceeding similarities**

The Second Circuit upheld an IJ's adverse credibility finding based on a comparison of striking similarities found in affidavits that were submitted separately in unrelated asylum applications.<sup>30</sup>

The court warned of the problems that such findings could entail, identifying four possible explanations for such similarities:<sup>31</sup>

- Both applicants may have inserted truthful information into a standardized template
- Different applicants may have employed the same preparer who wrote up both stories in their own rigid style
- The other applicant may have plagiarized the truthful statements of the applicant
- The similarities resulted from inaccurate or formulaic translations

---

<sup>29</sup> *Mei Chai Ye v. USDOJ*, 489 F.3d 517, 524-26 (2d Cir. 2007) ("We have repeatedly allowed IJs to take into account such "intra-proceeding" similarities because, in most cases, it is reasonable and unproblematic for an IJ to infer that an applicant who herself submits the strikingly similar documents is the common source of those suspicious similarities").

<sup>30</sup> *Mei Chai Ye v. USDOJ*, 489 F.3d 517 (2d Cir. 2007).

<sup>31</sup> *Id.* at 524.

The Court noted, favorably, the way the proceedings were handled, with the IJ “...meticulously follow[ing] certain procedural safeguards which, taken together, sufficiently addressed the dangers inherent in relying on inter-proceeding similarities.”<sup>32</sup> The Court then went on to describe the procedural safeguards in detail. The court found that, in relying on inter-proceeding similarities, a trier of fact should:

1. Carefully identify the similarities
2. Consider the number and nature of the similarities to determine if,
  - a. there is any likelihood that they are mere coincidence, or;
  - b. it is plausible that different asylum applicants inserted truthful information into a standardized template or, for illiteracy reasons, conveyed it to a scrivener tied to an unchanging style, or;
3. the similarities are due to a common translator converting valid accounts into similar stories, or
  - a. the applicant was an innocent victim of plagiarism.
4. Rigorously comply with procedural safeguards concerning notice,<sup>33</sup> by allowing the applicant meaningful opportunity
  - a. to explain or contest the similarities;
  - b. to investigate the possibility that her affidavit might somehow have been plagiarized; or
  - c. to consider whether the seemingly similar affidavits might merely have been translated or recorded inaccurately or formulaically.<sup>34</sup>

In the refugee context, there are times when refugees may have similar claims, which may or may not give rise to a credibility concern. Refugees often have spent many years living in either camps or urban settings with other refugees from their country and may

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 525 n.5 (explaining in greater detail the protections afforded by the notice requirements).

<sup>34</sup> *Id.* at 526, 527 n.9 (stating that “[t]here is nothing novel about our insisting on the application of heightened procedural protections to a context in which they are necessary to safeguard the integrity of the agency’s fact-finding function.”)



have heard that some stories ‘work’ for getting their cases approved. It does not mean, however, that the person sitting in front of you did not experience the claimed harm; you will need to elicit testimony to determine whether the applicant is credible.

## Considerations

Confronting an applicant about significant similarities between the applicant’s and others’ applications raises a number of issues that must be carefully handled, in close coordination with others in your chain of command, including supervisors, FDNS, and, in the overseas refugee processing context, the Refugee Affairs Division’s Security Vetting and Program Integrity Branch.

First, the confidentiality of the applicant must not be violated. The Court in *Mei Chai Ye*<sup>35</sup> made clear that an applicant must be given meaningful notice of the similarities and full opportunity to offer an explanation of those similarities before an adverse credibility determination may be based on boilerplate considerations. This may require you to allow an applicant to examine portions of the other similar applications, which raises confidentiality issues. The confidentiality issues may be addressed through proper redaction of identifying information.

Second, confronting an applicant with the fact that other significantly similar applications have been submitted by other applicants could possibly jeopardize an on-going fraud investigation. In some cases, most often in the asylum context, DHS may be investigating a particular “boilerplate preparer” for prosecution. Thus, it is important that you first consult with your supervisor and the FDNS officer assigned to your office to ensure that the any ongoing investigation is not jeopardized.

Third, an applicant who does not speak English may submit an application in English that is very similar to other applications filed by other applicants, yet insist that the applicant completed it himself or herself. It would not be appropriate to base an adverse credibility solely on lack of truthfulness about the preparation of an application.<sup>36</sup> However, such lack of candor may be appropriate to consider along with other relevant factors when evaluating credibility. While being untruthful about the identity of the person who prepared an application is not material to the actual claim, it may be another relevant factor to consider in the totality of circumstances. Being truthful about the preparation of an application is relevant to the applicant’s knowledge of its contents and thus relevant to the overall credibility of the claim.

## 4.10 Claims That Differ

<sup>35</sup> *Mei Chai Ye v. USDOJ*, 489 F.3d 517, 524-26 (2d Cir. 2007).

<sup>36</sup> In the overseas refugee processing context, Resettlement Support Center staff who are under cooperative agreement with the Department of State assist the applicant with filling out application forms; as such, this does not apply to refugee applicants.

You may become familiar with certain types of claims originating from a particular country. However, the fact that a given claim may be different from other claims made by refugee applicants from the same country is not necessarily in itself determinative of credibility. Human behavior is rarely consistent, and as a result, events in any given country cannot be expected to always be consistent.

