|  |  |
| --- | --- |
|  |  |

**Tips for Completing Form I-589:**

**Application for Asylum and for Withholding of Removal**

Form I-589 is used to apply for asylum, for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA), and for withholding of removal under Article 3 of the UN Convention Against Torture (CAT). This same form is used regardless of whether the case is to be heard by an officer at the Asylum Office or a judge in the Immigration Court. This memorandum aims to answer some commonly asked questions about the I-589 form, to help you avoid errors that commonly result in rejection of affirmative asylum applications by U.S. Citizenship and Immigration Services (USCIS) and rejection of defensive applications by the Immigration Court, and to help you use this required form to advance your client’s case.

**General pointers:**

* **WHERE TO FIND THE FORM.** The I-589 form is available on-line through the following link: [I-589, Application for Asylum and for Withholding of Removal](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=de9814836a14d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD). The USCIS website allows you to fill out the form on-line, but make sure to save the form to your computer and to print before you leave the USCIS website as there are often problems with saving the text of the document when it is completed online. Also, review the form carefully after it is printed to ensure that it does not contain any typos or errors that might have been caused by glitches in the form. With this and any other USCIS or EOIR form, make sure you go to the relevant website ([www.uscis.gov](http://www.uscis.gov) or [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir)) to confirm that you are using the current version of the form and are sending your application to the currently correct address. Use of old versions of the form will cause your application to be rejected.
* **FILL IN ALL THE BOXES.** Failure to fill in a box on the form is probably the most common cause of technical rejection of asylum applications by USCIS. If the answer is “None” or “N/A,” fill in “None” or “N/A,” as appropriate, or include a dash, but do not leave *any* boxes blank.
* **HOW TO FILE.** The I-589 cannot be filed online. It must be filed by mail if you are filing with USCIS. It must be filed in-person at a master calendar hearing or by mail or at the Court’s filing window if you are filing with the Immigration Court.
* **FILE TIMELY.** With limited exceptions set forth in the regulations at 8 C.F.R. 208.4, **your client’s application must be *received* within one year of your client’s last arrival in the United States.**
* **DO NOT RESPOND TO QUESTIONS IN PART B WITH “SEE ATTACHED AFFIDAVIT.”** The questions in Part B call for narrative answers about basic elements of your client’s claim. You should not respond to these questions by simply referring the reader to the client’s affidavit. Whether your case is before the asylum office or the immigration court, you are dealing with overburdened adjudicators who have limited time to absorb the facts of your client’s case. Seize these questions on the I-589 as an opportunity to provide the reader with a concise, compelling distillation of your client’s claim, in your client’s voice—one to two paragraphs in response to the first two questions (1.A. and 1.B), and one paragraph or a few lines in response to most of the others. This provides the adjudicator with a road map to the client’s case and makes it easier for him or her to read the affidavit efficiently, even if that affidavit will not be filed until later.

**Question-by-question guidance:**

**Part A.I.: Information About You**

*Remember to check the box at the top of this page if your client is also applying for withholding of removal under the Convention Against Torture.*

**Question 1:** The alien registration number, commonly known as the “A number,” consists of the letter A followed by 9 digits. (For older cases, the “A number” had 8 digits and you will need to enter a zero just after the “A” and before those 8 digits to conform to the new system.) If your client is applying for asylum affirmatively and has never made any other applications for immigration benefits or been in removal proceedings in the past, he or she may not have an A number. If your client does not have an A number, write “None” in response to this question. If your client has an A number, it will be printed on any correspondence he or she has received from USCIS, U.S. Immigration & Customs Enforcement (ICE), or the Executive Office for Immigration Review (EOIR).

**Question 2, 3:** Remember to fill in a response (even if the answer is “None”).

**Questions 4, 5, and 6:** Be attentive to the fact that naming practices in your client’s country may be different from American usage. For example, a Chinese applicant who in China would give his name as Li Xiaoming would be listed on the I-589 as last name Li, first name Xiaoming. In a number of places ranging from Rwanda to Tibet, people may not have “family names” or “last names” in the American sense—both of their names may be given names that may bear no connection to the names of their parents. If your client has an original authentic passport, the passport should make clear which name is which, but in any case you should always confirm this with your client. Some people from some parts of the world—e.g. Tibet, Afghanistan—may have only one name. In such cases it is best to list this name as the first name and write “None” under last and middle names. The immigration system will usually double the first name so as to give the client a last name in their records—e.g. a Tibetan applicant named only Tsering may become Tsering Tsering for immigration purposes—or they may give the last name as “LNU” which means “last name unknown.” Nevertheless, you should refer to your client in all documents by his or her given name, which in this example would be the single name of Tsering.

