



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

PREPARING AN APPLICANT'S DECLARATION IN SUPPORT OF ASYLUM (AND RELATED RELIEF)¹

A. The Purpose of Declarations

- **What are the types of declarations in an asylum case?**
 - The asylum applicant's own declaration² is submitted in support of Form I-589, Application for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture, which is the focus of this resource.
 - Supporting witness declarations can be submitted to corroborate the facts presented by the applicant.
 - Expert declarations can be submitted to corroborate or establish some element of the applicant's claim for asylum or related relief.
- **What is the role of a declaration in an asylum application?**
 - Asylum applicants must establish that they have credibility. Declarations in support of asylum applications are a form of documentary evidence. Therefore, it is critical that the declaration is accurate and consistent with other evidence in the applicant's filing, with documents that may be in DHS's files, and the proposed testimony. Only through obtaining and reviewing the evidence and practicing the testimony with the applicant will you ensure that that the declaration is accurate.
- **When are declarations used?**
 - An asylum applicant may submit a declaration to support their credible/reasonable fear interview before an asylum officer. However, because these interviews are scheduled very quickly, it is often too short a time to adequately prepare a declaration and it is not required or expected that a declaration be submitted. If you have adequate time and decide strategically it is best to submit a declaration, then it is submitted directly

¹ This resource can be used to prepare a declaration of an applicant for affirmative or defensive asylum, withholding of removal, protection under the Convention Against Torture, or credible or reasonable fear.

² This resource covers only declarations from the asylum applicant. Asylum seekers often submit supporting evidence from fact witnesses and/or expert witnesses. While many of the same concepts apply to declarations by other witnesses, this resource focuses on the specific issues involved in drafting the asylum seeker's declaration—the most important document submitted in the case.

to the asylum officer. Note that no I-589 is filed for a credible/reasonable fear interview.³

- If the asylum applicant is applying for asylum affirmatively, the declaration is submitted to USCIS:
 - It can be submitted with the I-589;⁴
OR
 - It can be submitted to the local asylum office after the asylum interview is scheduled, consistent with local procedures.⁵
- If the asylum applicant is in removal proceedings:
 - When the asylum applicant is in removal proceeding because the asylum office referred the case to the immigration court after denying their affirmative asylum application, the asylum office generally sends the I-589 and supporting documentation, including the declaration, to the immigration court.
 - While you will often need to supplement the existing declaration, be sure you are not contradicting anything that is in the record.
 - Any supplemental declaration (and any additional evidence) must be submitted in compliance with the Immigration Court Practice Manual (ICPM)⁶ Chapter 3.1(b)(ii), which requires additional evidence be submitted at least 15 days prior to a non-detained individual hearing (unless the immigration judge (IJ) orders it submitted at a different time) or as specified by the IJ for a detained individual hearing.
 - When the asylum applicant is filing the I-589 defensively for the first time in removal proceedings:
 - The asylum applicant may submit the declaration with the I-589, but does not have to unless the IJ requires this.
 - Note that some IJs may not set an individual hearing date until the asylum applicant has submitted the declaration. Some IJs will set a specific call-up date for filing the declaration.
 - The declaration (and any other evidence) must be submitted in compliance with the ICPM.
- Factors to consider for whether to submit the declaration with the I-589 or later in time:

³ See Asylum Seeker Advocacy Project, *Vindicating the Rights of Asylum Seekers at the Border and Beyond* (June 2018),

<https://asylumadvocacy.org/wp-content/uploads/2018/06/ASAP-Expedited-Removal-Guide.pdf>.

⁴ For further information on how to file an affirmative I-589, refer to the form and instructions available on USCIS's website: <https://www.uscis.gov/i-589>.

⁵ See, e.g., AILA, *Asylum Office Guide – Best Practices* (Updated Mar. 2, 2015), AILA Doc. No. 12060844, <http://ailaoh.org/wp-content/uploads/2015/11/AILA-doc.pdf>. Be sure to obtain the most recent information as the local practices do change regularly.

⁶ The ICPM can be found at: <https://www.justice.gov/eoir/page/file/1084851/download>.