#### **4.11 COI Fails To Corroborate Claim**

The fact that country condition information does not corroborate the applicant's claim is not necessarily determinative of credibility. In some instances, you may be the first to learn about a particular instance of human rights abuses or other developments in another country. In some refugee-producing countries, freedom of expression and association is non-existent, and human rights monitors are prevented from visiting the country or areas of unrest. This makes it difficult for organizations that document human rights abuses to obtain up-to-date information. Even where human rights monitors have access to a country, they are not able to document every human rights abuse that occurs.

The instance in which COI does not corroborate the claim should not be confused with the instance in which COI is clearly and directly inconsistent with the claim. Where country conditions do not corroborate the claim, the country conditions simply fail to address or shed light on the applicant's situation. Where COI is clearly and directly inconsistent with the claim, COI might show the claim is not plausible. In some instances, the applicant's details may be inconsistent with COI because the applicant experienced or witnessed the event differently.

#### **4.12 Ineligibility for Benefit**

The fact that the applicant does not qualify for the benefit sought is not relevant to the credibility determination. For example, it is possible that an applicant for refugee status is truly and honestly afraid of future harm, but his or her fears are not objectively reasonable based on country information. Therefore, the applicant's testimony may be credible, but his or her fears are not well-founded.

### **5 ADDRESSING CREDIBILITY AT THE INTERVIEW**

The interview is the most important tool that you have in assessing credibility. Most of the direct evidence that you develop for each case will come during the interview. The most important thing to keep in mind during the interview is that it is your responsibility to elicit as much relevant information as you can.

#### **5.1 Probing Credibility**

---

In general, the following techniques should aid you in evaluating the credibility of applicants. Some of the techniques discussed below apply specifically to cases in which fraud is suspected.

### **5.1.1 Elicit general biographical information about the applicant at the beginning of the interview to establish a baseline**

Such information should include where the applicant lived, with whom he or she lived, whether the applicant continued living at the same residence until departure from his or her country, where the applicant worked, when the applicant stopped working, and information about the applicant's schooling. General biographical information, contained in the application, provides a general picture of the applicant's life. You may then take the applicant's background into account when evaluating the type of information you expect the applicant to be able to provide.

Additionally, applicants who have fabricated asylum or refugee claims sometimes are not prepared for all of the basic background information elicited at the beginning of the interview and therefore may present this type of evidence truthfully. If an applicant has fabricated a claim, it may conflict with this general baseline biographic information, which may alert you that the claim is not genuine.

### **5.1.2 Listen carefully to what the applicant says**

Only by listening carefully to the applicant's testimony can you determine whether it is consistent. You should also remain attentive to avoid missing information. If you miss information, you may be unclear about whether information related later in the interview is consistent with information related previously.

### **5.1.3 Elicit as much detail as possible**

If an applicant is not credible, he or she may not be able to provide details about the alleged events that form the basis of the asylum or refugee claim. For example, if the applicant claimed to have been a political leader who actively campaigned by giving speeches at rallies, you should consider eliciting information about the party. If the applicant cannot describe basic information about the party (such as its goals or structure), the credibility regarding the extent of his participation in the party is put into question. Furthermore, if an applicant is fabricating a story, asking the applicant to provide greater detail can result in a higher probability of an inconsistency being discovered.

### **5.1.4 When appropriate, ask questions out of chronological order**

If an applicant is not telling the truth, he or she may have memorized the story in sequence. If you ask questions so that the applicant is required to describe events out of chronological order, the applicant may not be able to relate the story accurately. Caution must be

exercised, however, because a truthful applicant who is nervous, forgetful, or suffering from the effects of trauma might also become confused when having to explain events out of order. It is also helpful to elicit general baseline biographic information in chronological order, as explained above, before eliciting information about the claim for asylum or refugee status. An applicant who is fabricating a claim may not be able to fit the claim in the chronology of the biographical information. When engaging in this practice, you must take particular care not to create confusion through unclear questioning; instead ensure that the applicant is aware of the precise time period or event about which you are questioning him or her.

### **5.1.5 When appropriate, ask the applicant to explain certain events a second time**

If the applicant is not being truthful, he or she may relate events differently the second time. You must exercise caution in assessing whether the two answers provided are actually inconsistent or whether the applicant is just providing additional detail that was not initially requested.

### **5.1.6 Develop a firm understanding of any discrepancy before asking the applicant to explain**

Before asking about a discrepancy, it may prove helpful to rephrase questions or repeat back to the applicant what the applicant said to be sure that the meaning is clear. Eliciting additional information surrounding an apparent discrepancy may clarify facts or create a stronger record of the discrepancy. The point is not to trap an honest applicant in a lie, but rather to carefully develop a record of relevant information that you will use to evaluate the applicant's eligibility. Therefore, when you notice one or more inconsistencies, it is important to have a firm understanding of those discrepancies before asking the applicant to explain them.

### **5.1.7 Take careful notes**

Evidence of the reasons for a negative credibility finding must be documented in the interview notes. For asylum or refugee interviews, you must record all of your questions and the applicant's answers in a modified Q&A format (*see* RAIIO Training module, *Interviewing – Note Taking*). If you have recorded the applicant's statements carefully, you will be able to refer to specific testimony when questioning the applicant about any inconsistencies. This can help avoid confusion and may prevent disputes about what the applicant did or did not say earlier in the interview. Finally, if there is a request for review of the decision, the reviewer must have a clear record in order to understand whether the credibility determination was made correctly.

### **5.1.8 Closely review documents submitted by the applicant**

You should carefully examine the contents of any documents the applicant submits when he or she is still in your office, paying particular attention to names and dates. After the

applicant has presented his or her claim, you should compare it with the information in the documents and ask the applicant about any discrepancies. It is often difficult to determine whether documents issued in another country are genuine. If they are not genuine, or if the applicant's claim is fabricated, then the information contained in the documents may not match the details of the applicant's claim or biographical data.