**Question 7:** If your client arrived in the U.S. on a travel document in a different name, you should list this name here, and note in parentheses, for example, “name on passport used to travel to U.S.” Where a client’s name has been spelled differently on some of his/her documents, list those alternative spellings here (this is common especially for clients from countries using non-Roman alphabets that lend themselves to multiple transliterations).

**Question 8 and 9:** If your client’s mailing address is the same as the residential address, just mark “Same as above” or “N/A” in response to question 8. Do not list your name and your firm’s address as your client’s mailing address if your client does have an address at which to receive mail. To ensure that you get notice of any correspondence from USCIS or the Immigration Court about the case, you need to file the appropriate notice of entry of appearance form (G-28 for cases before USCIS or EOIR-28 for cases before the Immigration Court). The original notice will be sent to your client and a copy will be sent to you as counsel of record.

**Question 12:** As with name order, be alert to the fact that many countries list numbered dates as DD/MM/YY rather than MM/DD/YY as is customary in the U.S. If your client does not know his or her exact birth date, list the best information the client is sure of, e.g. “January 1938” or “1961”. (Do the same for any other questions that ask for dates. Handwrite this information if you are completing the I-589 online and the form is not allowing this date format.)

**Questions 14 and 15:** The country of your client’s present nationality will normally be the country with respect to which you will have to prove this asylum claim, so it is important to be sure of your client’s citizenship. Also, be aware that “stateless” is a term that has legal meaning and should not be used loosely. For example, if your client is an ethnic Tibetan born in the People’s Republic of China, he or she will normally be considered a citizen of the People’s Republic of China, and you should mark “P.R. China” in response to both questions 14 and 15. How your client feels about that state of affairs, or how he or she self-identifies, is not the point for these purposes. An ethnic Tibetan born in Nepal to parents who fled to Nepal from Tibet, in contrast, may in fact be stateless; if stateless, he or she will have to prove persecution or a well-founded fear of persecution *in Nepal*, assuming that Nepal was his or her country of former habitual residence.

**Question 16:** Here, you should go with however your client identifies herself. If your client’s racial, ethnic, or tribal identity is relevant to her asylum claim, it is particularly important to list it here, and to list it accurately. For example, if your client is a citizen of China of Tibetan ethnicity, this is the place to list “Tibetan.” Note also that a number of ethnic groups may be designated in different ways: Muluba, Baluba, or simply Luba all refer to the same Congolese group, but Muluba is the singular, Baluba the plural, and Luba the designation people will often use if they are speaking English or French.

**Question 17:** Same advice applies here as for question 16.

**Question 19:** (a) If client does not know the exact date that he left his country, give the best available approximation. (b) The I-94 number appears on your client’s I-94 card, which is the little white card he should have been issued at the airport or border, or the number available electronically through the Customs and Border Protection [website](https://i94.cbp.dhs.gov/I94/request.html;jsessionid=kGqZSJTKgGQcPvR45V2QRQvnvKX5GqLwxQb8TWH04sG0Tx3kL3lv!-1588311864), unless he entered the U.S. without inspection. If he was traveling on travel documents other than his own, you should still list the I-94 number here if possible, because this will be helpful to proving your client’s date of entry (relevant to proving that your client filed for asylum within one year of his last arrival in the U.S.) If your client does not have the I-94 card or know the number, mark “Unknown.” (c) It is extremely important to confirm the date of your client’s last arrival in the U.S., as this is the date from which his compliance with the one-year filing deadline will be calculated. If your client was detained on arrival in the U.S. or otherwise entered without valid travel documents but with the intention to seek protection in this country, you can list his status on most recent entry as “asylum seeker” and write “N/A” as the date of expiration of that status.

**Questions 20, 21, & 22:** If your client does not have her own passport or travel document, but came here on a passport or travel document that was not hers or which she obtained through irregular means, you can fill in the information concerning that document, if known, but should mark all these responses with an asterisk and explain below (at the bottom of this page of the form or on an attachment) that the document was not your client’s own, or was not obtained through regular channels, and was used only to flee persecution.

**Questions 23, 24, and 25:** Make sure you get a complete account from your client of the languages he speaks and talk to him about which he speaks fluently. Some clients may assume that you are only interested in major European languages, and may not spontaneously mention a number of other languages in which they are fluent, and which may be relevant later for other purposes, e.g. as confirmation of their nationality, regional origin, or other social-group membership. You should not list your client as being fluent in English unless he speaks English well enough to testify in English at his asylum interview or hearing.

