

Credible & Reasonable Fear Interviews

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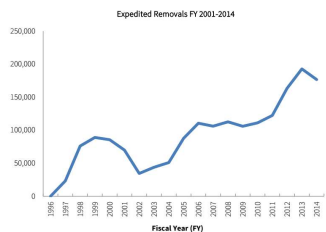
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Right to Ask for Protection

- Immigrants have the right to ask the U.S. to protect them from persecution or torture in their home country
- If an immigrant expresses fear by telling an immigration officer or judge that they are afraid to be deported to their home country, then they must be afforded the right to tell their story
- There is only a right to ask for protection. The Asylum Officer will determine whether the immigrant can apply for asylum.

Use of Expedited Removal Is on the Rise

The use of expedited removal to deport people has risen substantially over the past two decades. In FY 2013, approximately 193,000 persons were deported from the United States through expedited removal. That represents 44 percent of all 438,000 removals from the United States in 2013.¹⁴



Source: U.S. Department of Homeland Security, Immigration Enforcement Activity 2001, 2002, 2003, and 2014; U.S. Immigration and Naturalization Service, 2003 Statistical Yearbook, Ch. 4.

Summary of Removal Orders Issued by DHS

Expedited removal

- Removal of an individual without due process protections

Administrative removal

- Applies to non-LPRs who have been convicted of an “aggravated felony.” INA §238(b)
- DHS has discretion to initiate §240 removal proceedings even if § 238(b) could apply

Reinstatement of prior removal order - INA §241(a)(5)

IJ orders of removal

- Usually pertains to person who has seen an IJ or failed to appear to a hearing before an IJ
- Call 1800-898-7180 and file EOIR FOIA

Credible Fear vs. Reasonable Fear Processes

CREDIBLE FEAR

- If immigrant has recently come to the U.S. without permission and is afraid to return to their home country
- Standard is whether there is a “significant possibility” they could win an asylum case before an immigration judge
- If they pass the interview, relief available: asylum, withholding of removal, Convention Against Torture (CAT)

REASONABLE FEAR

- If client has been deported before, has a prior deportation order, or has been convicted of an aggravated felony (and is not a LPR), and is afraid to return to their country
- Standard is whether there is a “reasonable possibility” they would be persecuted or tortured if deported. Higher burden of proof.
- If they pass the interview, relief available: withholding of removal or CAT

Does My Client Need an Interview?

NTA/removal proceedings

- No need for credible fear interview

Expedited removal order (Form I-860)

- Look to see if fear interview still needs to be conducted

Reinstatement order

- Look to see if fear interview needs to be conducted

NTA and an I-94 card with "Parole" stamp

- Likely that your client has already been interviewed

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under sections 881 of the Immigration and Nationality Act, File No. _____

In the Matter of _____

Respondent _____ currently residing at _____
FILE NO. I-860 - Revised Instructional Content, I-860 (02) Rev. 03-10, Page 2003, Copyright, 2010 DHS

You are in holding status.
 You are not in removal in the United States who has not been admitted or paroled.
 You had your admission to the United States, but are inadmissible for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or lawful permanent resident.
2. You are in status of an alien who is inadmissible.
3. You are not in removal status as an alien who is inadmissible.
4. You are not in removal status as an alien who is inadmissible.
5. You are not in removal status as an alien who is inadmissible.
6. You are not in removal status as an alien who is inadmissible.
7. You are not in removal status as an alien who is inadmissible.

You are not in removal status as an alien who is inadmissible.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provisions of the Immigration and Nationality Act: _____

You are hereby notified that you are required to appear at the following hearing:

Date: _____ Time: _____ Location: _____

Signature: _____

Date: _____

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Requesting The Interview

- Documenting requests – must be done through ICE
- One-year filing deadline issues (non detained)
- Client's prior statements and government contacts
- Busting detention center myths (previous interactions with CBP and ICE)
- Explain the roles of the parties in the interview

Preparing for the Interview

Explain how the interview will work:

- Interview could last a few hours
- If an interpreter is needed, there will be an interpreter, most likely by telephone

Advise the client:

- Answer all questions honestly
- Do not answer any question that you don't understand
- Tell the officer if you do not understand a question or if you do not understand the interpreter
- Speak slowly and give the interpreter time to interpret
- Try to discuss events in chronological order
- Use complete sentences and phrases
- It is okay to show emotion. If you need a minute to compose yourself, you can ask the officer for a break

Preparing for the Interview

Questions to prepare with the client:

- WHO harmed, persecuted, or tortured them (or will in the future)?
- WHY did they harm, persecute, or torture them (or will in the future)?
- Was the GOVERNMENT in their home country involved?
- Can you SAFELY LIVE SOMEWHERE ELSE in your home country?