- Sometimes the asylum applicant must file the I-589 very quickly. As is often the case, an applicant may be approaching the one-year filing deadline (OYFD)⁷ to timely file the asylum application (or may be seeking an exception to the OYFD but needs to file promptly to meet that exception).⁸ Thus, it is important to file the I-589 promptly to meet the statutory deadline. This may not allow adequate time to prepare an accompanying declaration that is both accurate and consistent.
 - Note that in the short answer section of the I-589, it is appropriate to provide some substantive answer to the applicable questions, followed by the language, “See forthcoming declaration.”
 - Note that some IJs are requiring applicants to delineate their particular social groups (PSGs) before setting an individual hearing so you need to provide sufficient detail in the application to formulate the potential PSGs.⁹
- A practitioner may also need to consider the applicant’s eligibility to apply for an employment authorization document (EAD) (also known as a “work permit”) in determining when to file the I-589 and may wish to file it more quickly, before a declaration can be completed, to maximize the possibility that an applicant will qualify for an EAD while their I-589 is pending.
 - Once the I-589 is filed (with either USCIS or the immigration court), the EAD clock starts. Once the I-589 has been pending for 150 days, the applicant can apply for an EAD (Form I-765), but USCIS can only approve the EAD if the I-589 has been pending for 180 days. Note that certain actions, such as making a motion to change venue

⁷ INA § 208(a)(B).

⁸ There are exceptions to the one-year filing deadline if the applicant “demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application.” INA § 208(a)(2)(D); *see also* 8 CFR § 208.4(a)(4) (defining “changed circumstances”); 8 CFR § 208.4(a)(5) (defining “extraordinary circumstances”). The applicant must file within a “reasonable” period of the changed or extraordinary circumstances. 8 CFR § 208.4(a)(4); 8 CFR § 208.4(a)(5). *See generally* CLINIC, Practice Advisory: Overcoming the One-Year Filing Deadline for DACA Recipients, 2018, <https://cliniclegal.org/sites/default/files/DACA-and-the-One-Year-Filing-Deadline-.pdf>.

⁹ In *Matter of W-Y-C & H-O-B*, 27 I&N 189 (BIA 2018), the BIA held that an applicant for asylum or withholding of removal making a PSG claim, must articulate the PSG claim(s) before the IJ, and cannot advance a new PSG on appeal. Note that the decision does not require that the PSG be advanced prior to the final hearing in the case, and also note that this decision is being challenged in various Courts of Appeal. *See* AILA, *Matter of W-Y-C & H-O-B* and Articulating PSGs before the IJ, Mar. 14, 2018, <https://www.aila.org/infonet/articulating-particular-social-groups-before-ij>; *Cantarero-Lagos v. Barr*, 924 F.3d 145 (5th Cir. 2019) (holding that the BIA did not err when it refused to consider a PSG that was not initially articulated before the IJ).

or motion to continue for hearing preparation will pause the EAD clock.¹⁰

- It is possible that the asylum applicant will not qualify for an EAD if the IJ or USCIS adjudicates the I-589 before the EAD clock reaches 180 days. Because of the current policies of adjudicating asylum applications promptly after filing, it is possible that USCIS may schedule the interview or the IJ schedules the individual hearing very quickly.¹¹ Thus, it is also important not to rush to file an I-589 if you may need significantly more time to prepare the case (including drafting the declaration and gathering other supporting evidence).
- Ensuring the declaration is as complete and accurate as possible takes time. If possible, it is often best to have obtained and reviewed the relevant records, gathered evidence, completed the country condition research, and practiced the applicant’s testimony before submitting the final declaration. Consider these tips:
 - It is helpful to discuss the case with a potential country conditions expert before finalizing the declaration. The expert may help you determine relevant questions to ask your client or how to frame and present the particular social group in the declaration.
 - Often times, clients are particularly traumatized by their past or reluctant to trust a legal representative. Because of this, it may take a significant amount of time and multiple meetings or professional counseling for them to open up about all of the details that are relevant to their asylum claim.

¹⁰ EOIR and USCIS, The 180-Day Asylum Clock Notice, May 9, 2017, [https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum Clock Joint Notice - revised 05-10-2017.pdf](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum%20Clock%20Joint%20Notice%20-%20revised%2005-10-2017.pdf).