**Part A. II.: Information About Your Spouse and Children**

Your client’s spouse and children who are unmarried and under 21 years of age on the date your client (known in immigration parlance as the “principal applicant”) files her application for asylum will be able to benefit from a grant of asylum to your client, as “derivatives” of your client’s claim. **If your client has not yet filed an application for asylum, be sure to confirm ASAP the dates of birth of *all* her children, so that you do not inadvertently deprive one or more of them of derivative eligibility for asylum by filing your client’s application after their 21st birthdays.**

If they are present in the United States, they can be “included” in your client’s application and can then receive asylum at the same time as your client and from the same jurisdiction—if your client is granted by the Asylum Office, included derivative applicants will also be granted by the Asylum Office and on the same day; if your client is granted asylum by the Immigration Court, derivative applicants included in her claim will be granted by the Immigration Judge at the same time. In order for your client’s spouse and/or children to be included in her application, you must file an additional copy of your client’s asylum application (I-589 and attachments) for each included family member, which must bear a photo of the included family member, rather than of your client, on page 9. In order for a family member to be included as a derivative in your client’s claim, you must also ensure that that family member is present at all procedural events in the case at which your client’s presence is required. At the immigration court level, your client’s dependents must also be in removal proceedings in order to be “included” in your client’s claim. If they are not already in removal proceedings, whether to take steps to get them issued a Notice to Appear may be a strategic decision, and often difficult to accomplish in practice—if your client’s dependents are in this situation (not in removal proceedings while your client is), please consult a Human Rights First attorney for guidance on both the strategy and the practicalities of this. Note that it is possible to be a derivative on someone else’s claim *and* to file a claim of one’s own as a principal applicant—be alert to the possible independent claims of included family members, and the one-year filing deadlines applicable to them.

If your client’s dependents are not in the United States, they cannot be “included” in your client’s application. Your client, once she is granted asylum, will need to petition for them to join her here. This is done by filing an asylee relative petition (Form I-730).

Regardless of their present location, be sure to complete all of the information requested on the form about each of your client’s dependents. Note also that the definition of “child” for these purposes extends beyond your client’s biological children—it includes, for example, stepchildren and adopted children under certain conditions. Explain this to your client, to make sure you are getting a complete picture of who should be listed here. You should list *all* of your client’s children, including any children who may not be able to benefit from a grant of asylum to your client because they are already over 21. Remember to also list children who were born to your client even if they are now deceased, and write “deceased” where it asks for the current location of those children.

**Part A.III.: Information About Your Background**

**Question 1-3:** These are self-explanatory, but be sure to read the questions carefully so that you are giving the information requested in the required order. Also, confirm the spelling of proper nouns in this section (and throughout the application) with your client, your interpreter, or, if your client’s literacy is limited and/or his language uses a different alphabet, by doing a Google search to confirm that the spelling you are using is correct and recognizable as what it is.

**Question 4:** List *all* employment in the past five years. If your client is working in the U.S. without having employment authorization, you *do* need to declare this employment here. Working illegally is not a bar to asylum. It is an adverse discretionary factor in an asylum claim, but should not be a major one—no one should be denied asylum as a discretionary matter based on having worked without authorization, assuming the work they were doing was not *per se* unlawful. Your client is signing this application under penalty of perjury, so it is very important to make sure all responses are complete and accurate. That being said, if the client is working without authorization it is OK to list that employment in a way that does not provide the exact street address, and which thereby might reduce the chance of triggering immigration enforcement at that address. For example, one could answer “Diner, Brooklyn, NY” rather than giving the name and exact street address of that diner.

**Question 5:** Also self-explanatory. Again, as with spouse and children, be sure to get a complete list of your client’s siblings (including half-siblings, if any), including those who are now deceased. Include their full names and current locations (city and country) to the extent those details are known.

**Part B.: Information About Your Application**

*For the general approach to take to all the questions in Part B, see the last of the “general pointers” at the beginning of this memo.*

**Question 1.A.:**  Notice that the question asks not only about your client but about your client’s family, close friends, colleagues. . . Although the details of the past persecution these people may have suffered can be left for your client’s affidavit, this is a good reminder to be sure, in interviewing your client, that you are actually asking about these other people your client knows or knows of, whose experiences may be relevant to her claim. Incidents that may not be at the forefront of your client’s mind now because they were not direct causes of her decision to flee may be relevant to her claim—or may become so in the future if country conditions change. Ask about all of this. To the extent possible, condense the responses to Question 1.A and Question 1.B so that they fit in the spaces provided and save the details for the client affidavit, rather than using the “Supplemental B” page at the end of the application.

**Question 1.B.:** Plan the responses to 1.A. and 1.B. so that they work together effectively as a unit. This is often a good place to include a statement that there is no one in the home country who could protect your client and no place within that country where she would be safe.

**Question 2:** This question is deliberately broadly worded. In responding, make sure you are covering family members as well as your client himself, and make sure you are precise in your characterization of these incidents. Be careful, also, that your interpreter, if any, is accurate in his use of legal terms—e.g. understands the difference between “accused” and “charged” in the American sense. People who are victims of arbitrary arrest and/or detention may be unclear as to the precise legal status of the event—that’s part of what makes it arbitrary. If that is the case you should just give the facts as your client knows them. (E.g.: “I was held in a small room behind the police station for four days. During that time none of the officers there told me I had broken any particular law. I was never brought before a judge, either while I was detained or later.”) If family members have been arrested or convicted of a crime, for example, but your client has not, it would be a good idea after describing the relatives’ legal problems to conclude with a statement that the client has never been arrested or charged with a crime.

