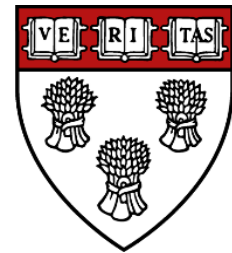




Webinar on Haitian Asylum Claims

March 30, 2017

CENTER FOR
Gender & Refugee
STUDIES



Presenters

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*Special thank you to CLINIC for
hosting the webinar!*



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

Introduction

Institute for Justice & Democracy in Haiti

- Build the Rule of Law in Haiti
- Help Haitians Enforce their Basic Rights
- Bring Haitians' Fight for Justice to the International Community

Coordinating the
Haiti Deportations
Response Network
(HDRN)

Questions to cover:

- What are conditions on the ground Haitians are fleeing and common claims to asylum?
- What are best practices for working with Haitian asylum seekers in a culturally competent way that respects the client and best helps in case preparation?
- How do the common asylum claims meet the eligibility requirements for Haitians? For Haitians who spent time in Brazil, are their claims foreclosed by the firm resettlement bar?
- What resources exist to help attorneys working with Haitian asylum seekers?

Situation on the Ground in Haiti: Common Asylum Claims

Country Conditions: Roadmap

- Overview
- Law Enforcement/ Justice
- Politics
- Particular Categories
 - Women
 - LGBT
 - Journalists
 - Police officers
- Resettlement

Country Conditions: Overview

- History of instability/dictatorships- internal and external causes
- Poverty:
 - 163/188 in Human Development Index
- Unnatural vulnerability to natural disasters
- Migration

Law Enforcement/Justice

National Police



Justice System



Gangs



Politics

Political Situation



Political Violence

Particular Categories

Women



LGBT



Journalists



Land Conflicts



Special Issues

Resettlement



Cultural Competency: Best Practices for Working with Haitian Asylum Seekers

Best Practices: Before Meeting Client

- Join the Haiti Deportations Response Network (HDRN)

<http://www.ijdh.org/2017/02/topics/immigration-topics/action-alert-join-the-haiti-deportations-response-network/>

- Study materials on the Haiti Asylum Information Project (HAIP) BEFORE interviewing your client
 - Gives a sense of political and social conditions in Haiti and of the kinds of questions you'll need to ask to elicit your client's asylum story

Best Practices: Meeting Your Client

- Take time to ESTABLISH TRUST
- Explain the process and WHY it is important to tell the truth:
 - To have the best chance of winning asylum and of not getting tripped up later at the hearing and being denied asylum for lack of credibility

Best Practices: Interviewing Your Client

- Have your client tell their story *one phrase or sentence at a time*, so that your translator has time to immediately translate each phrase or sentence into English, otherwise you'll not get the accurate and full story.
- If your client starts to “run on,” have translator *gently* hold up a hand in a stop sign gesture and/or say “rehTAY” (wait), so that your translator has time to immediately translate each phrase or sentence into English.
 - Otherwise, you may get INACCURATE and/or INCOMPLETE information which may later result in a negative credibility finding due to discrepancies between your client’s I-589 and his/her testimony at the eventual hearing.

Best Practices: Sworn Statements at the Border

- REVIEW the sworn statement closely:
 - Was it read back before you signed? Is that your signature?
 - Did they use a *Creole* interpreter or one in another language? Did you understand each other? Was he or she sympathetic? Were you rushed in any way?
 - Did you say things the translator did *not* translate? If so, what?
 - If it says “I came to work,” did you say that?
 - Did you tell them why you left Haiti? What did you say about that?
 - If the statement says anything like “I had a visa to stay in Brazil,” what exactly did you say about that?
 - Etc.

Proving Asylum Eligibility: Haitian Claims

Refugee Definition

Deborah E. Anker, *Law of Asylum in the United States* (2017) (Thomson/Reuters)

- INA § 101(a)(42):
 - **Persecution or well-founded fear** of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion
- **Past Persecution:** 8 C.F.R. § 208.13
 - Past persecution creates presumption of a well-founded fear
 - Where past persecution is established, the burden shifts to government to prove absence of a well-founded fear. Rebuttal of presumption:
 - Fundamental change in circumstances
 - Internal relocation that is both possible and reasonable
 - “Past-persecution only” cases may be granted on a discretionary basis if :
 - There are compelling reasons arising out of severity of past persecution
 - There is a reasonable possibility of other serious harm

Withholding of Removal: probability of threat to life or freedom (persecution) for reasons of one of protected grounds

“Well-Founded Fear”

- Fear must be both 1) subjectively genuine and 2) objectively reasonable--*Matter of Mogharrabi*, I. & N. Dec. 439 (B.I.A. 1987)
- Types of proof:
 - Testimony (credible, persuasive, and specific)
 - Human rights conditions in country of origin
 - Past persecution and past harm
 - Targeting of a) individual (“singled out”) or b) closely associated persons
 - Pattern or practice of persecution of similarly situated persons
 - Actions or events post-flight; “sur place”
- Internal Flight: Haiti’s small size (about the size of Maryland), and kinship ties that follow individuals if they attempt to relocate within the country, mean that internal relocation is neither possible nor “reasonable under all the circumstances.”