¹¹ On January 31, 2018, USCIS announced a policy of prioritizing the scheduling of interviews for the most recently filed affirmative asylum applications (known as the “last in, first out” policy). *See* USCIS, USCIS to Take Action to Address Asylum Backlog (Jan. 31, 2018), <https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog>. On November 19, 2018, EOIR released a memo setting forth the policy of adjudicating asylum applications within 180 days of filing to the extent practicable. Memorandum from James R. McHenry III, Director EOIR, Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii) (Nov. 19, 2018), <https://www.justice.gov/eoir/page/file/1112581/download>. On November 16, 2018, EOIR released a memo explaining that EOIR will be prioritizing cases labeled as “family unit” cases (in at least 10 jurisdictions), to be adjudicated within one year or less. Memorandum from James R. McHenry III, Director EOIR, Tracking and Expedition of “Family Unit” Case (Nov. 16, 2018), <https://www.justice.gov/eoir/page/file/1112036/download>.

- It is preferable to not submit the declaration until you have completed any relevant record checks to obtain any prior statements your client may have made so you can check their current statements for consistency.
- It is preferable to practice the testimony of the client to see if new details are shared before finalizing the declaration that is submitted.

B. Getting the Most Out of Your Meetings with Your Client, the Asylum Applicant: Preparing for Declaration Drafting¹²

- If the client is literate and sophisticated enough to understand the issues, they can prepare a first draft of the declaration that you can then work with. If you entrust the client with this first step, you may want to provide a list of questions to help them get started.
- If the case has a lengthy or complicated procedural history, you should ask the client to review their prior file and/or prior declarations before talking with you.
- Become familiar with the relevant country conditions (both those at the time your client suffered past persecution and the current conditions). The more you know about country conditions, the better your questions to the client will be.
 - Read the U.S. Department of State (DOS) Country Reports on Human Rights Practices¹³ for the relevant years (because the asylum officer, IJ, and DHS attorney will likely be familiar with those reports, it is important to know what they include, although they may not be accurate or complete¹⁴).
 - Do independent research to find and read local newspaper articles, background reports from reputable sources (ex: Human Rights Watch, Amnesty International), and any other relevant background information. There are some useful indexes of country conditions articles put together by various organizations (ex: Center for Gender and Refugee Studies (CGRS), Temple Law Annotated Table of Contents Project).¹⁵ Even

¹² This section assumes you have done an initial consultation with your client and determined they have a subjective fear of return that is objectively reasonable and have decided to file for asylum, withholding of removal, or protection under the Convention Against Torture.

¹³ See U.S. Department of State, Country Reports on Human Rights Practices, <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>.

¹⁴ See Amnesty International USA, Medium, A Critique of the US Department of State 2017 Country Reports on Human Rights Practices (May 8, 2018), <https://medium.com/@amnestyusa/a-critique-of-the-us-department-of-state-2017-country-reports-on-human-rights-practices-f313ec5fe8ca>; Robbie Gramer, Foreign Policy, Human Rights Groups Bristling at State Department Report (Apr. 21, 2018), <https://foreignpolicy.com/2018/04/21/human-rights-groups-bristling-at-state-human-rights-report/>.

¹⁵ EOIR itself has country conditions materials, which are helpful to review as the IJ may be more likely to be familiar with such resources. See U.S. Department of Justice, EOIR, Current Research Listings, <https://www.justice.gov/eoir/country-research-listings#S>. However, you must complete independent research.

- simple searches on Google using relevant terms can produce useful country conditions materials.
- Talk to an expert on country conditions to understand the relevant and most up-to-date country conditions (and they may help you formulate additional questions for your client).
 - Know the legal elements that you must cover and the standards you need to meet.¹⁶
 - For an asylum¹⁷ claim, you must show:
 - Past Persecution and/or Well-Founded Fear of Future Persecution (at least 10% chance)
 - Nexus (i.e., persecution is on account of (or motivated by) at least one protected ground and that ground is a central reason for the persecution -Five protected grounds: race, religion, nationality, membership in a particular social group, and/or political opinion)
 - Persecution is by the government or someone that the government is unable or unwilling to control
 - Filed within one year, or meets an exception
 - Exceptions: changed circumstances; extraordinary circumstances plus filing within a reasonable period of time after the changed or extraordinary circumstance
 - Not subject to criminal or other bars
 - Discretion – must demonstrate that asylum is merited as a matter of discretion.
 - Withholding of Removal¹⁸

¹⁶ You must consult the statute, case law, and the many useful resources or trainings that are available to make sure you are up to date on current developments in the law and policy.

