

THE ASYLUM PROCESS IN THE UNITED STATES: A CRUCIAL NEED FOR ERROR-FREE TRANSLATION AND INTERPRETING

- ATA ANNUAL CONFERENCE
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SEEKING FREEDOM FROM PERSECUTION: THE ROLE OF PROFESSIONAL TRANSLATORS AND INTERPRETERS



NUMBERS AND FACTS

- 2006: 26,113 individuals were granted asylum in the US
 - 12,873 through the affirmative process
 - 13,240 through the defensive process
- 10 top countries of origin:
 - China (21.3%)
 - Haiti (11.5%)
 - Colombia (11.4%)
 - Venezuela (5.2%)
 - Ethiopia (3%)
 - Indonesia (2.8%)
 - Guatemala (2.5%)
 - El Salvador (2.3%)
 - Cameroon (2.2%)
 - Albania (2.1%)

DEFINITION OF ASYLUM

- Definition of Asylum
- "Unable or unwilling to return to his/her country because of persecution or a well-founded fear of persecution on account of:
 - Race
 - Religion
 - Nationality
 - Political Opinion
 - Or Membership in a particular Social Group"

DEFINITION OF ASYLUM

- The concept of "persecution" is defined by the immigration courts, the Board of Immigration Appeal (BIA) and the Circuit Court of Appeals
- "*The infliction of suffering or harm upon those who differ... in a way that is regarded as offensive.*"
- Persecution is carried out by the government or a group the government is unable or unwilling to control

A WELL-FOUNDED FEAR

- A reasonable possibility of persecution
 - Fear of an event happening with a less than 50% chance occurrence
 - Establishing a 10% chance of being shot, tortured, or otherwise persecuted

A WELL-FOUNDED FEAR

- Applicant must demonstrate both a subjective and an objective component
 - Subjective: actual fear of returning to home country
 - Objective: specific facts through evidence or persuasive, **credible** testimony. Translators and Interpreters play a critical role in this process

A WELL-FOUNDED FEAR

- *Matter of Mogharrabi*: the four elements set by the BIA for the applicant to establish a "well-founded fear" of persecution
 - Applicant possesses a belief or characteristic a persecutor seeks to overcome by means of punishment;
 - The persecutor is already aware that the applicant possesses this belief or characteristic;
 - The persecutor has the capability of punishing the applicant;
 - The persecutor has the inclination to punish the

PAST PERSECUTION

- If past persecution exists, presumption of future persecution
- Rebutting presumption weighs on government
- Changed country conditions doctrine
- Preponderance of the evidence
- Severity of the past persecution
- Applicant must show nexus between past or feared future persecution and the five protected grounds for asylum

THE FIVE GROUNDS FOR ASYLUM

- Race
- Religion: mere membership is not enough
- Nationality: citizenship or membership in an ethnic or linguistic group
- Political opinion: actual or imputed
- Membership in a Particular Social Group: individuals sharing certain characteristics that they cannot or should not be required to change

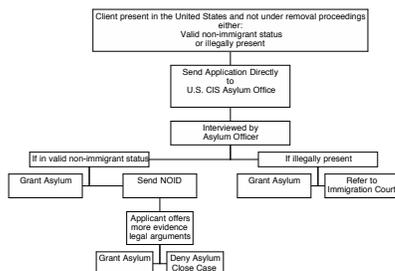


THE SYSTEM OF ASYLUM

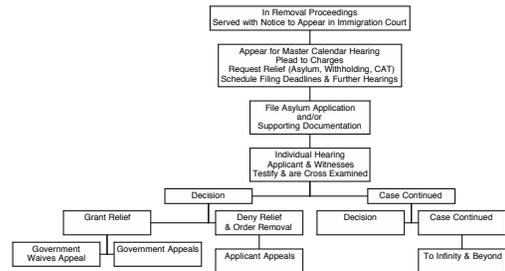
- Two ways to apply for asylum
- Affirmative application: entry while in status; or illegal entry but not apprehended
- Defensive application: illegal entry



AFFIRMATIVE APPLICATION



DEFENSIVE APPLICATION



THE ROLE OF TRANSLATORS AND INTERPRETERS

- Filing the asylum application
- Translation of documents: birth, marriage and death certificates, university diploma, employment records, hospital records, police records, news articles...
- Preparation of the "declaration"
- Preparation for court or the asylum office (multiple sessions)

THE ROLE OF TRANSLATORS AND INTERPRETERS

- Translators and Interpreters assist in other settings related to the asylum process:
 - Psychological assessment and evaluation
 - Medical assessment and evaluation

THE ROLE OF TRANSLATORS AND INTERPRETERS

- Clip from "Well-Founded Fear" a PBS documentary about asylum in the United States
- <http://www.pbs.org/pov/pov1999/wellfoundedfear/>

DURING THE ASYLUM INTERVIEW

- Applicant is responsible for bringing his/her own interpreter to the asylum interview
- Ideally interpreter is a trained, professional interpreter
- In reality, less than 5% of interpreters assisting during asylum interviews are trained professionals
- Cost issue
- Government monitoring: asylum officer calls Lionbridge interpreter to monitor the interview

AT THE ASYLUM HEARING IN COURT

- Interpreter provided and paid for by the immigration court (Lionbridge contract)
- Interpreters are rigorously selected and trained; on-going training process
- Background check
- Some defense attorneys provide their own monitoring system

THE COST OF HIRING A PROFESSIONAL TRANSLATOR/INTERPRETER

- High
- Applicant generally has no financial means and/or work permit
- Cost is also in time lost or gained:
 - Errors in translation and interpretation are too common
 - Difficulties with rare languages

JURISPRUDENCE

- Osorio v. I.N.S.
 - Inconsistencies and credibility issues stemming from the initial asylum application
- Naing Tun v. Alberto Gonzales
 - Incorrect court interpreting
 - Defense monitoring

CONCLUSION

- Applicant entitled to a “fair hearing” under Due Process Clause of the fifth amendment to the US Constitution



Q&A

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