

APPENDIX 6K

WORKING WITH COUNTRY CONDITIONS EXPERTS

Expert witnesses can be essential to the success of an application for asylum, withholding of removal, and/or CAT relief. Country conditions experts can be useful in educating an immigration judge on current socioeconomic or political conditions and the objective reasonableness of an applicant's claim within the context of the country in question.

It is important to involve expert witnesses early in the case-planning process, rather than waiting until after you have already developed your legal theory and prepared the supporting documentation. Experts can be incredibly useful in helping you to understand the conditions on the ground and why the applicant may have been targeted. For particular social group (PSG) claims, they can help you define the relevant PSG. They also can help you understand the persecutors' code and core belief systems, how they operate, how their dynamics manifest in a given society, and ultimately, who they target and why. A full understanding of these elements is essential to developing your legal theory and, ultimately, to educating the adjudicator about the context of the applicant's protection claim.

What can a country conditions expert help you corroborate or establish?

- Certain events and background/context for those events;
- Government policies and practices;
- Common human rights violations;
- Societal perception of certain social groups or other protected characteristics;
- The contours of a particular social group;
- The common tactics of the relevant persecutor(s);
- What motivates those persecutors to act and why they are so motivated;
- The government's inability or unwillingness to control the actions of a non-state persecutor or to protect the applicant;
- A government's acquiescence to torture;
- The inability of the applicant to safely and reasonably relocate within the country of feared persecution.

NOTE: Country conditions experts should always speak to the individual circumstances of the applicant, not just the general conditions in the country in question. Their role is distinct from the human rights reports and articles that you will submit to supplement the expert's analysis.

How can you find an expert witness?

The best kind of expert is an academic with scholarly credentials, rather than a professional from a partisan or advocacy organization. Academic experts are viewed as less biased. Identifying and securing the appropriate expert, however, is often quite challenging, especially when the applicant does not have funds to pay the expert's fees. Below is a list of potential sources for locating the appropriate expert witness:

- Word of mouth and recommendations from other immigration attorneys presenting these claims;

- Colleges and universities – most universities have “expert witness databases” or similar search functions on their websites;
- Think tanks and research institutes in both the United States and the relevant country abroad;
- Expert databases, such as the one that was developed by the Center for Gender and Refugee Studies;
- Reports and articles discussing the various issues involved in the applicant’s claim – think about contacting the person who wrote or is quoted in the report or article; and
- Case law – immigration judges, the BIA, and the U.S. Courts of Appeals often reference the affidavits or testimony upon which they relied in making their decisions.

How should you contact potential experts?

Overall, you may need to cast the net wide. Start looking for the appropriate expert early in the process, as identifying and securing the expert can take a significant amount of time. When reaching out to experts to request their assistance, you should include the following information in your request:

- Who you are and why you are contacting them;
- The most compelling facts of your case (without identifying the applicant or breaching confidentiality);
- A brief explanation of why expert testimony is necessary for the case;
- A narrow description of the subject area of expertise needed;
- What you are hoping the expert can provide – A written affidavit? In-person testimony? Telephonic testimony?;
- Any upcoming deadlines, interviews, or court dates;
- What you will do to assist the expert and how you will make the process less burdensome on him or her;
- Whether the expert might expect compensation for his or her time and assistance (if you are representing the applicant pro bono, this should be emphasized);
- An offer to schedule a phone meeting at the expert’s convenience to discuss the case and the expert’s role in more detail; and
- If the expert is not able to assist, whether he or she has a recommendation of someone else you can contact to seek assistance.

In making a request for expert assistance, it is always important to show your recognition that the expert is a busy professional with a full schedule and that his or her time is valuable, and to express sincere appreciation for any time and assistance that the expert might be able to provide.

What is the process of working with an expert?

As a practitioner preparing an asylum application, working with expert witnesses can present various challenges. Experts are usually busy professionals who have limited time in their schedules for you and the applicant. Usually, they are not lawyers and do not understand the contours and complexities of U.S. asylum law. Additionally, experts do not always have prior experience working with attorneys and cooperating to produce evidence that is most helpful to the applicant. Thus, it is important to be patient, to understand both your role as the attorney and their role as the expert, and to be active in the process while collaborating with the expert.

The first step once you have identified and secured an expert is to schedule an appointment during which you and the expert can educate each other. Prior to the appointment, it may be useful to provide the expert with a copy of the applicant's sworn statement (upon receiving permission, of course), even if it is in draft form. This helps the expert understand the facts prior to your appointment and will make your discussion more focused and efficient. During the appointment, the expert should educate you about the conditions on the ground in the relevant country and answer any questions you might have about the facts or circumstances involved in your specific case. You should educate the expert about the legal requirements for asylum and what elements you hope to prove or support with the expert's testimony. The goal is for you and the expert to end this "education" meeting with a shared understanding of the purpose and scope of the expert's testimony, as well as the next steps.