¹⁷ The law for asylum is found at INA § 208 and 8 CFR § 1208. If you are preparing for a credible fear interview or reasonable fear interview, be aware of the relevant legal standards. *See* 8 CFR § 1208.30 (credible fear); 8 CFR § 1208.31 (reasonable fear). It is also important to be up to date on current case law and policy, which change frequently. For example, in the summer of 2018, then-Attorney General Sessions issued a decision in *Matter of A-B-*, 27 I&N Dec. 316, 320 (A.G. 2018), in which he sought to alter the legal landscape for domestic violence and gang-based asylum claims. However, there are some viable ways to argue that the decision has a more limited reach than the AG had intended. *See* Center for Gender and Refugee Studies, *Matter of A-B-*, CGRS Practice Advisory (July 6, 2018),

<https://uchastings.app.box.com/s/57k2hk6rpyjh7bbmebld4195r2wsdzt0/file/302956088950>.

Moreover, the decision has been challenged in federal court as applied to credible fear and reasonable fear determinations, and on December 19, 2018, the U.S. District Court for the District of Columbia issued a permanent injunction in *Grace v. Whitaker*, No. 18-cv-01853 (EGS), 2018 WL 6628081 (D.D.C. Dec. 19, 2018). There has also been guidance put forth by both USCIS and EOIR regarding credible fear interviews in light of the decision in *Grace v. Whitaker*. *See USCIS Guidance re: Grace Injunction*, <https://www.aclu.org/legal-document/grace-v-whitaker-uscis-guidance-re-grace-injunction>; *EOIR Guidance re: Grace Injunction*, <https://www.aclu.org/legal-document/grace-v-whitaker-eoir-guidance-re-grace-injunction>. USCIS also recently updated the credible fear lesson plans. *See* AIC and CLINIC, Updated Credible Fear Lesson Plans Comparison Chart, AILA Doc. No. 19053034 (May 30, 2019), <https://www.aila.org/infonet/updated-credible-fear-lesson-plans-comparison>.

- Similar to asylum but:
 - Must show persecution is more likely than not (more than 50% chance)
 - Fewer bars (no one-year bar; different criminal bars)
 - Not discretionary
 - Protection under the Convention Against Torture¹⁹
 - Torture
 - Must show torture is more likely than not (more than 50% chance)
 - No nexus requirement
 - Government acquiescence
 - Almost no bars for deferral of removal
 - Not discretionary
- Know the record and sequence of events
 - Whenever possible, do the appropriate FOIA requests and background checks to obtain as much information about your client as possible.²⁰ Note that with asylum cases and family cases being fast-tracked in immigration court,²¹ you may have to begin preparing your case before you obtain the FOIA results.
 - Make a timeline of the factual and procedural events in your client’s case based on dates already existing in some recorded format (ex: statements in I-213, credible fear interview notes, prior statements, declarations, or applications to USCIS, CBP, or DOS, which can be obtained through FOIA) and what your client has shared with you. Indicate after the event in the timeline where the information came from so you can easily reference that material in the future.
 - Sometimes your client’s memory of dates may not be precise so you want to try to iron out the correct timeline before you submit the declaration. NEVER have your client guess at a date. It is better to approximate than to commit to something incorrect.
- Before meeting with the client and starting the declaration drafting process, consider how the environment you set up for the interview may affect what the client tells you. Continue to be sensitive to environmental factors as the interview proceeds. Environmental factors you may be able to control include:

¹⁸ See INA § 241(b)(3).

¹⁹ See 8 CFR § 1208.16 to 1208.18. Note that there are two forms of protection under the Convention Against Torture: (1) withholding of removal under 8 C.F.R. § 1208.16(c) for non-citizens who are not barred from eligibility for having been convicted of a “particularly serious crime” or of an aggravated felony for which the term of imprisonment is at least five years, and (2) deferral of removal under 8 C.F.R. § 1208.17(a) for non-citizens entitled to protection but subject to mandatory denial of withholding.

²⁰ For a more detailed discussion of what record checks may be appropriate and how to complete those requests, see American Immigration Council, Practice Advisory: FOIA for Immigration Lawyers (Feb. 2017), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/practice_advisory_foia_for_immigration_lawyers.pdf.

²¹ See *supra* FN 11.