However, you should keep in mind that sometimes applicants obtain false documents in order to leave their country to escape harm. Also, in some countries, it is easier for an individual to pay to get fraudulent civil documents than it is to get genuine documents. Possession of false documents, in itself, may not be a sufficient basis to make a negative credibility finding or to find an applicant ineligible for the benefit sought. In the asylum and refugee context, you must determine whether any discrepancies between documents and the applicant's testimony present inconsistencies that are material to the applicant's claim. When processing asylee/refugee following-to-join cases or family-based immigrant petitions, you may issue a request for evidence and suggest DNA testing when fraudulent documents are submitted to establish a parent-child relationship.

### **5.1.9 Provide the applicant an opportunity to address perceived credibility flaws**

Raising a concern regarding a discrepancy does not always have to happen immediately. Sometimes the issue will resolve itself as the claim is developed. Raising each inconsistency immediately can stifle the flow of the interview and the applicant's train of thought. It may confuse the applicant, resulting in the appearance of a credibility issue when in fact none might exist. This could also make you appear skeptical or lacking in neutrality. You should find a way to make note of discrepancies during the interview. Later, at an appropriate time before the close of the interview, you should review all of the discrepancies noted and make sure they have been resolved. See RAIO Training module, *Interviewing – Eliciting Testimony*.

As noted above, you must provide the applicant an opportunity during the interview to explain any inconsistency, implausibility, or lack of detail that you discover. The applicant may have a legitimate reason for having related testimony that appears to contain an inconsistency, or there may have been a misunderstanding between you and the applicant. Similarly, there may be a reasonable explanation for a discrepancy or inconsistency between information on the application and the applicant's oral testimony. On the other hand, if the applicant does not offer a reasonable explanation after being given an opportunity to do so, you may make a negative credibility determination.

It is incumbent on you to have sufficiently reviewed the materials in the case file prior to the interview to be able to identify any inconsistencies in the course of the interview and confront the applicant with them at the time of the interview. Nonetheless, there may be some rare situations (for example when submitted documents are later discovered to be fraudulent) in which you discover a discrepancy or misrepresentation only after the

interview. If the inconsistency is material and affects the outcome of the refugee or asylum case, every effort should be made to conduct a second interview. In some cases, a second interview may not be possible. In this type of situation, you should request guidance from his or her immediate supervisor or team leader.

While current case law is silent on how to determine whether an explanation is reasonable, a technique you can employ to assist you in making such determinations is to apply the same factors that are used to make the initial credibility determination. Ask yourself whether the explanation is detailed, consistent, and plausible. If it is, then the explanation is reasonable and the applicant is credible on this point. If the explanation is vague, inconsistent with another part of the record or the applicant's testimony, or implausible in light of logic or country conditions, then it may not be reasonable and a negative credibility determination may be justified. In analyzing whether an explanation for an inconsistency is reasonable, you must be able to articulate specific and cogent reasons. You must also take into account the explanations provided by the applicant.

#### **5.1.10 Remaining composed and professional, even if fraud is suspected**

You should never argue with applicants. When you ask an applicant to explain the reasons for apparent inconsistencies, implausible statements, or lack of detail, the applicant may become defensive, evasive, and/or argumentative. However, you must remain professional at all times and not argue with the applicant or confront the applicant in a manner or tone that puts an applicant on the defensive. One effective way of doing this is to lead off confronting the applicant about an inconsistency by saying, "Help me understand..." In a non-adversarial manner, you should simply ask the applicant to explain the inconsistency, ask for further clarification if necessary, and write the applicant's explanation in the interview notes.

Similarly, you should remain composed and you must avoid unprofessional body language. If you do not believe an applicant, you should not use body language to convey your disbelief. For example, you should not tap the desk impatiently, ask a rapid series of leading questions, shake your head or laugh in disbelief, or roll your eyes.

## **6 SPLIT CREDIBILITY FINDING**

In some cases, you may determine that part of the applicant's testimony is not credible, but that another part is credible. You should identify those parts of the testimony that were found not credible, explain why they were found not credible, and state whether they are relevant to the applicant's claim. You should also identify those parts of the claim that were deemed credible. In some instances, unexplained credibility concerns related to part of the applicant's testimony can be a basis for finding that the entire testimony is not credible.