Preparing for the Interview ("Finding the refugee")

WHO harmed, persecuted, or tortured them (or will in the future)?

- Was it an individual? A group? The police or someone in the government?
- How did you identify them?

Preparing for the Interview

WHY did someone harm, persecute, or torture them (or will in the future)?

- It helps if client can explain that their persecutor was motivated by one of the protected grounds (race; religion; nationality; political opinion; membership in a particular social group).
- How did they know it was on this basis that they were persecuted?
 - Did the person say something about their reason for harming you?
 - Was the person wearing anything that signified the reason they were harming you?

Preparing for the Interview

Was the GOVERNMENT in their home country involved?

- Did the government cause the harm?
- If government did not cause the harm, did they do anything about the harm?
- Did the client report harm to the police? If so, did the police help?
- Was the government, including local authorities, unable or unwilling to protect them?

Preparing for the Interview

Can they SAFELY LIVE SOMEWHERE ELSE in their home country?

Need to show that if they tried to go elsewhere in their country, either:

1. The people who harmed (or want to harm) them are still there and still want to harm them;
2. The people who will harm them will find them wherever they go; or
3. It would be unreasonable for them to go anywhere else.
 - Would they be at a great risk of harm in general somewhere else?

During the Interview

- Attorneys role:
 - Take notes as close to verbatim as possible
 - Generally allowed to clarify misunderstandings and ask the client questions after the Asylum Officer to elicit further testimony, but Asylum Officers may differ in what they will allow
 - Credible Fear Interview:** regulations allow a closing statement to be presented, but condition this opportunity upon the Asylum Officer's approval
 - Reasonable Fear Interview:** regulations do not grant permission to the advocate to present a statement, but do require the Asylum Officer to review the summary of testimony with the asylum seeker and provide them an opportunity to correct any errors

Record of Determination/Credible Fear Worksheet

| DATE | FILE NUMBER | OFFICE | AGENT |
|------|-------------|--------|-------|
| | | | |

REASONABLE FEAR INTERVIEW

1.0. Was the interview conducted? Yes No

1.1. Was the interview conducted in a private setting? Yes No

1.2. Was the interview conducted in a language understood by the applicant? Yes No

1.3. Was the interview conducted in a language understood by the interpreter? Yes No

1.4. Was the interview conducted in a language understood by the Asylum Officer? Yes No

1.5. Was the interview conducted in a language understood by the Asylum Officer's supervisor? Yes No

1.6. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor? Yes No

1.7. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor? Yes No

1.8. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor? Yes No

1.9. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.10. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.11. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.12. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.13. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.14. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.15. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.16. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.17. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.18. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.19. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

1.20. Was the interview conducted in a language understood by the Asylum Officer's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor's supervisor? Yes No

Common Issues at the Interview

- Language**
 - Understanding the interpreter
 - Rare Languages in credible fear interviews only whereby an NTA can be issued within 48 hours
 - Strategically it may be beneficial to proceed with alternative language for arriving alien who may be paroled
- Competency**
 - Advocate for NTA to be issued based on inability to testify
- Limited Questioning**
 - Ask follow up questions based on clarifying or critical information.
- Family members and linking**

After the Interview

If they do not pass the interview, and want to continue the case:

- Ask for Immigration Judge Review – a short hearing in which the judge will question the asylum seeker about their fear, evaluate their credibility, and consider relevant country condition documentation. An attorney can accompany the asylum seeker as a consultant but cannot represent them at the hearing. The attorney may be given an opportunity to speak, but it depends on the judge.
- If the IJ vacates the Asylum Officer's negative decision, the asylum seeker will receive the opportunity to apply for relief before a judge
- If the IJ affirms the Asylum Officer's negative decision, there is a process to Request for Re-Interview or Reconsideration with the asylum office that made the initial fear determination, but there must be a reasonable claim that compelling new information in the case exists and the request must be made quickly after the IJ affirms the decision.

If they do not pass the interview, and do not want to appeal: ICE will remove them from the U.S.

Negative Credible/Reasonable Fear Review Hearings

(E) Conduct of hearing. — A credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings. Rather, a credible fear review is simply a review of the DHS asylum officer's decision. Either the alien or DHS may introduce oral or written statements, and the court provides an interpreter if necessary. Evidence may be introduced at the discretion of the Immigration Judge. The hearing is recorded. Parties should be mindful that all requests for continuances are subject to the statutory time limits. See (A), above.

After the Interview

If they pass the interview, they will receive a Notice to Appear and will have an opportunity to see an immigration judge to apply for relief:

- Credible Fear – asylum, withholding of removal, CAT
- Reasonable Fear – withholding or removal, CAT

Questions and Contact Information

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