- Whether to meet with the client in person at your office versus on the telephone
- Whether to take notes by hand versus on a computer as the client is talking
- Ensuring the room temperature is comfortable and there are tissues and water available
- Ensuring taking breaks for the client to use the restroom or get fresh air
- Whether to meet with the client with others present versus alone (issues of embarrassment and confidentiality may arise when others are present)
- Ensuring the client's children are not present while you are taking the declaration
- Whether to use an interpreter versus communicating directly in English or a language you are fluent in
 - It is generally best practice to use the language the client is most comfortable communicating in to ensure that your communications are accurate.
 - If you use an interpreter, you must ensure that you are using an interpreter who speaks the client's best language/dialect and make sure the interpreter is correctly interpreting. You must also ensure the client is comfortable with interpreter. It is generally best to avoid using a family member or friend as an interpreter since the client may not disclose certain information in front of them. Use a neutral interpreter.
- Considering differences between you and the client that may impact the client's comfort in sharing story (gender, religion, etc.) and being sensitive to how you ask questions in light of those differences
- Be prepared to meet or talk with the client multiple times in order to build trust, develop the relationship, jog memory, or clarify details.
 - Writing the declaration is a layering process; each time you go through a part of the declaration with the client, it is likely they will give you more details.
 - Be aware of how the client's cultural background may impact the way the client shares their story or why the client may be hesitant to share certain information.
 - Do not be quick to assume that the client is lying because a fact was previously omitted or the details of events are different. Detail omissions are common for clients with a history of trauma. Upon meeting with your client, if you notice that the facts are not consistent, the client is having a difficult time discussing their past (ex: they are upset or try to avoid answering certain questions) or you feel they are not revealing everything that is relevant to their case, you may want to refer them to a psychologist or therapist who may be able to help them professionally.
 - Sometimes clients are resistant to meeting with a professional mental healthcare provider (for personal or cultural reasons), but you can explain how it will be helpful to their case, which might make them more willing to do so. You can also explain that in the

United States, therapy is a normal part of life as Americans generally value this type of support.

- A mental healthcare professional can also be extremely helpful to make sure you are aware of all the relevant facts and have included all of those facts in the declaration (the client may be willing to share more with the healthcare professional and you need to include newly disclosed details prior to submitting the asylum declaration so that there are no new facts that come up in court, which can lead to credibility issues).
- The healthcare professional may also be able to write a report to help your client's case:
 - As corroboration that the person has a diagnosed mental health condition as a result of the past persecution;
 - To establish why they cannot remember some facts or details or are disclosing more details now than they may have disclosed at a prior credible fear interview (because they suffer from PTSD,²² for example); and/or
 - To help establish a OYFD exception.

C. Meeting with the Client and Drafting the Declaration:

- At the outset of the declaration drafting process:
 - Set the client's expectations appropriately. Let them know that this will be a time-intensive process, that it is important that information is accurate, and they will review the declaration before it is finally submitted.
 - Explain that what they tell you is confidential and that confidentiality extends to the interpreter and staff of the attorney. When you submit the final declaration to the immigration court, there are confidentiality provisions that bind the IJ, DHS attorney, and the interpreter in court (who may be a member of the same immigrant community as the asylum applicant).
 - Asylum applications are confidential records that "shall not be disclosed without the written consent of the applicant." 8 C.F.R. § 208.6

²² "An applicant suffering from PTSD may be unable to tell a story that a factfinder would find credible. This is because the applicant cannot tell a story that is consistent and highly detailed such that a factfinder would find it credible. There is an inescapable and cruel paradox evident when one considers the ramifications of PTSD on an asylum claim—those who suffer from PTSD because of their traumatic experiences, and who are deserving of asylum in the United States, may be denied asylum as a direct result of the symptoms of their affliction." Carol M. Suzuki, Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder, 4 Hastings Race and Poverty Law Journal 235 (2007), https://digitalrepository.unm.edu/law_facultyscholarship/105/?sequence=1&isAllowed=y.

- While immigration court proceedings are generally open to the public, if the case involves an asylum application, the IJ will ask the asylum applicant if they want the proceedings to be closed (or the applicant can request that it be closed). *See* ICPM Chapter 4.9(a)(1).²³
- Explain in layman’s terms, the legal elements and important issues that must be covered in the declaration so they know what may be relevant.
- Explain that the declaration must be based on the client’s own version and first-hand knowledge of events.
- Explain to the client that you will need to ask a lot of clarifying questions, and you are not doing this because you don’t believe their story, but because DHS may try to ‘catch’ them in a lie, and you want to make sure you have preempted any possible issues or inconsistencies there may be.
- Explain that you may need to ask certain questions about sensitive topics (ex: victimization, past persecution) or things they are uncomfortable or embarrassed or ashamed about discussing, and explain why this information is relevant and important for their case.
 - It is important to emphasize that if the IJ catches them in a mistake or lie even on insignificant things, the IJ may think that they are lying about everything and make an adverse credibility finding or frivolous finding.
 - The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005) (which applies to all *applications filed* on or after May 11, 2005), made it easier for IJs to make an adverse credibility finding than under the prior law.²⁴
 - “If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under

²³ If either party appeals to the U.S. Court of Appeals with jurisdiction, the attorney can request to put the case under seal or make a motion to use a pseudonym.

