

# Overview of Revised Credible Fear Lesson Plan

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Asylum Division

USCIS

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- Credibility
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- Establishing a Credible Fear of Torture
- Other Issues

# Burden of Proof and Standard of Proof

# Burden of Proof – Evidence

- Applicant must provide sufficiently convincing evidence
- Facts must satisfy every element of relevant legal standard
- Asylum Officers must conduct interview in non-adversarial manner
- Purpose of CF interview: elicit all relevant and useful information bearing on CF determination
- Testimony is evidence
- Must provide specific facts
- If asking for corroborating evidence
  - *Notice to applicant*
  - *Opportunity to submit*
  - *Must provide evidence unless cannot reasonably obtain it*

# Burden of Proof – Use of COI

- Added language further highlighting the use of COI
- Emphasizes use of credible COI sources such as the following:
  - *Department of State*
  - *Other USCIS offices*
  - *International organizations*
  - *Private voluntary agencies*
  - *News organizations*
  - *Academic institutions*
- Emphasizes use of COI to inform evaluation of applicant's claim

# Standard of Proof

- Updated language cited from U.S. Court of Appeals for the D.C. Circuit to describe the significant possibility standard as:
  - *higher than the standard of “significant evidence” but lower than that of “preponderance of the evidence.”*
  - *The standard requires the applicant to identify more than “significant evidence” that the applicant is a refugee entitled to asylum, withholding of removal, or deferral of removal, but the applicant does not need to show that the “preponderance” or majority of the evidence establishes that entitlement.*

# Applicable Law

Where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue, the interpretation most favorable to the applicant is used when determining whether the applicant meets the credible fear standard.

**Grace footnote:** If the *Grace* order is lifted, then officers must apply law of circuit where the alien is located.

# Credibility



# Assessing Credibility when Making a Credible Fear Determination

- Reminder:
  - *If CBP documents indicate that additional information was gathered from the applicant regarding the nature of his/her claim, then...any inconsistencies should be probed and addressed in evaluating credibility*
  - *New case cite: Matter of J-C-H-F-, 27 I&N Dec. 211 (BIA 2018).*
    - Immigration Judge should assess the accuracy and reliability of the interview based on the totality of circumstances, rather than relying on any one factor among a list or mandated set of inquiries.
- **Grace footnote**: If *Grace* order is lifted, must also apply circuit court case law cited to in the LP footnote

# Documenting a Positive Credibility Determination

- The officer must specify the basis for credibility finding in the written analysis
- Positives: The officer should note any specific portions of testimony that contributed to the officer's overall credibility determination, including:
  - *specificity of the presentation*
  - *consistency with corroborating evidence submitted or country condition reports available*
  - *any other factors about the applicant's:*
    - narrative,
    - demeanor, or
    - presentation
- ...that weighed in favor of a positive credibility determination.

# Establishing a Credible Fear of Persecution

# Persecution- Claims based on Well-Founded Fear

- To establish a WFF:
  - *The applicant must show (1) subjective fear of persecution, and (2) that such fear has an objective basis.*
  - *Subjective element established when applicant credibly articulates genuine fear (apprehension or awareness of danger)*
  - *Objective element established if applicant demonstrates PP and not rebutted by COI and has a WFF*

# Persecution- Claims based on Well-Founded Fear Cont.

- Likelihood of Future Harm Standard
  - *Extensive discussion of Cardoza-Fonseca, emphasizing not to focus on 10% statistical probability.*
  - *There is no single, binding interpretation of Cardoza-Fonseca’s discussion of ‘well-founded fear,’ including its suggestions about a one-in-ten chance.”*

# Persecution- Motivation

- Replaces “one central reason” language with “at least in part”/”one reason” language, applying law most favorable (i.e. the 9th circuit standard for withholding from *Barajas-Romero v. Lynch*)
- **Grace footnote:** If the injunction in Grace is lifted, then officers outside of the 9th circuit must use the “one central reason” standard.

# Persecution- PSGs

- There is no general rule against claims involving domestic violence and gang-related violence as a basis for membership in a particular social group. Similarly, there is no general rule that proposed particular social groups whose definitions involve an inability to leave a domestic relationship are circular and therefore not cognizable.

# Persecution- PSGs cont.

- When there are no precedent decisions on point, in determining whether a PSG is valid an officer only needs to determine whether the group comprises individuals who share a common, immutable characteristic.
- While a PSG cannot be defined exclusively by the claimed persecution, each PSG should be evaluated on its own merits. If the proposed social group definition contains characteristics independent from the feared persecution, the group may be valid.
- **Grace footnote:** If the injunction in *Grace* is lifted, officers must follow the BIA's 3-prong analysis (immutability, particularity, and social distinction)



# Persecution- Gov't Unable/Unwilling to Control

- It is not sufficient for an applicant to assert that the government lacks sufficient resources to address criminal activity.

# Persecution- Internal Relocation

- Adds language that the officer “must consult all available and salient information, including information in the objective country conditions set forth in Department of State country reports.”
- Emphasizes that in cases in which the persecutor is a non-governmental entity and the applicant has not established past persecution, the applicant has the burden of establishing that internal relocation is not reasonable.

# Establishing a Credible Fear of Torture

# Convention Against Torture (CAT) – Credibility

- An adverse credibility determination on the persecution claim does not necessarily defeat a claim made under the Convention Against Torture.
- Must consider all evidence, such as COI

# Convention Against Torture (CAT) – Harm by a Public Official

- “Public official” - any person acting on behalf of a national or local authority or any national or local government employee regardless of whether the official is acting in their official or personal capacity
- Applies Ninth Circuit holding in *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017).
- “Acting in an official capacity” does not modify “public official.”
- ***Grace footnote: If the injunction in Grace is lifted, then officers should apply the law of the relevant circuit as to whether or not actions taken by a public official acting in a purely private capacity will satisfy the state action element.***

# Other Issues

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# Other Issues- No General Presumption Against Certain Types of Cases

- Each claim must be evaluated on its own merits (Matter of A-B-)
- No general presumption against recognizing any particular type of fear claim (Matter of A-B-)
- Analysis whether proposed PSG is cognizable should be evaluated on a case by case basis (Matter of M-E-V-G-)

# Other Issues- No Need for Applicant to Formulate/Delineate PSG

- Officer cannot require applicant to formulate or delineate PSGs



# Case Example:

(b)(6)

- [redacted] is an 18-year old girl from [redacted] (DOB: [redacted])
- She entered the U.S. in April 2017 by walking across the border with other [redacted] she met on her trip to the U.S. At her entry, she was apprehended by U.S. immigration officers. The following day, she was placed in removal proceedings and was placed in Office of Refugee Resettlement (ORR) custody until May 2017, when ORR released her into the custody of her maternal aunt in a city in your jurisdiction.
- In Immigration Court, the applicant expressed her interest in filing for asylum.
- **Question:** Would your asylum office be involved in this case?



# Case Example

(b)(6)

- At her Immigration Court master calendar hearing in December 2018, [REDACTED] stated she wanted to file for asylum.
- What is the procedure for her to file for asylum with USCIS?



# Case Example

(b)(6)

- files for asylum on December 15, 2018. She is scheduled for an interview with you in July 2019.
- What do you need to know to determine whether USCIS has jurisdiction?



(b)(6)

# Case Example

- [redacted] mother resides in the same town as [redacted]. Aunt [redacted] feeds and cares for [redacted] on a daily basis.
- Is [redacted] unaccompanied for initial jurisdiction purposes?

(b)(6)