### *Examples*

- In a case involving a Christian from Pakistan, the IJ found credible the testimony that the petitioner was a Christian, but found not credible his account of incidents he claimed to have suffered in Pakistan on account of his religion. The IJ denied based on the adverse credibility finding. The petitioner filed a motion to reopen based on updated country reports that purportedly detailed increasingly harsh conditions for Christians in Pakistan. The BIA denied the motion on the ground that the proffered evidence did not address the IJ's original adverse credibility finding against the petitioner. The Second Circuit found that the new evidence may establish a well-founded fear despite the negative credibility finding on the past persecution claim. The court did not analyze the basis for the adverse credibility finding, only whether that testimony “necessarily infects related but essentially freestanding claims made by the same petitioner.”<sup>37</sup> The court held that “an applicant may prevail on a theory of future persecution despite an IJ's adverse credibility finding as to past persecution, so long as the factual predicate of the applicant’s claim of future persecution is independent of the testimony that the IJ found not to be credible.”<sup>38</sup>
- Likewise, in a case involving an Ethiopian government crackdown on opposition sympathizers, the Seventh Circuit held that the applicant’s claim of future persecution was “distinct from her evidence of past persecution concerning her detention and beating for participating in the AAPO.”<sup>39</sup> According to the court, “[g]iven these distinct facts, the prior adverse finding need not undermine [the applicant’s] theory of future persecution.”<sup>40</sup>
- The Ninth Circuit has refused to rely on testimony regarding a subjective fear of future persecution because of an adverse credibility determination of the applicant’s past persecution claim. The court held, “[w]e cannot rely on [the applicant’s] testimony as establishing the subjective element [of the well-founded fear test], [] because the IJ and the BIA, with substantial basis in the record, found that the ‘applicant’s testimony [was] not worthy of credence.’”<sup>41</sup> The court, however, found the applicant’s fear of future persecution to be genuine because of the substantial documentary evidence providing strong support for the objective component of the applicant’s well-founded fear claim.<sup>42</sup>
- A negative credibility determination with respect to a future persecution claim will not per se defeat an asylum claim where there is evidence of past persecution. In a Chinese forced sterilization case, the Fourth Circuit held that even though an applicant failed to credibly demonstrate a well-founded fear of future persecution, the

<sup>37</sup> *Paul v. Gonzales*, 444 F.3d 148, 154 (2d Cir. 2006).

<sup>38</sup> *Id.*

<sup>39</sup> *Gebreeyesus v. Gonzales*, 482 F.3d 952, 955 (7th Cir. 2007).

<sup>40</sup> *Id.*

<sup>41</sup> *Al-Harbi v. INS*, 242 F.3d 882, 890 (9th Cir. 2001).

<sup>42</sup> *Id.*

IJ erred in failing to consider the applicant's claim of past persecution based on his wife's forced abortion.<sup>43</sup>

## 7 TOTALITY OF THE CIRCUMSTANCES

You must base your credibility determination on the totality of the circumstances in the claim, taking into account any cross-cultural misunderstandings that may have arisen, translation or language difficulties, trauma the applicant has suffered, the applicant's background, your time constraints and the difficulty in evaluating the behavior of a stranger. During your determination, you have a duty to remain neutral and unbiased.

### 7.1 Cross Cultural Misunderstandings<sup>44</sup>

#### 7.1.1 Body language

The meaning of body language varies from culture to culture. These differences can cause the applicant, interpreter, and you to misconstrue the non-verbal signals of one another.

##### *Examples*

- While indicating affirmation in the United States, nodding the head indicates negation in some other cultures. If you are insensitive to cultural differences, you might erroneously suspect that an applicant is lying when he verbally answers, "No," but at the same time nods his head.
- Eye contact is another form of body language that has different meanings in different cultures. An applicant may not maintain eye contact with you out of deference to or respect for a person in authority. You generally should not view this as a sign of evasiveness.

#### 7.1.2 Customs

A cultural *faux pas* may distract you or the applicant, resulting in responses or non-verbal signals that might be misconstrued as signs of untruthfulness.

##### *Example*

A female officer might shake the hand of an Asian Buddhist monk, not knowing that this would be considered extremely inappropriate in the monk's culture. This action may disturb the monk (and/or the interpreter) and, until he regains composure, may

---

<sup>43</sup> *Lin-Jian v. Gonzales*, 489 F.3d 182, 191-92 (4th Cir. 2007).

<sup>44</sup> See RAI0 Module, *Cross-Cultural Communication*.



cause the monk (and/or the interpreter) to reply to questions in a shaken manner - giving an impression that he is not being forthright.

### 7.1.3 Culturally-based perceptions

To accurately assess credibility, you must be sensitive to differences in culturally-based perceptions.

#### *Examples*

- Different cultures have different perceptions of and measurements of time. In some cultures, events are remembered not by specific dates, but in reference to seasons, religious holidays, or other important events. Even in cultures where time is measured by calendar, the applicant may be using a different calendar than the Gregorian calendar used in the United States, and errors are sometimes made in translating from one calendar to another.
- In some Asian cultures, a child is considered to be one year old at birth. Thus, an applicant from one of those cultures may state that he or she is 30 years old, while a calculation of the age based on the birth date in the application might indicate that the applicant is 29 years old, by Western standards.
- Identification of family members also varies between cultures. For example, an individual referred to as “brother” in one culture may actually be considered a “cousin” in another culture.

### 7.1.4 Interpreter’s or applicant’s English speaking ability, language, or dialect<sup>45</sup>

Usually, English is neither the applicant’s nor the interpreter’s first language. Therefore, their ability to speak and understand English may be limited.

Even if both the applicant and interpreter understand English, misunderstandings may arise from having learned English in another country. There may be nuances of American English with which they are not familiar.<sup>46</sup>

In some cases, the applicant and interpreter may not speak the same first language, or may speak distinctly different dialects of the same language. Using a language or dialect that one or both do not speak or understand fully will cause problems in the interpretation.<sup>47</sup>

<sup>45</sup> For additional information, see RAI0 Module, *Interviewing: Working with an Interpreter*.

<sup>46</sup> See *Senathirajah v. INS*, 157 F.3d. 210, 213 and 219 (3d Cir. 1998).

<sup>47</sup> See *Amadou v. INS*, 226 F.3d 724 (6th Cir. 2000).

Furthermore, the interpreter's and applicant's inexperience with interpretation and the interview process can create an obstacle to good communication. The applicant may speak too rapidly or explain too much at once, making it difficult for all information to be interpreted accurately. Likewise, an officer may ask several questions at once, speak too quickly or give a long explanation. These factors may lead to misunderstandings that, if unresolved, can adversely affect the credibility evaluation.