Following this "education" step (which actually may require multiple meetings), you should send a follow-up email or other written communication to the expert, listing the facts that you discussed that you would like included in the expert's written affidavit. You should also suggest a format for the expert's written affidavit at this time or provide a suggested template or outline that he or she may follow in preparing his or her affidavit. Putting your expectations into writing before the expert spends time drafting the affidavit helps to confirm that you and the expert are "on the same page," and also assists the expert with preparing a written affidavit more efficiently and in accordance with your expectations. Set a deadline for when the expert is to send you the draft affidavit, while being as deferential as possible to his or her schedule.

Upon receipt of the draft affidavit, you should review it very carefully to make sure that it is completely consistent with the applicant's claims, that it contains all of the facts that you discussed with the expert, and that it addresses all of the legal elements that you need the expert's testimony to prove or support. Often times, you and the expert will go back and forth on several drafts until the affidavit is perfected and finalized. However, remember that it is important to remain respectful and deferential to the expert when working with him or her throughout the affidavit preparation process. It may even be necessary for you to spend time drafting parts of the affidavit yourself and to have the expert confirm those as accurate once drafted.

If the affidavit is in support of an affirmative application, this usually ends the active collaboration with the expert. However, for cases in removal proceedings, the collaboration will be ongoing. Once the expert affidavit has been finalized, the next step is to prepare the expert for his or her in-court or telephonic testimony. The preparation meeting should take place closer to the hearing date so everything is fresh in the expert's mind. During the preparation meeting, you should do the following:

- Confirm the date, time, and place of the hearing and answer any questions that the expert might have in that regard;
- Review the purpose and scope of the expert's testimony;
- Review the legal elements that you hope the expert will prove or support;
- Reference or review the other evidence that has been submitted so the expert has a full understanding of the record;
- Explain your role during the proceedings;
- Explain the procedures of the hearing and what is going to happen, including the order of witnesses and where the expert will be during the hearing;
- Address any questions that the expert might have about the process and procedures of the hearing;
- Provide testimony tips to the expert – the importance of eye contact, listening carefully to the question asked and answering only that question, polite persistence when answering questions on cross, pitfalls to avoid, etc.;

- Practice direct and cross-examinations with the expert;
- Discuss how the expert can prepare for his or her testimony following your meeting;
- Discuss logistics: what should the expert bring, what should he or she wear, where should he or she be and when, directions, parking, security procedures, what phone number should the court reach the expert at if he or she is providing telephonic testimony, etc.; and
- Schedule another preparatory meeting if necessary or if the expert would like one.

Some experts are already experienced in testifying in immigration court, and thus, the steps above may be abbreviated. What is most important is to review the main points you hope to establish on the record and what you expect the immigration judge or trial attorney to have questions about. It is always best to help the expert avoid getting caught off guard by a question in immigration court. Again, they are usually not legal experts, and thus, preparing them for what *not* to say is even more important than preparing them for what to say on direct examination (which usually sticks pretty closely to their written affidavit).

Overall, your job in preparing the expert for his or her testimony is to make sure that the expert is comfortable with his or her role, the purpose of his or her testimony, the procedures of the hearing, and what to expect from you, the immigration judge, and the DHS attorney.

Checklist for Working with Experts

Practitioners may use the following checklist for working with expert witnesses to prepare affidavits and testimony in support of applicants' cases:

- Make a list of the aspects of the applicant's claim that you would like to corroborate with expert testimony.
- Locate expert(s) who are qualified to address the relevant aspects of the applicant's claim.
- Contact the experts to request their assistance.
- Meet with any potential experts to discuss the applicant's claims and to verify that the expert is able to provide the information that you need to support the applicant's case.
- Ask the expert to prepare a detailed sworn affidavit relating to the particulars of the case, whether in regard to the country conditions, the objective reasonableness of a claim, or cultural differences.
- Provide the expert with specific guidance of what to include in his or her sworn affidavit.
- Carefully review the sworn affidavit and flag any statements or information that may be problematic for the applicant's case.
- Discuss any problematic information with the expert and any concerns.
- Ask the expert to provide in-court testimony so that DHS may have an opportunity to cross-examine and "test" any statements made by the expert. An immigration judge is more likely to find the testimony of an expert witness as being persuasive if it is subjected to cross-examination, and it passes muster.
- If the expert cannot appear in court, ask if he or she can provide telephonic testimony. Expert witnesses may be permitted to appear telephonically, and practitioners should make efforts to move the court to allow such testimony well in advance of a hearing.
- Prepare the expert witnesses for testimony, just as you would prepare the applicant for testimony: complete a thorough question-and-answer session, and attempt to anticipate questions by DHS counsel and an immigration judge.

- If an immigration judge refuses to permit or otherwise limits an expert's testimony, either in court or telephonically, object on the record to maintain the issue for appeal.