**Question 3.A. & B.:** Another broadly worded question. This is the place to flag any associational activity or group membership that may be relevant to your client’s persecution or that of her family. Ethnicity, religion, and tribal membership belong here too.

**Question 4:** An important question to establish your client’s eligibility for relief under the Convention Against Torture, if any. Be sure to read the CAT regulations (8 C.F.R. § 208.16, 208.17, 208.18). Describe in some detail what forms of harm your clients fears and by whom it would be inflicted. He or she need not use the word torture.

**Part C.: Additional Information About Your Application (Continued)**

**Question 1:** Self-explanatory.

**Question 2:** This question goes to firm resettlement, though its inquiry is broader. List here any countries your client passed through on his way to the U.S.—the full facts relevant to the firm resettlement issue will be developed in your client’s affidavit, but provide a paragraph here that makes clear what your client’s flight path was, and that he was not firmly resettled in any third countries in the process (or, if he was offered permanent resettlement elsewhere, why he is eligible for asylum in the U.S. notwithstanding that fact). Also be sure to read question 2.B—if your client’s spouse had a student visa in a third country and it is now expired, this is the place for that information.

**Question 3:** This question seeks to determine whether your client or any dependents who might obtain asylum derivatively through his application are barred from asylum as persecutors of others. If your client has never ordered, incited, assisted, or otherwise participated in persecution of other people, but was associated at any point with people or groups known to have a dubious human rights record, answer “no” here and be sure to bring out *in your client’s affidavit* a detailed account of his own personal activities and responsibilities. Membership in almost any branch of the security forces (army and police, including mandatory military service) in a great many countries can raise red flags, and although it is always difficult for a client to prove a negative—that he was *not* involved in bad things—the best way to do this is usually to provide ample and consistent detail on what he *was* doing.

**Question 4:** Important and self-explanatory.

**Question 5: One-year filing deadline** If your client has missed the one-year deadline, this is your opportunity to give a concise summary of her arguments for an exception to the deadline based on changed circumstances or extraordinary circumstances, as well as to state that the client is filing within a reasonable time given those circumstances. If your client filed timely *pro se*, or through other counsel, and you are redoing her I-589 as part of an amended/supplemental filing, you should check “No” in response to this question and add sentence or two explaining that this is a revised version, prepared with the help of pro bono counsel, and that it should be considered in place of the version that was filed *pro se*.

**Question 6:** Be sure to ask your client about any problems she or any of her dependents included in this application may have had with the police since arriving in the U.S. Your client will be fingerprinted multiple times in the course of this application process, so any arrests will come out. Explain this to your client in a non-offensive way. This is not a question about arrests or other interaction with immigration authorities.

**PART D: YOUR SIGNATURE**

Self-explanatory as this may seem, a surprising number of applicants get confused as to whether they are being asked to write their usual business signature or to write out their name. Explain to the client that he should sign here the same way he would sign an official document, check, ID card, or receipt, in his home country.

**PART E: DECLARATION OF PERSON PREPARING FORM**

You fill this out. By signing this you are swearing that you read the completed application to your client, or had it read to her, in a language in which she is fluent. Be sure to do this very carefully. Don’t just leave it to the interpreter to go over the information with the client—go through it all with both of them, line by line. It is easy for clients, out of exhaustion, deference, or a lack of understanding of the hair-splitting scrutiny their applications may receive, to simply nod at everything that is being read back to them. Make sure to ask them, actively, about the information you have just read: “Is that right? Did the soldiers come *before* the paramilitaries?” Your client should not sign the I-589, and you should not sign as preparer, until you and they are certain that all details provided are entirely accurate. When there is doubt or confusion as to a particular detail, it’s better to write “unknown” or to describe events in a way that does not include the detail which is uncertain, so that your client will be able to sign with confidence, knowing that every detail provided is true.

**PARTS F and G: TO BE COMPLETED AT INTERVIEW OR HEARING**

As the heading says, you leave this part blank.

**SUPPLEMENT A and B:**

If these are filled out, be sure to have your client sign and date at the top of the page.

**FINAL NOTE:**

The website of USCIS, where you will find the Form I-589, has at various points had glitches which result in the answers to certain questions being changed inadvertently when you print the form. It is your responsibility, as counsel, to carefully review the form, line-by-line, after it is printed and before it is signed, to ensure that the answers to every question are as you and your client intended. When necessary you may need to accomplish this by hand-writing the answers to those particular questions.