### *Examples*

- An immigration judge ruled that an applicant was not credible due to inconsistencies in his testimony and failure to establish his identity. The Sixth Circuit ruled that the applicant was denied a fair hearing because the interpreter was incompetent. Although the interpreter was fluent in English and Fulani (the applicant's first language), he spoke a different dialect of Fulani than the applicant. An examination of the record indicated several instances of misunderstanding between the applicant and the interpreter.<sup>48</sup>
- An immigration judge found that a Guatemalan applicant was not credible. The U.S. Court of Appeals, Ninth Circuit, found that the record indicated that the Quiché-speaking applicant did not understand some of the questions being interpreted for him. Although the interpreter was interpreting in Quiché, the applicant's answers to the IJ's questions indicated a lack of understanding. The interpretation problem was exacerbated by the aggressive questions from the IJ.<sup>49</sup>
- A Haitian applicant whose application stated that she lived with her father, was asked where she lived after her father was killed. She replied that she stayed with her relatives in Cape Haitien. In Haitian Creole, there is one word that means both 'parent' and 'relative'—'paran.' The interpreter, however, interpreted the word as 'parents,' causing the officer to doubt the applicant's veracity.
- A Spanish-speaking applicant was asked why she did not immediately flee her country after being threatened. She replied that she could not, using the word "embarazada" meaning that she was pregnant and could not travel. The interpreter stated that she was too "embarrassed" to travel.

## **7.2 Trauma from Flight and Past Persecution<sup>50</sup>**

<sup>48</sup> *Amadou v. INS*, 226 F.3d 724 (6th Cir. 2000).

<sup>49</sup> *Perez-Lastor v. INS*, 208 F.3d 773 (9th Cir. 2000).

<sup>50</sup> See RAI0 Module, *Interviewing Survivors of Torture and Other Severe Trauma*.

Many asylum and refugee applicants have experienced trauma to some degree. Severe trauma such as torture can greatly affect the survivor long after the actual event. Trauma sufferers may not wish to discuss the details of their experiences; they may have difficulty remembering all of the events that occurred; and may exhibit other symptoms, such as an inability to maintain eye contact, loss of composure, anxiety, and suspicion of others. These factors can give the appearance that the applicant is not being forthright at the interview.

### 7.3 Submission of Fraudulent Documents

#### 7.3.1 General Rule

**Knowingly** submitting a false document to prove a central element of an applicant's asylum claim may indicate lack of credibility. "Such fraud tarnishes the [applicant's] veracity and diminishes the reliability of [the applicant's] other evidence."<sup>51</sup>

#### 7.3.2 Considerations

"Ordinarily, it is reasonable to infer that a respondent with a legitimate claim does not usually find it necessary to invent or fabricate documents in order to establish asylum eligibility. On the other hand, there may be reasons, fully consistent with the claim of asylum, that will cause a person to possess false documents, such as the creation and use of a false document to escape persecution by facilitating travel"<sup>52</sup> or lack of knowledge that the document is fraudulent.<sup>53</sup>

The Ninth Circuit agreed with the manner in which the BIA distinguished between the two types of uses of fraudulent documents and their different impacts on a credibility determination:

The BIA set forth a clear division between two categories of false document presentations: (1) the presentation of a fraudulent document in an asylum adjudication for the purpose of establishing the elements of an asylum claim; and (2) "the presentation of a fraudulent document for the purpose of escaping immediate danger from an alien's country of origin or resettlement, or *for the purpose of gaining entry into the United States.*" (emphasis added)... The BIA concluded [in *Matter of O-D-*] that the applicant's presentation of the fraudulent documents, "submitted to prove a central element of the claim in an asylum adjudication, indicates his lack of credibility." The BIA then carefully distinguished such false presentations from those in the second category of cases. In the second category, the use of false documents to facilitate travel or gain entry does not serve to impute a lack of credibility to the petitioner. The BIA stated, "there may be reasons, fully consistent with the claim of asylum that will

<sup>51</sup> *Matter of O-D-*, 21 I&N Dec. 1079, 1083 (BIA 1998).

<sup>52</sup> *Id.*

<sup>53</sup> *Corovic v. Mukasey*, 519 F.3d 90, 97-98 (2d Cir. 2008).

cause a person to possess false documents, such as the creation and use of a false document to escape persecution by facilitating travel.” We [the Ninth Circuit] agree with the BIA's classifications.<sup>54</sup>

Note that for the submission of a false document to support a negative credibility finding, the evidence in the record must establish that the applicant *knew* that the document he or she submitted was fraudulent.<sup>55</sup>

### *Examples*

- The Eighth Circuit upheld a negative credibility finding against an applicant from Haiti who “submitted fraudulent documents relating to a core asylum issue (i.e., that supporters of the former president killed his brother and he feared a similar fate), failed to provide a satisfactory explanation for having done so, and failed to present other credible documentary evidence to support his allegations of political persecution.”<sup>56</sup>
- In a case involving an applicant who alleged to have been persecuted for writing newspaper articles critical of the Albanian government, the IJ “found that [the applicant] was not a credible witness because the [Forensic Document Lab] determined that the author attributions in the newspaper articles were added after publication and, in one of the papers, other text had been erased from the author name area on the page before [the applicant’s] name had been added on top of it. Because the newspaper articles were so central to [the applicant’s] asylum claim and because the articles were altered, the [IJ declined to believe [the applicant’s] testimony.”<sup>57</sup> The Seventh Circuit upheld the negative credibility finding that was based solely on the submission of these allegedly false newspaper articles.