²⁴ INA § 208(b)(1)(B)(iii) states:

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

this chapter, effective as of the date of a final determination on such application.”²⁵

- It is also important to make sure that relevant but sensitive issues are included in the declaration even if the client is shy about saying them out loud. For example, the declaration should include derogatory names they were called, use of offensive language against them, and harm that was designed to demean them.
 - The burden of proof is on the applicant to establish that the applicant meets the definition of a refugee.²⁶ An asylum applicant in removal proceedings can only present evidence while the case is open before the IJ. If the IJ denies the application(s), there is no opportunity to present new evidence that was previously available²⁷ after the case is denied, even if the case is on appeal before the Board of Immigration Appeals (BIA).
- During the declaration drafting process:
 - Do not use technical terms
 - When asking the client questions for the declaration, use language with which the client is comfortable.
 - In the declaration itself, do not make legal conclusions. Avoid legalese (ex: “I was persecuted”).
 - Use facts and action words that paint a picture for the IJ and tell the client’s best version of their story.
 - Use the client’s voice and unique perspective
 - There is a fine line between putting words in the client’s mouth and helping clarify the client’s thoughts.
 - Keep translations close to how the client says it. If you are not sure how to translate their statement accurately or are not sure if you understand their statement, do not be afraid to ask the client for clarification. For words with specific meanings in the native language that are not easily captured in a single English word, like “renta,” it can be helpful to include the word in the native language with an explanation of its English meaning in a footnote.

²⁵ INA § 208(d)(6). Note that in this context “frivolous” does not mean weak; an application “is frivolous if any of its material elements is deliberately fabricated.” 8 C.F.R. § 1208.20.

²⁶ INA § 208(b)(1)(B)(i).

²⁷ The only means to present new evidence is through a motion to reopen or motion to remand, topics which are beyond the scope of this guide. *See generally* Michelle Mendez and Rebecca Scholtz, CLINIC, Practice Advisory: Motions to Reopen for DACA Recipients with Removal Orders (2018), https://cliniclegal.org/sites/default/files/Motion-to-Reopen-PA_1.pdf; American Immigration Council, Practice Advisory: The Basics of Motions to Reopen EOIR-Issued Removal Orders (Feb. 7, 2018), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/the_basics_of_motions_to_reopen_eoir-issued_removal_orders_practice_advisory.pdf.

- If the client will be testifying in court in another language, their testimony (which is being interpreted by a professional interpreter) should sound similar to their declaration.
- The client must be able and willing to say the same things in an interview or hearing as what they say in their declaration.
 - Therefore, if the client is using another word or phrase during the declaration preparation, use the client's preferred word or phrase in the declaration and plan to have the client explain the word or phrase either as part of the declaration or during direct exam. Alternatively, you can ask a clarifying question during the asylum interview or during the direct exam, such as: "When you say X, what do you mean?"
- Ask broad questions at the beginning to collect as much information as possible from the client.
- Allow the client to ramble somewhat in order to get as much information as possible, but remember that not everything has to go into the declaration.
- Listen to your client and empathize. They may be sharing things they have never shared with anyone before. But work to redirect them to the relevant facts you need to know.
- It may be helpful to keep notes from your meeting that include more details, and a separate draft declaration.
 - For this reason, if handwriting, two pads of paper would be best. Or, if typing, type the declaration and maintain a separate document for notes (or use a pad of paper for such notes).
- Include all legally relevant facts (past persecution, persecutor, internal relocation, bars, etc.)
 - Including some limited additional information beyond the relevant facts can be useful.
 - While the focus of the declaration should be on the elements of the asylum claim, include enough information about the applicant's life to tell their story in a way that paints a picture of the person's life (ex: level of school completed, who raised them, when they moved away from home, family relationship dynamics, etc.). You should accomplish this without telling a biography of their entire life.
 - Including some limited extraneous information adds to the credibility of the applicant, helps humanize the declarant, and can make the case more sympathetic (ex: some hardship to the client's U.S. citizen children or other relatives, etc.)
 - Read the declaration and know why every sentence is included. If you cannot explain how the information is relevant (either to prove

