

Notes: Understanding the Current Legal Landscape for Asylum Seekers:
Myths and Realities- 10/23/18 at Gateway Community Services

Panel:

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ILAP:

100% win rate for the cases they take, over 140 current cases, always doing intake, but don't have enough attorneys, money and resources to help all.

Problem: Too many Asylum seekers, and not enough resources in Maine to help accommodate these numbers. People come here for the welcoming environment and services we provide (General Assistance) but too many for a small city and one ILAP

Need to have viable claim based on one or more of these 5 grounds:

Race, religion, nationality, affiliated with political opinion, membership of social group

Proof/documentation of asylum claim: Anything that can be reasonably documented, such as: diploma if attended certain school, documentation from physician verifying physical harm suffered etc. – it depends on their claim. But people should never tell an asylum seeker they MUST have certain documentation because then the fear is they'll produce a fake document or think they don't have a case without it.

People don't necessarily have an asylum claim if they've just experienced violence – it has to be one or more of the 5 grounds listed above.

CAUTION: People are sometimes being advised by others in their (country of origin) community to “just say this or that” in order to make a stronger claim. It is bad advice, and they should never put anything in the application that is not the absolute truth. If their stories are found not to align with the truth, they will be denied. Even when they are completely truthful, they sometimes get confused about time lines or dates and it is held against them, so embellishing just makes it worse.

LIFO - Last In, First Out: Those filing now are being heard sooner than those who filed months (or years) ago.

All info available at ILAP's website – it's very user friendly.

Procedure:

1. Apply for Asylum - file Asylum application I-589, One year to submit application, with a viable claim;
2. Get a receipt back from USCIS with date for Interview; Do not always need an attorney for the interview – but it's best to try – there's a greater chance of winning case if it's well documented from the time applicant submits I-589 to each interview and hearing. Applicant needs to have an interpreter with them for interviews (if they are not fluent in English) and for the Immigration Court hearing if they are referred there, because it is complicated even for someone

- with decent English. They MUST have an attorney at the Immigration Court hearing to maximize their chances of winning;
3. After 1st interview, applicant will get letter saying whether they're granted asylum or referred to Immigration Court;
 4. 'Master Calendar' date – this is a meeting to determine the date for the Court hearing. This is when one really needs an attorney (if they don't already have one).
 5. Immigration Court for hearing: they are either granted asylum or denied by letter some time after the hearing. If denied, attorney can advise the feasibility of an appeal, but it's rare that appeals are successful.
 6. USCIS begins the process of removal, which can take months or years. In the meantime they are often allowed to continue working and living under the cloud of removal. They may be detained, but most are not.

Once a person is granted asylum they are a permanent resident (like refugees who come in through federal refugee program), and after 5 years can apply for citizenship

If they are denied? Takes months to get removed, may not be detained, but eventually deported back to original country. If they illegally continue to live in country ("under the radar") and are found, they'll be detained, then deported.

Biggest issues - What do we do for them? How do we help them with finding their next option for those denied Asylum? What are the questions to ask next?

Is there a way to coordinate our needs, to see if there is a way we can work best for the asylum seeker?

How do the people get into the country? Affirmative asylum seekers come in with some kind of visa – tourist, student or business visas are most common.

Attorney General has taken it upon himself to issue directives narrowing possible ways to grant asylum. He has also begun to refer cases to himself, and then denying them without due process. Gang-related claims and domestic violence claims are examples of claims he says will no longer be considered overall. There are always exceptions, so attorneys will file under those circumstances if they believe the person has a strong claim.

Entering the US without visa (border crossers – mostly from Central America): they say they want to claim asylum (defensive asylum seekers coming over the borders), then most often get detained. While they have the right to file for asylum, they are often denied that right and returned, or they may be released with a notice to appear in court.

If people decide to try filing in a different state (or transfer their pending application), must move to that jurisdiction (i.e. a state with possibly more resources) then ask for the case to be transferred. But they also need to look at whole picture before moving: can they get housing, assistance with rent and food, if they have a work permit, can they get a job and afford to live there. They should make sure they have legal help lined up before making that decision.

There are about 3,000 pending applications for Maine residents.

Going to Canada:

While people are increasingly deciding to try to cross the border to Canada, it's risky (not at designated border crossings, but unpatrolled areas). If stopped by US border patrol, they can be turned back, or detained. If detained, there is wide discretion about what USCIS can do: detain and release, proceed with deportation, or a mix of options. If asked, mentors and advocates need to be sure to give information on risks, but not advice about whether they should go, as it is illegal to suggest someone break the law. Asylum seekers need to know their rights, and the consequences. They also need to know what may happen once they get to Canada.

Other issues:

Many advocates and asylum seekers are hitting a wall in finding the resources for helping those seeking asylum. They want to assist in helping with I-589, but It is difficult for lay people to ask the questions attorneys need to ask. Filling out the application often retraumatizes people by asking the questions that will be asked in the interview. Care must be taken by lay people not to unintentionally appear to be "engaging in the unlicensed practice of law"

Due to the low success rates at the asylum interviews people wonder if it's a good use of Attorneys time to go to the 1st interview – though building the case begins immediately (when application is filled out) and the work carries through and builds throughout the case, it is possible to prepare and go to the 1st interview before engaging an attorney. Practically speaking, many people have to go to the interview without an attorney, and can be supported by mentors and advocates by being sure they have rides, interpreters, and constantly reinforced to tell the truth, ask for a question to be repeated if they don't understand, and answer truthfully if the hearing officer says there are discrepancies (if they say a different date, sequence of events, name different witnesses, etc, just explain why they may remember it differently now).

Need to bring own interpreter. The interpreter for the Hearing Officer at interview is there to monitor the client's interpreter.

Recommend for people trying to help: help people get information on other states (to with more legal resources and higher acceptance rates). Increases chances of getting legal representations.

This is a summary of the discussion and Q & A. For more information or clarity, email: Nancy Markowitz, Welcoming the Stranger: nmark88@gmail.com or Lucky Hollander, Hopeful Links: lucky.hollander@gmail.com