## 7.4 Personal Background of the Applicant<sup>58</sup>

The level of education or sophistication of an applicant may affect his or her ability to articulate a claim. If you perceive that the applicant is having difficulty articulating a claim, you should review the baseline you established early in the interview to ensure that that you are asking questions appropriate to the applicant’s level of involvement, age,

<sup>54</sup> *Akinmade v. INS*, 196 F.3d 951, 955-56 (9th Cir. 1999).

<sup>55</sup> See, e.g., *Corovic v. Mukasey*, 519 F.3d at 97-98 (holding that when an applicant contests that he or she knowingly submitted a fraudulent document, the IJ must make an explicit finding that the applicant knew the document to be fraudulent before the IJ can use the fraudulent document as a basis for an adverse credibility determination).

<sup>56</sup> *Ambrose v. Gonzales*, 411 F.3d 932, 933 (8th Cir. 2005). See also *Kourski v. Ashcroft*, 355 F.3d 1038, 1039 (7th Cir. 2004); *Yeiman-Behre v. Ashcroft*, 393 F.3d 907, 912 (9th Cir. 2004); *Selami v. Gonzales*, 423 F.3d 621 (6th Cir. 2005).

<sup>57</sup> *Hysi v. Gonzales*, 411 F.3d 847, 852 (7th Cir. 2005).

<sup>58</sup> See RAI0 Module, *Cross-Cultural Communication*.

history of trauma, or other element and inquire further into the applicant's background to determine if there are reasons, other than lack of credibility, that explain the applicant's inability to express the claim. A close review of the biographical data in the application may give you information that indicates the applicant's level of sophistication.

In questioning an asylum or refugee applicant whose claim is based on religion or membership in an organization, it is important to establish at what level the applicant participated. A mere member or supporter cannot be expected to have the same knowledge as a leader or intellectual in a movement. A clear distinction must be made between adherents and experts.<sup>59</sup>

## 7.5 Time Constraints

Time pressures are a reality for you. However, attempting inappropriately to rush an interview may cause you to lose focus, become impatient, and miss information related by the applicant. This could lead you to believe erroneously that the applicant did not provide enough detail, that there were gaps in the applicant's testimony, or that the testimony was internally inconsistent. Some interviews may simply take longer to conduct in order to evaluate credibility accurately. You should follow your division's procedures in your interview.

## 7.6 Difficulty in Evaluating the Behavior of a Stranger

Generally, you will not have previously encountered the applicants you interview. First impressions of an applicant may be unreliable. Care should be taken to avoid misinterpreting the applicant's actions and words.

For example, an applicant's reticence and confusion in answering questions may indicate that the applicant is shy, did not understand your question, or fears authority figures, rather than indicate that the applicant is not telling the truth. An initial impression that an applicant is truthful because he or she can easily relate the claim may also be erroneous, because the applicant's fluency may be due to an outgoing personality rather than a credible story.

## 7.7 Duty to Be Neutral and Unbiased

Your duty is to adjudicate claims in a neutral manner, free of personal opinions, preferences, and biases. If you are not neutral, as you are required to be, this lack of neutrality may result in erroneous decisions, including erroneous credibility

---

<sup>59</sup> *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir.2006); *Cosa v. Mukasey*, 543 F.3d 1066, 1070 (9th Cir. 2008) (“Remarkably, the IJ set up a Bible quiz and an academic trivia contest as the foundation for the adverse credibility finding. Cosa claimed no expertise in Bible study or passages nor did she claim to have an intellectual's understanding of Millenism”).

determinations. Lack of neutrality can affect the way you view evidence, the way you make a decision, and how you treat an applicant. You should avoid conjecture based on your personal world-view, known approval or denial rates, or your perceptions of fraud in previous cases. Your personal views cannot substitute for actual evidence in the record.

For example, you may have learned that the human rights conditions in country X are among the worst in the world. If you feel that all applicants from there are deserving of refugee or asylee status, you are not adjudicating the case in a neutral manner. This bias should not lead you to overlook inconsistencies in an application from country X or to forget to inquire about mandatory bars, for the applicant before you might not be eligible for protection.

On the other hand, you may have just interviewed several applicants from country X and found them not credible. You cannot assume that all applicants from that country are fabricating their claims. If you do, you have breached your duty to be a neutral adjudicator. Lack of neutrality may cause you to deny otherwise eligible applicants based solely on the country of origin or type of claim presented.

## **8 INVESTIGATING CREDIBILITY ISSUES – SOME TOOLS TO USE IN EVALUATING CREDIBILITY FLAWS**

Maintaining your role as a neutral adjudicator can be difficult. As discussed above, your own personal baggage and your own subjective opinions could affect profoundly the outcome of your credibility analysis. Below are four effective aids you can use to help you remain neutral.

1. Except When/Especially When
2. Parallel Universe Thinking
3. Doubting and Believing Scale
4. Temporarily Set aside Decision Making<sup>60</sup>

### **8.1 Except When / Especially When**

This is a particularly useful tool when you are basing your decision in whole, or in part, on a generalization. If you are trying to explain your reasons for an adverse credibility determination and you find yourself saying to yourself, “Everybody knows...” you are probably engaging in a generalization of some sort. You need to examine that generalization, try to test it, and, if necessary, narrow it.