- a particular point or to help tell the comprehensive story), the information should probably not be included.
- Specificity versus generality
 - Dates:
 - Include specific dates when possible, but only where the client is sure of the date and will remember the date if asked.
 - Often, clients have difficulty remembering dates, so it can be better to provide more generalized time references or points of reference (ex: Your client may remember that a particular incident happened around Christmas or in the summer or during middle school or after their first child was born).
 - For example, instead of writing a specific date that your client has guessed, say “winter of 1999 and I remember because it was very cold at that time.” You can also ask your client to put the event in reference to another major event, for example, “it occurred approximately a couple of years after my son was born.”
 - Sometimes it is better to keep information more generalized—for example, if your client is unsure about something. If your client is not sure about a detail, do not ask them to “guesstimate.”
 - Credibility is a huge issue in all asylum cases and you do not want your client to testify inconsistently. They truly may not be able to recall certain details about the event and that is okay.
 - Explore why your client cannot remember certain details. This may be related to them having been victimized (ex: PTSD), or to the fact that the event happened a very long time ago, or may be a result of many instances of mistreatment such that the details of particular instances of abuse blend together.
 - On the other hand, providing some very specific details that make the claim come to life can be very useful, provided the client can provide the same details consistently. Using descriptive language and emotions can help paint a picture for the reader and bring the case to life.
 - For example, including specific derogatory names that the client was called; how the person felt after being called such names; a description of a particular form of physical harm including describing the instrument of torture that was used; etc.
 - Be creative. For example, if nexus is not clear or the client is having difficulty explaining why they were targeted, ask more questions to figure out why they may have been targeted.

- For example: What reasons did X have to target you [and not someone else]? Why did X target you specifically? How do you know that X targeted you because of X? Who else did X target? What do you share in common with those individuals who X also targeted? Why didn't X target Y person?
- If you do not understand something or if what the client is saying sounds implausible, do not be afraid to ask the hard questions or possibly offensive questions (of course, ask in an empathetic way and explain why the information you are asking about is relevant and important).
 - The declaration drafter's job is to make the client's story clear to the IJ or asylum officer and to understand it. Thus, in drafting the declaration, you have to discern what is relevant and helpful to the case.
 - Work with your client to understand what happened and to reach a point where you understand the incident or its relevance to the client.
 - Do not include information that does not make sense to you just because the client insists it is true. If something sounds implausible to you, it will almost certainly sound implausible to the adjudicator. Discuss with the client why you believe it is problematic to include some particular information. Sometimes there may be facts that are simply not helpful to the claim and are not required to be disclosed. These are best left out of the declaration—but then you also need to prepare the client to not affirmatively raise those facts in testimony (unless a question is asked that would require that information to be shared).
- If the client has a long history of past abuse or torture or mistreatment and they cannot delineate all the individual episodes or details, try asking questions like:
 - What is the worst thing that ever happened to you? (Which may not be the incident that was most physically damaging—but may have been emotionally very scarring.)
 - What is the incident where you suffered the most physical harm?
 - What made you decide to leave your home country when you did?
 - Where the client suffered repeated mistreatment, be sure the declaration explains that and is providing some examples of that mistreatment. Details matter.
- If the client is talking about events that did not happen to them directly, ask them: “How do you know X? Why do you think that X happened? Why do you believe X?”
 - Do not accept everything as fact.
 - It should be clear in the declaration when the client is stating an opinion or belief and on what basis the client bases his or her opinion or belief.
 - If the client does not know something, the declaration should also be clear about that, if relevant.

- If there are some “bad” facts or difficult issues that are sure to come up and are relevant to the claim, it is best to address those directly, putting the facts or information in the best light and offering an explanation as to why the client still merits asylum.
 - For example: The client may have a criminal conviction, may have made return trips to the country of origin, or may have lied on a visa application because they were trying to escape their home country.
- When you have a first, complete draft of the declaration, check for consistency. Compare what is in the declaration with prior declarations, documents in file, prior applications, witness declarations, etc. Ask questions to the client if something seems inconsistent.
 - If you sense problems regarding your client’s consistency or memory, are facing translation issues, or if you are not sure of the relevancy of certain pieces of information or do not know what to do about negative information—flag these issues and discuss them with the client.
 - You may need to have a heart-to-heart with the client about your concerns;
 - You may need to refer the client to meet with a psychologist or therapist;
 - You may need a new interpreter;
 - You may need to spend extra time with the client in preparing them to testify or may need to omit details about which they are unsure.