Nexus

- INA § 101(a)(42)(A): Past or feared persecution must be “*on account of*” *one* of the enumerated grounds
- REAL ID Act, INA § 208(b)(1)(B)(i): “[T]he applicant must establish that [one of the five grounds] was or will be *at least one central reason* for persecuting the applicant”

Persecution

- Persecution: serious harm **plus** failure of state protection; **non-state actors**
- Forms of harm
 - Physical
 - Gender based violence
 - Emotional or psychological
 - Discrimination
 - Violations of social, cultural, economic rights
 - Forced violation of fundamental beliefs
 - Cumulative harm
 - “Severe and atrocious” harm (past-persecution only--*Matter of Chen*, 20 I. & N. Dec. 16 (B.I.A. 1989))

Grounds: Particular Social Group

- Particular Social Group:
 - Immutable characteristic (e.g. innate such “as sex, color, or kinship ties”)
 - Past shared experience “such as former military leadership or land ownership.” *Matter of Acosta*, 19 I.&N. Dec. 439 (B.I.A. 1985)
 - Social distinction -*Matter of M-E-V-G-* 26 I. & N. Dec 227 (2014) and particularity
 - --*Matter of A-M-E & J-G-U*, I. & N. Dec. 69 (B.I.A. 2007)

Grounds: Particular Social Group (Haitian Context)

- **Gender/Domestic Violence**--*Matter of A-R-C-G-*, 26 I. & N., Dec. 388 (B.I.A. 2014) (Haitian women, especially those in rural areas are often subjected to violence from their partners)
- **LGBTQ**--*Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819 (B.I.A 1990) (LGBTQ Haitians are subjected to discrimination and violence)
- **HIV/Aids**--(*Matter of*— immigration judge decision (John F. Gossart Jr.), Baltimore, MD (IJ Dec. 20, 2000)) (Haitians who are HIV+ or have Aids are socially isolated and discriminated against)
- **Mental Disability**--persons with mental disabilities are highly stigmatized causing severe discrimination and social isolation
- **Family**--*Matter of H-*, 26 I. & N., Dec. 749 (B.I.A. 2016)

Grounds: Political Opinion

- Political Opinion: not just party membership, not just for elites: “instinctive or spontaneous reaction to oppression equally valid as educated opinions”
- Refusing extortion; refusing to join gang in Central America
- Examples in Haitian context:
 - Extortion:--Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988)* (Haitian man who refused extortion by government security forces threatening his very livelihood was imputed anti-government political opinion; Duvalier Haiti described as a “kleptocracy”)
 - Political protests; corruption in government*

Land Ownership as a Ground

- Political Opinion: citizens opposing government eminent domain policies by protesting state expropriating land
 - Over the past few years there have been several protests and demonstrations opposing the government expropriating land ie) protests in 2013 over road building project in Jeremie, protests in 2014 over Ile-a-Vache development project,
- PSG: Land ownership has been recognized as a PSG in *Matter of Acosta*, 19 I.&N. Dec. 439 (B.I.A. 1985)--see e.g., *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666 (7th Cir. 2005)
 - Potential Land Ownership PSGs in Haiti:
 - Internally displaced land owners or claimants, whose land is built upon by others
 - Particularity?

Firm Resettlement Bar to Asylum

Sources of Authority

- INA § 208(b)(2)(A)(vi), 8 U.S.C. § 1158(b)(2)(A)(vi) (establishing firm resettlement exception for asylum)
- 8 C.F.R. § 1208.15 (defining “firm resettlement”)
- *Matter of A-G-G-*, 25 I&N Dec. 486 (B.I.A. 2011) (setting forth test for analysis)
- Federal court precedent (analyzing application of bar)

For additional information and analysis:

Deborah Anker, *Law of Asylum in the United States*, Chpt. 6.III.C. (2017);

U.S. Citizenship and Immigration Services, RAO Directorate – Officer Training, *Firm Resettlement Training Module* (Feb. 21, 2012)