---

<sup>60</sup> This is generally not an option in refugee processing, and is subject to case processing time limitations within other divisions.

You test a generalization in three stages:

- Articulate your generalization.
- Add “except when” and brainstorm as many different circumstances as you can.
- Add “especially when” and brainstorm as many different circumstances as you can.<sup>61</sup>

### *Examples*

- A generalization that is used quite often in credibility determinations is *falsus in uno falsus in omnibus*, or false in one thing, false in all things. Stated in plain English, this generalization means: If an applicant has lied about one thing, it is probable that he or she is lying about everything. Ask yourself: How true is this generalization? Post-REAL ID Act, several circuit courts have addressed the issue of *falsus in uno, falsus in omnibus*. The First Circuit has applied this concept and noted, in dicta, that the REAL ID Act endorses it.<sup>62</sup> The Seventh Circuit has rejected the application of this concept, stating:

The immigration judge failed to distinguish between material lies, on the one hand, and innocent mistakes, trivial inconsistencies, and harmless exaggerations, on the other hand. In effect, he applied the discredited doctrine of *falsus in uno, falsus in omnibus* (false in one thing, false in all things), which Wigmore called “primitive psychology,” and in a characterization that we endorsed, an “absolutely false maxim of life.”<sup>63</sup>

The Second Circuit has also addressed the issue of *falsus in uno*, but has addressed it using the “Except When/Especially When” analysis. The Second Circuit applied the concept, affirming the immigration judge’s adverse credibility determination based on the applicant’s submission of a single fraudulent document to prove the nexus element of his claim. In affirming the IJ decision the court looked more closely at the generalization, in order to conform to circuit precedents and identified five exceptions to the general rule, none of which applied in the case before it.<sup>64</sup> The five situations where *falsus in uno* will generally not apply, as identified by the Second Circuit are as follows:

<sup>61</sup> D. Binder & P. Bergman, *Fact Investigation: From Hypothesis To Proof* (West Pub., 1984).

<sup>62</sup> *Castaneda-Castillo v. Gonzales*, 488 F.3d 17, 23 n. 6 (1st Cir.2007).

<sup>63</sup> *Kadia v Gonzales*, 501 F.3d 817, 821 (7th Cir. 2007) (citations omitted).

<sup>64</sup> *Siewe v. Gonzales*, 480 F.3d 160, 170 (2d Cir. 2007).

- A finding that an applicant submitted false evidence does not excuse the assessment of evidence that is independently corroborated.<sup>65</sup>
- The presentation of fraudulent documents that were created to escape persecution may actually tend to support an individual's application.<sup>66</sup>
- False evidence that is wholly ancillary to the alien's claim may, in some circumstances, be insufficient by itself to warrant a conclusion that the entirety of the alien's uncorroborated material evidence is also false.<sup>67</sup>
- A false statement made during an airport interview, depending on the circumstances, may not be a sufficient ground for invoking *falsus in uno*. Aliens may "not be entirely forthcoming" during the initial interview due to their perception that it is "coercive" or "threatening," particularly aliens who may have a well-founded fear of government authorities in general.<sup>68</sup>
- An alien's submission of documentary evidence that the alien does not know, and has no reason to know, is inauthentic, is no basis for *falsus in uno*.

The court engaged in a process similar to "Except When/Especially When" and in doing so crafted a rule that clearly limits the application of the general rule. The "Except When" analysis will help you to find the limits of a generalization and you can use the "Especially When" analysis to help narrow an overly broad generalization.

## 8.2 Parallel Universe Thinking<sup>69</sup>

Parallel Universe Thinking is a process in which you set aside your judgment or disbelief of an applicant's statement or behavior in order to brainstorm on what possible reasons, *in a parallel universe*, might cause a person to actually do what the applicant claimed. This is a tool that helps you overcome your own cultural biases and apply what you have learned about cross-cultural/inter-cultural communications problems. It helps you understand behavior and asks you to brainstorm alternative explanations for the applicant's behavior that you might find initially puzzling or annoying. This tool requires that you suspend your certainty regarding realities you may not yet fully comprehend. It requires that you engage in constructive ignorance, reminding yourself about how much

<sup>65</sup> *Poradisova v. Gonzales*, 420 F.3d 70, 77 (2d Cir.2005).

<sup>66</sup> *Lin v. Gonzales*, 445 F.3d 127, 132-33 (2d Cir.2006).

<sup>67</sup> *Zhong v. USDOJ*, 461 F.3d 101 (2d Cir. 2006).

<sup>68</sup> *Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir.2005).

<sup>69</sup> Bryant and Peters, *Five Habits of Cross Cultural Lawyering*, reprinted in *Race, Culture, Psychology, and Law* 57-59 (Kimberly Holt Barrett & William H. George eds., 2004).]



you do not know about the applicant, before rushing to judgment. You must try to understand the applicant's world and behavior as *the applicant* understands it.

The goal of "Parallel Universe Thinking" is to avoid jumping to conclusions based on your own cultural biases and recognize that other possible explanations exist. You might find yourself in a position of disbelieving something an applicant tells you about what he or she did, or what was done to him or her, because "people just don't act that way." When you find yourself having such a thought, ask yourself if you were in a "parallel universe," what are some possible explanations for the statement or behavior? Employing the tool of Parallel Universe Thinking will help you understand whether there might be a credible explanation for an applicant's statement or behavior that you might have misunderstood based on cultural or personal bias.