D. Style and Formatting of Declaration:

- Introductory information should include declarant: name, immigration status, and purpose of declaration.
- When deciding on the organization of declaration, make it easy for the reader (and easy for you to cite to in a brief).
 - Use numbered paragraphs, which are a few sentences long
 - Break apart information
 - Chronological order is generally the most appropriate and logical way to present the declaration, especially if the applicant suffered past persecution. However, think through the story and determine if the client can tell a more persuasive story in a different order and format (ex: thematic headings).
 - Sub-headings can be very useful
 - End with why the client is afraid of going back now
 - Put any negative information you must disclose in the middle (primacy and recency—begin and end strong)
 - Do not only focus on the harm; establish that the individual has the protected characteristic (e.g. is a member of the proposed particular social group or holds the political opinion, etc.)
 - Create a narrative/story
 - Use topic sentences at beginning of paragraphs

- At the end of the declaration, include a statement that the client swears to the truth of the statements therein.
 - “I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge.” Must be signed and dated.
- If the client is not fluent in English:
 - The client must have the declaration read to him or her in best language and attach certificate of interpretation.
 - OR
 - Prepare the declaration in the client’s native language, translate the declaration into English, and attach a certificate of translation. *See* ICPM, Appendix H.
- The declaration does not have to be notarized.
- There is no minimum or maximum page limit for an asylum declaration—the length will largely depend on the particular case. Asylum declarations are often lengthy, but know your client, your audience, and your opposing counsel when making these decisions. Sometimes, declarations will be short if there is a concern that the client will contradict the declaration during direct or cross-examination.

E. Finalizing the Declaration:

- When finalizing the declaration, the client must review the declaration carefully. Everything must be true as they will be signing the declaration under penalty of perjury.
 - Explain what “under penalty of perjury means”
 - Explain the legal concepts of credibility and a frivolous finding so they understand the consequences of including any untrue information
- If the declaration is prepared in the client’s best language (whether that be English or a foreign language), before they sign the declaration, make sure that they can read and understand that language (as they may have had limited schooling and may not be able to read the declaration).
- If the declaration is prepared in a language that is not the client’s best language, ensure complete interpretation or translation so that the client can confirm that everything in the declaration is accurate.
- Make sure the client has a copy of the final signed declaration.

F. After Declaration is Submitted:

- Make sure the client reviews the declaration before they prepare for testimony. It is also good practice to read the declaration to the client every couple of months before the asylum interview or individual hearing if there is a large gap between the submission of the declaration and the asylum interview or individual hearing.
- Warn the client that if anything is incorrect or changes even after submitting the declaration, they should let you know right away and you can correct it if necessary before they sign the I-589 before the asylum officer or the immigration judge. The best practice is to be sure everything in the declaration initially submitted is accurate.

- If a lot of time passes between the preparation of the initial declaration and the asylum interview or final hearing on the matter or if new significant events occur that are relevant, it may become necessary to do a supplemental declaration. Always research country conditions to see if they have changed in a manner helpful to the client and might be worth including from your client's perspective in a supplemental declaration.

G. Additional Helpful Resources:

- Immigration Equality, Application Process: Preparing the Asylum Declaration, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/application-process-preparing-the-asylum-declaration/#.XHQQgC2ZM6h>.
- Immigration Equality, Preparing the Application: Declarations Dos and Don'ts, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/preparing-the-application-declarations-dos-and-donts/#.XHQQfC2ZM6h>.
- Immigration Equality, Preparing the Application: Annotated Sample Declaration, <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/preparing-the-application-annotated-sample-declaration/#.XHQQhS2ZM6h>.
- Northwestern, Pritzker Legal Research Center, Trauma Sensitive Interviewing Resources, <https://library.law.northwestern.edu/immigrationclinic/trauma>.
- Krisztina Szabo, et al, National Immigrant Women's Advocacy Project, American University, Washington College of Law, Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma Informed Approach (2013), <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Szabo%20et%20al%20-%20Advocates%20and%20Attorneys%20Tool%20for%20Developing%20a%20Survivors%20Story%20%28NIWAP%202013%29.pdf>.²⁸

²⁸ While this resource is related to VAWA, U and T visa relief, it provides some useful information regarding working with a trauma survivor.