Overview of the Bar

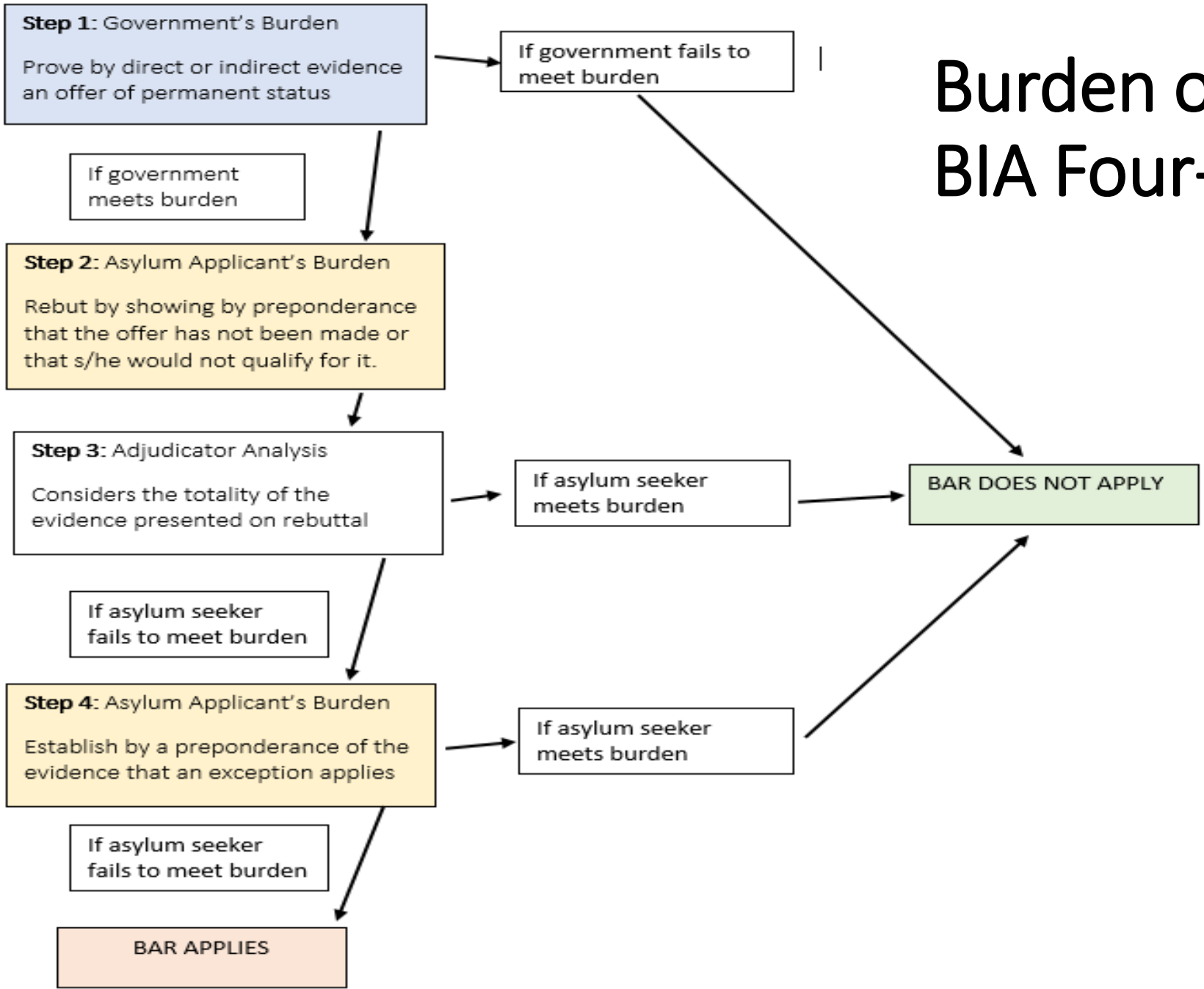
Requirements

1. Entry into a third country
2. Offer or receipt of
3. Permanent status

Exceptions

1. Residence in third country incident to flight from persecution
2. “Substantial and conscious” restriction on rights in the third country
 - a. Living conditions
 - b. Employment opportunities
 - c. Availability of other rights (e.g. travel, education, citizenship)

Burden of Proof: BIA Four-Step Framework



Bar as Applied to Haitians

1. Most Haitians satisfy the first requirement of entry into a third country, having spent time in Brazil before coming to the U.S.
2. However, it is far less clear whether Haitians were given an “offer” of permanent residence in Brazil.
 - a. Did your client enter Brazil **before** January 13, 2012 or otherwise enter Brazil unlawfully without a visa? If so, s/he may have been authorized in November 2015 by the National Council on Immigration and the Ministry of Justice to apply for permanent residence, see <http://voce.mj.gov.br/lista1.pdf>.
 - b. Did your client enter Brazil **after** January 13, 2012 with a humanitarian visa (*visto humanitario*) following Normative Resolution No. 97 of the National Council on Immigration, conditional for a 5-year period? If so, she may be eligible at the end of the period to apply for permanent residence if s/he can prove s/he is working and has financial means to support him/herself.
3. In any case, most Haitians can demonstrate one of the exceptions to firm resettlement applies.

Resources for Attorneys Working with Haitian Asylum Seekers

Institute for Justice & Democracy in Haiti

Haiti Asylum Information
Project (HAIP)

<http://www.ijdh.org/haip>

Haiti Deportations Response
Network (HDRN)

<http://www.ijdh.org/2017/02/topics/migration-topics/action-alert-join-the-haiti-deportations-response-network/>

Center for Gender & Refugee Studies

Technical Assistance Program

CGRS provides free expert assistance to attorneys representing asylum seekers across the United States, including legal consultation, country conditions evidence, and expert witness referrals and declarations.

Request assistance in your case here

<http://cgrs.uchastings.edu/assistance>

MCLE Credit for California Attorneys

To request a certificate of attendance for California MCLE Credit, after viewing this webinar, please email cgrs@uchastings.edu with the subject “Haiti Webinar MCLE” and including your Name and Bar Number.

Any questions?

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