### 8.3 Doubting and Believing Scale<sup>70</sup>

*There was a case of two asylum officers who worked in the same office, under the same supervisor, and who had radically different grant rates—one over 50% and the other under 10%—even though they interviewed the same pool of applicants. When the supervisor was asked why the disparity, he answered, "One officer expects every applicant to be truthful and the other expects every applicant to lie."*

Most people tend to be either "doubters" or "believers" as part of their general outlook on life. Whichever tendency is characteristic of you, it will affect your credibility determinations. One way you can control for your natural tendencies is to subject each case to systematic doubting and believing.

Methodological doubting and believing is a form of critical thinking. Usually critical thinking is thought of as a process in which ideas or information are analyzed through systematic skepticism, subjecting everything to question and accepting nothing on its own. Most people, even those who tend to be believers, are comfortable with critical thinking as an exercise in skepticism. It is harder to play "the believing game"<sup>71</sup> in which you try to be as welcoming as possible to every fact the applicant asserts, actually trying to believe him or her. The purpose of methodological believing is to find the hidden virtues in the applicant's claim—a mirror image of methodological doubting, where the goal is to discover the flaws. You should try to engage in both methods in order to evaluate a claim completely. It is important to know yourself and have some idea of where you tend to fall on the believing/doubting spectrum. If you tend to be a doubter, you should put more effort into methodological believing. If you tend to be closer to the believing end of the scale you should put more effort into methodological doubting.

<sup>70</sup> Peter Elbow, *Embracing Contraries: Explorations in Learning and Teaching* (Oxford, 1986).

<sup>71</sup> Peter Elbow, *The Believing Game and How to Make Conflicting Opinions More Fruitful*  
[http://scholarworks.umass.edu/context/peter\\_elbow/article/1001/type/native/viewcontent](http://scholarworks.umass.edu/context/peter_elbow/article/1001/type/native/viewcontent)

## 8.4 Temporarily Set Aside Decision Making

If you feel distracted by a behavior or characteristic of the applicant or the applicant's attorney, rather than allowing this immaterial or irrelevant factor to affect your decision-making, you might try this tool. Within reasonable limits, set aside the case and come back to it when the distracting characteristic has faded from your memory. Rely on your notes and reach your decision from the record before you. One BIA Member wrote that reviewing the written record in a case was a "substantial, and much underrated, advantage" that insulated the BIA from "the almost inevitable, and often distracting, frustrations and extraneous factors that could accompany such personal interaction . . ." <sup>72</sup> Because RAO officers work under significant time constraints that support the goals and integrity of our programs, setting aside a such a case must not interfere with the decision making timeframes established by your office. Speak with your supervisors so that you understand your office policy. This method is generally not available to Refugee Officers engaged in refugee processing overseas, unless they need further guidance from Headquarters.

## 9 CONCLUSION

Assessment of credibility is an evidentiary determination. There is no moral component to credibility; the issue is to determine what evidence is reliable enough on which to base your decision.

## 10 SUMMARY

A methodological approach to credibility breaks the evaluation of credibility down into three determinations.

- Internal consistency— whether the material facts are internally coherent and consistent with facts asserted by the applicant through his or her production of evidence
- External consistency— whether material facts are consistent with independent evidence such as COI or other sources that may be introduced by the applicant or you, the adjudicator
- Plausibility— whether the facts asserted by the applicant conform to the objective rules of reality

<sup>72</sup> *Matter of A-S-*, 21 I&N Dec. 1106, 1114 (BIA 1998)(Schmidt, dissenting).

Credibility analyses should be based on factors such as consistency, detail, and plausibility. You may also consider, in the totality of the circumstances, other factors such as demeanor, candor, and responsiveness; inaccuracies or falsehoods; and any other relevant factor, but you should not base the credibility determination on these factors alone.

Credibility analyses should not be based on such factors as:

- Your moral judgment
- Your personal opinion about how an individual would act
- The fact that applicant's testimony supports his or her application.
- Delay in filing the claim
- Contact— or lack of contact— with the U.S. Embassy
- The fact that the applicant's story is similar to other claims
- The fact that the applicant's story differs from other claims
- The fact that COI fails to corroborate the claim
- The fact that a refugee or asylum applicant's fear does not appear to be well-founded

In the asylum and refugee context, the interview is the most important tool you have in assessing credibility. There are various techniques you can employ to test for credibility, but the most important technique is to conduct as thorough an interview as possible. The more detail you elicit, the better your credibility determination will be. During the interview you should address with the applicant any concerns you have about the applicant's credibility and give the applicant an adequate opportunity to respond to your concerns and attempt to answer them.

**PRACTICAL EXERCISES**

**Practical Exercise # 1**

- **Title:**
- **Student Materials:**

OTHER MATERIALS

There are no Other Materials for this module.

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**RAD Supplement**

**Inadmissibility under INA §212(a)(6)(C)**

A principal applicant who lies to obtain, or attempt to obtain, a benefit for himself or herself, or for an unqualified family member, may be inadmissible under INA §212(a)(6)(C). In order to invoke this provision:

1. the misrepresentation must be willful
2. there must be evidence of the lie or misrepresentation (such as DNA findings or contradictory testimony).

General inconsistencies will usually lead to a finding that the applicant is not credible rather than inadmissible under INA §212(a)(6)(C).

**SUPPLEMENT B – ASYLUM DIVISION – DRAFT**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**Supplement will be added at a later time.**

**REQUIRED READING**

- 1.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

**ASM Supplement**  
**Supplement will be added at a later time.**

**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**There are no IO Supplements**

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>IO Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
--